

Sanchez v Perez

2019 NY Slip Op 35138(U)

October 29, 2019

Supreme Court, Bronx County

Docket Number: Index No.: 24904/2018E

Judge: Mary Ann Brigantti

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX, PART: 15



SANCHEZ, STEVEN V.

Index No. 0024904/2018E

-against-

Hon. MARY ANN BRIGANTTI,

PEREZ, JR., JAIME

Justice Supreme Court

The following papers numbered 1 to _____ Read on this motion, (Seq. No. 2) for
SUMMARY JUDGMENT LIABILITY, noticed on **May 23 2019**.

Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed	No(s).
Answering Affidavit and Exhibits	No(s).
Replying Affidavit and Exhibits	No(s).

Upon the foregoing papers, it is ordered that this motion and cross motion are granted in accordance with the annexed decision and order.

Motion is Respectfully Referred to Justice:
Dated:

Dated: .10/29/19

Hon. Mary Ann Brigantti
MARY ANN BRIGANTTI, J.S.C.

- 1. CHECK ONE..... CASE DISPOSED IN ITS ENTIRETY CASE STILL ACTIVE
- 2. MOTION IS..... GRANTED DENIED GRANTED IN PART OTHER
- 3. CHECK IF APPROPRIATE..... SETTLE ORDER SUBMIT ORDER SCHEDULE APPEARANCE
- FIDUCIARY APPOINTMENT REFEREE APPOINTMENT

[*1]

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF BRONX: I.A.S. PART 15

-----X
 STEVEN V. SANCHEZ and CARMEN B. CARLO,

Plaintiffs,

DECISION AND ORDER

- against -

Index No. 24904/2018E

JAIME PEREZ JR., HENRY RICARDO, TOMAS
 RICARDO, MARTA GALAN RICARDO, and "JOHN
 DOE" (a fictitious name used to represent the operator of
 the RICARDO VEHICLE),

Defendants.
 -----X

Mary Ann Briganti, J.

Upon the foregoing papers, plaintiffs seek summary judgment on the issue of liability. Co-defendants Henry Ricardo, Tomas Ricardo ("Tomas"), and Marta Galan Ricardo ("Marta") oppose the motion (collectively, "co-defendants"), and co-defendant Jaime Perez, Jr. ("Perez") cross-moves for summary judgment on the issue of his liability dismissing the complaint and all cross claims against him.

In support of their motion, Plaintiffs' submitted he deposition transcript of Tomas. At the outset, and contrary to co-defendants' contentions, Plaintiffs were entitled to rely on the certified, albeit unsigned, copy of Tomas's deposition transcript, the accuracy of which Tomas does not dispute (*Ortiz v. Lynch*, 105 A.D.3d 584, 585 [1st Dept 2013]; *Tsai Chung Chao v Chao*, 161 A.D.3d 564 [1st Dept 2018]). Tomas testified that as he was travelling directly behind a Lincoln MKS, SUV, the Lincoln stopped on the highway for approximately 10 to 20 seconds and the front of his vehicle struck the rear of the Lincoln (Thomas EBT at 23). Tomas testified that the Lincoln was stopped at the time of the impact (*id.*). Tomas also testified that traffic conditions were heavy stop and go (*id.*).

In support of his cross-motion and partial opposition, Perez submitted an affidavit stating that while operating a 2010 Lincoln on the Cross Bronx Expressway he was slowing his vehicle to a

stop because of traffic when his vehicle was struck in the rear by a vehicle operated by Tomas. Perez further contends that his actions did not contribute to the subject accident and that he could not avoid the impact.

In this case, the Court finds that Plaintiffs and Perez have established their prima facie entitlement to summary judgment as their vehicle was struck from the rear by co-defendants' vehicle (*see Cabrera v Rodriguez*, 72 A.D.3d 553 [1st Dept 2010]; *De La Cruz v. Ock Wee Leong*, 16 A.D.3d 199, 200 [1st Dept 2005]). The burden therefore shifts to co-defendants to provide evidence of a "nonnegligent explanation for the accident, or a nonnegligent reason for [their] failure to maintain a safe distance between [their] car and the lead car" (*Mullen v Rigor*, 8 A.D. 3d. 104 [1st Dept 2004], citing *Jean v Xu*, 288 A.D.2d 62 [1st Dept 2001], and *Mitchell v. Gonzalez*, 269 A.D.2d 250, 251 [1st Dept 2000]).

In opposition to the motion, co-defendants failed to come forward with an adequate nonnegligent explanation for the accident (*Cabrera*, 72 AD3d 553; *Ferguson v Honda Lease Trust*, 34 AD3d 356, 357 [1st Dept 2006]), or a nonnegligent reason for their failure to maintain a safe distance from the lead car (*see Woodley v Ramirez*, 25 AD3d 451 [1st Dept 2006]).

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Accordingly, it is hereby,

ORDERED, that plaintiffs' motion for summary judgment against co-defendants is granted, and it is further,

ORDERED, that plaintiffs' motion for summary judgment against Perez is denied, and it is further,

ORDERED, that Perez's cross motion for summary judgment dismissing the complaint and all cross-claims asserted against him is granted, and it is further,

ORDERED, that the Clerk of the Court is directed to enter judgment accordingly.

This constitutes the Decision and Order of the Court.

Dated: 10/29/19

E N T E R,



MARY ANN BRIGANTTI, J.S.C.