

Lopez v Rodriguez

2024 NY Slip Op 32329(U)

June 14, 2024

Supreme Court, New York County

Docket Number: Index No. 158166/2023

Judge: James G. Clynes

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. JAMES G. CLYNES PART 22M

Justice

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DANIEL LOPEZ

Plaintiff,

- v -

DANILO RODRIGUEZ,

Defendant.

INDEX NO. 158166/2023

MOTION DATE N/A

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22

were read on this motion to/for JUDGMENT - SUMMARY

Upon the foregoing documents, it is ordered that Defendant's motion for summary judgment dismissing the complaint against him on the basis that he did not breach any duty owed to Plaintiff and, therefore, is not a proximate cause of the subject accident is decided as follows:

Plaintiff seeks to recover for injuries allegedly sustained as a result of an April 14, 2023, motor vehicle accident at the intersection of West 191st Street and Saint Nicholas Avenue, between a motorcycle owned and operated by Plaintiff and a vehicle owned and operated by Defendant.

To grant summary judgment, it must be clear that no material or triable issues of fact are presented (Sillman v Twentieth Century-Fox Film Corp., 3 NY2d 395 [1957]). The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case (Winegrad v NY Univ. Med. Ctr., 64 NY2d 851 [1985]). Once such entitlement has been demonstrated by the moving party, the burden shifts to the party opposing the motion to "demonstrate by admissible evidence the existence of a factual issue requiring a trial of the action or tender an acceptable excuse for his failure...to do [so]" (Zuckerman v New York, 49 NY2d 557,

560 [1980]). A defendant's motion for summary judgment opposed by a plaintiff must be decided on the version of the facts most favorable to the plaintiff (*Mullin v 100 Church LLC*, 12 AD3d 263, 264 [1st Dept 2004]).

In support of the motion, Defendant submits a certified police accident report, a video depicting the alleged accident, and the affirmation of Defendant. Defendant relies in part on the video depicting the accident. Defendant states in his affirmation that the video depicts Plaintiff's motorcycle entering the intersection while the pedestrian light for pedestrian traffic on Saint Nicholas Avenue is white.

In Defendant's affirmation, he states his maximum speed was 10-15 miles per hour, that he was at a complete stop for between 60-90 seconds at a red traffic light, the traffic light turned green for his direction of travel, he removed his foot off the brake and pressed lightly on the accelerator. Defendant states he drove approximately two car lengths into the intersection when he saw Plaintiffs' motorcycle coming towards his driver side and a split second later, the motorcycle hit Defendant's driver's side front wheel area. Defendant further contends he did not have time to make any evasive maneuvers. Defendant's affirmation establishes prima facie entitlement to relief, and the burden shifts to Plaintiff to raise a triable issue of fact (*Winegrad* 64 NY2d at 851; *Zuckerman* 49 NY2d at 560).

In opposition, Plaintiff relies on Plaintiff's affirmation. In the affirmation, Plaintiff states he was traveling at a speed of 20-25 miles per hour when the intersection's traffic light turned yellow, and Defendant's vehicle entered the intersection. Additionally, Plaintiff states he was not performing "wheelies" or otherwise operating the vehicle recklessly prior to the accident.¹

¹ The certified police report states multiple witnesses and Defendant observed Plaintiff doing a "wheelie" before the accident.

Plaintiff's affirmation states Defendant's video does not clearly depict the traffic light or pedestrian crossing signals. Plaintiff's counsel in opposition of Defendant's motion for summary judgment states that the two video still images included in Defendant's affirmation show an illuminated pedestrian light, but the video footage does not, and there is no indication the pedestrian walk signals are in sync with vehicular traffic signals at the intersection.

In reply, Defendant contends that Plaintiff's affirmation that his vehicle entered the intersection at a yellow light does not create an issue of fact because the video and photographic evidence negate Plaintiff's version of events.

Despite the video footage of the accident submitted in support of the motion, the Court finds there are triable issues of fact. Specifically, Defendant affirms that prior to the accident, Defendant was stopped at a red light and upon the light turning green, Defendant proceeded through the intersection, however, the vehicular traffic light in question is not visible on the video footage. Plaintiff states, in his affirmation, the vehicular traffic light turned yellow when Plaintiff's motorcycle entered the intersection, likewise, the vehicular traffic light in question is not visible on the video footage (*see Lynch v Mondestin*, 2022 N.Y. Misc. LEXIS 20789 [Sup Ct, Queens County Mar. 15, 2022, No. 702905/2020] [finding that triable issues of fact exist because a traffic light was not visible in the video footage submitted and there were competing versions of how the accident had occurred]); (*see also Eremin v Motor Veh. Acc. Indem. Corp.*, 2022 N.Y. Misc. LEXIS 20948 [Sup Ct, Queens County July 18, 2022, No. 727409/2021] [finding when it is unclear from the contents of video footage whether the party had a green or red light, the video creates a question of fact as to the happenings of the accident]).

Here, Plaintiff raised sufficient issues of fact, precluding summary judgment for Defendant. The motion is denied. Accordingly, it is

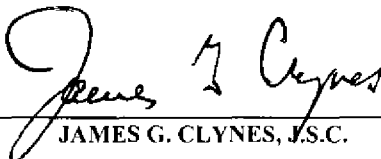
ORDERED that Defendant's motion for summary judgment dismissing the complaint against him on the basis that he did not breach any duty owed to Plaintiff and, therefore, is not a proximate cause of the subject accident is denied; and it is

ORDERED that any relief sought not expressly addressed herein has nonetheless been considered; and it is further

ORDERED that within 30 days of entry, Plaintiff shall serve a copy of this Decision and Order upon Defendant with Notice of Entry.

This constitutes the Decision and Order of the Court.

6/14/2024
DATE


JAMES G. CLYNES, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED	<input type="checkbox"/>	
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	REFERENCE
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	