

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
SECOND JUDICIAL DEPARTMENT

Dalrymple v. Morocho

2022 NY Slip Op 05020 (App. Div. 2022) · No. 2019-12328 · Decided August 24, 2022

SUMMARY

The New York Appellate Division, Second Department, affirmed an order granting Roman Morocho summary judgment in a personal injury action arising from a bicycle-vehicle collision. The court held that the plaintiff's unsafe lane change established Morocho's prima facie lack of fault and that the plaintiff's counsel's affirmation was insufficient to raise a triable issue of fact or show that the motion was premature.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Mark C. Dillon, J.P.; Francesca E. Connolly, J.; Sheri S. Roman, J.; Joseph J. Maltese, J.
JURISDICTION	New York
DECIDED	August 24, 2022
DOCKET	2019-12328
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiff appealed from an order granting defendant Roman Morocho summary judgment dismissing the personal-injury complaint insofar as asserted against him.
STANDARD OF REVIEW	Summary judgment is appropriate where the movant establishes prima facie entitlement to judgment as a matter of law and the opposing party fails to raise a triable issue of fact. A party opposing a claim that a summary-judgment motion is premature must show that discovery might lead to relevant evidence or that essential facts are exclusively within the movant's knowledge and control.
PRECEDENTIAL VALUE	precedential
PARTIES	Woody Dalrymple v. Roman Morocho

TOPICS

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QUESTIONS PRESENTED

1. Whether Morocho established prima facie that he was not at fault and that his alleged negligence was not a proximate cause of the collision.
2. Whether plaintiff's counsel's affirmation raised a triable issue of fact in opposition to summary judgment.
3. Whether the summary-judgment motion was premature under CPLR 3212(f).
4. Whether plaintiff's remaining contention, raised for the first time on appeal, was properly before the court.

HOLDINGS

1. Morocho established prima facie that Dalrymple made an unsafe lane change into the path of Morocho's vehicle in violation of Vehicle and Traffic Law § 1128(a), that Morocho had no opportunity to avoid the collision, and that Morocho was not at fault or a proximate cause of the accident.
2. Plaintiff's counsel's affirmation, which was plaintiff's sole submission in opposition, was insufficient to raise a triable issue of fact.
3. The motion was not shown to be premature because plaintiff failed to demonstrate that discovery might lead to relevant evidence or that essential facts were exclusively within Morocho's knowledge and control.
4. The remaining contention, raised for the first time on appeal, was not properly before the Appellate Division.

KEY QUOTATIONS

*“A defendant moving for summary judgment in a negligence action has the burden of establishing, prima facie, that he or she was not at fault in the happening of the subject accident” (*1)*

*“A party who contends that a summary judgment motion is premature is required to demonstrate that discovery might lead to relevant evidence or that the facts essential to justify opposition to the motion were exclusively within the knowledge and control of the movant” (*2)*

*“mere hope or speculation that evidence sufficient to defeat a motion for summary judgment may be uncovered during the discovery process is an insufficient basis for denying the motion” (*2)*

FACTUAL BACKGROUND

Morocho was driving southeast on Irving Avenue in Brooklyn at approximately 15 miles per hour while Dalrymple was bicycling in the bicycle lane to Morocho's left. A tractor-trailer entered the intersection without

stopping at a stop sign and stopped in the crosswalk while turning. Dalrymple swerved right to avoid the tractor-trailer and collided with the left front door of Morocho's vehicle, causing Dalrymple to fall.

PROCEDURAL HISTORY

Dalrymple commenced a personal-injury action against Morocho and others after a bicycle-vehicle collision. The Supreme Court, Kings County, granted Morocho's motion for summary judgment, determining that plaintiff's counsel's affirmation did not raise a triable issue of fact. The Appellate Division affirmed the order insofar as appealed from.

DISPOSITION

affirmed

CASES CITED

- Daniel v. Ian-Michael, 188 A.D.3d 1155, 1156 (N.Y. App. Div. 2020)
- Boulos v. Lerner-Harrington, 124 A.D.3d 709, 709 (N.Y. App. Div. 2015)
- Carias v. Grove, 186 A.D.3d 1484, 1484 (N.Y. App. Div. 2020)
- Callahan v. Glennon, 193 A.D.3d 1029, 1030 (N.Y. App. Div. 2021)
- Barbieri v. Vokoun, 72 A.D.3d 853, 856 (N.Y. App. Div. 2010)
- Vainer v. DiSalvo, 79 A.D.3d 1023, 1024 (N.Y. App. Div. 2010)
- Merola v. Beaird, 185 A.D.3d 679, 680 (N.Y. App. Div. 2020)
- Pipinias v. Ferreira, 155 A.D.3d 1073, 1074 (N.Y. App. Div. 2017)
- Leonard v. Pomarico, 137 A.D.3d 1085, 1086 (N.Y. App. Div. 2016)
- Morales v. Amar, 145 A.D.3d 1000, 1002-03 (N.Y. App. Div. 2016)
- Suero-Sosa v. Cardona, 112 A.D.3d 706, 708 (N.Y. App. Div. 2013)
- Williams v. Spencer-Hall, 113 A.D.3d 759, 760-61 (N.Y. App. Div. 2014)