

Giarletta v Martinez

2007 NY Slip Op 31609(U)

June 12, 2007

Supreme Court, Richmond County

Docket Number: 0010817/2000

Judge: Philip G. Minardo

Republished from New York State Unified Court System's E-Courts Service.
Search E-Courts (<http://www.nycourts.gov/ecourts>) for any additional information on this case.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

-----X
TRUDY A. GIARLETTA, ROBERT CASTELLANOS,
RALPH GIARLETTA, As Administrator of the Estate
of RUDOLPH MICHARONI, SARAH MICHARONI,
and SCORRO CASTELLANOS, as Administrator of the
Estate of LUIS R. CASTELLANOS, deceased,

Index No. 10817/00

Plaintiff(s),

-against-

Action No. 1

WILLIAM MARTINEZ, TOBY HANNA
CORPORATION and REPUBLIC ONE d/b/a TOBY
HANNA CORPORATION,

Defendant(s).

-----X
TRUDY A. GIARLETTA, ROBERT CASTELLANOS,
RALPH GIARLETTA, As Administrator of the Estate
of RUDOLPH MICHARONI, SARAH MICHARONI,
and SCORRO CASTELLANOS, As Administrator of
of the Estate of LUIS R. CASTELLANOS, deceased.

Index No. 11581/02

Plaintiff(s),

-against-

Action No. 2

SWAP MEET CARRIER CORP., et al.,

Defendant(s).

-----X
TRUDY A. GIARLETTA, ROBERT CASTELLANOS,
RALPH GIARLETTA, As Administrator of the Estate
of RUDOLPH MICHARONI, SARAH MICHARONI,
and SCORRO CASTELLANOS As Administrator of
the Estate of LUIS R. CASTELLANOS, deceased,

DECISION and ORDER

Index No. 12772/02

Plaintiff(s)

-against-

Action No. 3

JAGTRUX, INC. and LYNN D. WEAVER,

Defendant(s).

-----X

-----X
 TRUDY A. GIARLETTA, ROBERT CASTELLANOS,
 RALPH GIARLETTA, As Administrator of the Estate
 of RUDOLPH MICHARONI, SARAH MICHARONI
 and SCORRO CASTELLANOS, as Administrator of
 the Estate of LUIS R. CASTELLANOS, deceased,

Index No. 12773/02

Plaintiff(s)

-against-

Action No. 4

IESI NY CORPORATION, et al.,

Defendant(s).

-----X

The following papers numbered 1 to 4 were used on this motion this 24th day of May 2007.

	Pages Numbered
Notice of Motion for Summary Judgment (Affirmation in Support)	1
Plaintiff's Affirmation in Opposition	2
Defendant's Affirmation in Opposition (Martinez)	3
Reply Affirmation	4

Defendant Groeger Siegfried s/h/a/ Siegfried Groeger (hereinafter "Groeger") in Action No. 4, moves for an order granting him summary judgment dismissing the complaint on the ground that no triable issue of fact exists with respect to his liability pursuant to CPLR 3212.

Based upon the examination before trial and the papers submitted, the court makes the

following findings of fact: On August 31, 1999 six vehicles collided on the westbound side of the Staten Island Expressway. The chain reaction of impacts is as follows: the sixth vehicle operated by defendant William Martinez rear ended the fifth vehicle, operated by defendant Horace Muhammad, who then was propelled into the defendant Groeger. Groeger was operating the fourth vehicle when he was hit in the rear which propelled him into defendant Weaver, who was operating the third vehicle, which was propelled into the plaintiffs' Trudy A. Giarletta and Rudolph Micharoni vehicle. The plaintiff(s) testified that their 1999 Infiniti I30 was completely stopped for sixty seconds behind a flatbed truck due to construction on the roadway before being rear ended by a truck owned by defendants Jagtrux Inc., and operated by Lynn D. Weaver. This collision propelled the Plaintiffs' vehicle into the non party flatbed truck.

The fourth vehicle operated by defendant Groeger claims that he is entitled to summary judgment because evidence from the police report and his own affidavit prove that his vehicle was lawfully stopped five yards behind the vehicle operated by defendant Weaver before it was struck from behind by defendant Muhammad. In this multi-vehicle collision, Groeger argues, the rear most vehicle is clearly responsible.

In opposition the defendant Martinez, the sixth vehicle in this collision, testified that he saw smoke coming from the brakes of the vehicle ahead of him, defendant Muhammad, suggesting that defendant Groeger's vehicle may not have been completely stopped. However, defendant Martinez does not know for certain whether or not Groeger's vehicle was completely stopped. This is evident in his statements "Only God knows," and "I can't say." Further, this court finds whether the fifth vehicle's brakes were smoking or not is irrelevant to oppose the fourth vehicle's request for

summary judgment.

The opposing parties, however, claim that summary judgment is premature because discovery is still proceeding in this case. This case has been certified by the court that all discovery has been completed or waived. The court notes defendant Martinez did not submit a copy of their demand to take defendant Groeger's deposition pursuant to this court's prior compliance order and therefore the deposition is considered waived.

In order to obtain summary judgment, the moving party must demonstrate that there is no genuine issue of material fact and that it is entitled to summary judgment as a matter of law (CPLR 3212). “Summary judgment is a drastic remedy and should not be granted where there is any doubt as to the existence of a triable issue” (*Bank of New York v Granat*, 197 AD2d 653 (2nd Dept. 1993)). The movant must make a prima facie showing that it is entitled to summary judgment based upon submission of sufficient evidence (*Alvarez v Prospect Hospital*, 68 NY2d 320 (1986)).

The burden then shifts to the opposing party, who must “...produce evidentiary proof in admissible form sufficient to require a trial of material questions of fact on which he rests his claim (*Zuckerman v The City of New York*, 49 NY2d 557, 562(1980)). Mere conclusory statements, expressions of hope or unsubstantiated allegations are insufficient to defeat the motion (*Rodriguez v New York City Housing Authority*, 87 NY2d 887; *Ayotte v Gervasio*, 81 NY2d 1062 (1993)). The requirement that evidence in opposition to a summary judgment motion must be in competent and admissible form protects the meritorious motion from frivolous defenses *Fender v Prescott*, 101 AD2d 418,425 (1st Dept. 1984). “ Only the existence of a bona fide issue raised by evidentiary fact and not one based on conclusory or irrelevant allegations will suffice to defeat summary judgment”

(*Extruders, Inc. v. Ceppos*, 46 NY2d 223, 231 (1978)).

In the instant case, Vehicle and Traffic Law §1129(a) provides:

“(a) The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon and the condition of the highway.”

This statute imposes a duty upon drivers to maintain a safe distance from the car ahead of them and the failure to do so, without adequate explanation or some defense of sudden or unavoidable circumstances, is negligence as a matter of law (*Silberman v Surrey Cadillac Limousine Service Inc.*, 109 AD2d 833 [2nd Dept. 1985]).

A rear-end collision with a stopped or stopping vehicle creates a prima facie case of liability with respect to the operator of the rear-most vehicle, thereby requiring that operator to rebut the inference of negligence by providing a non-negligent explanation for the collision (*see, Purcell v Axelsen*, 286 AD2d 379 (2nd Dept. 2001); *Colonna v Suarez*, 278 AD2d 355 (2nd Dept. 2000)).

Here, Groeger has succeeded in presenting a prima facie case that he is entitled to summary judgment as a matter of law. The opposing parties have failed to show that any facts exist upon completion of discovery that would raise an issue of fact to oppose Groeger’s motion for summary judgment. “The mere hope by a party that he might be able to uncover some evidence during discovery is insufficient to deny summary judgment to a defendant” (*Koenig v Price*, 200 AD2d 559 [2nd Dept. 1994] citing *Jones v Gamera*, 153 AD2d 550, 551 (2nd Dept. 1989)). Accordingly, this court finds the opposing parties failed to submit compelling evidence sufficient to create an issue of fact, nor have they provided any meritorious defenses for the occurrence of the accident.

Accordingly, defendant's Groeger's motion for summary judgment is granted in its entirety.

This shall constitute the decision and order of the court.

E N T E R,

Dated: June 12, 2007

s/ Philip G. Minardo
J.S.C.