

Richardson v Berggruen
2008 NY Slip Op 30567(U)
February 27, 2008
Supreme Court, New York County
Docket Number: 0103143/2005
Judge: Eileen A. Rakower
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

EILEEN A. RAKOWER

PRESENT: _____ J.S.C.

PART Part 5

Index Number : 103143/2005

RICHARDSON, HALANA

vs.

BERGGRUEN, NICHOLAS

SEQUENCE NUMBER : 002

SUMMARY JUDGMENT

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

this motion to/for _____

PAPERS NUMBERED

1

2

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

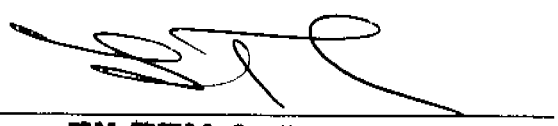
FILED

MAR 03 2008

NEW YORK COUNTY CLERK'S OFFICE

DECIDED IN ACCORDANCE WITH ACCOMPANYING DECISION / ORDER

Dated: 2/27/08



EILEEN A. RAKOWER ^{S.C.}

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION ^{J.S.C.}

Check if appropriate: DO NOT POST REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 5

-----X
HALANA RICHARDSON,

Plaintiff,

Index No.
103143/05

Mot. Seq. No.: 002

- against -

Decision After
Trial

NICOLAS BERGGRUEN, APARICIO FERNANDES,
Defendants.

-----X
HON. EILEEN A. RAKOWER

Plaintiff, Halana Richardson, brings this action for personal injuries she allegedly sustained when she was hit from behind in her motor vehicle while on Northern Boulevard and 50th Street Queens, New York on September 17, 2002. The defendants in this action are Nicolas Berggruen, owner of the rear vehicle and Aparicio Fernandes ("Fernandes"), the driver of the vehicle. Before trial, defendants moved and plaintiff cross-moved for partial summary judgment before the Honorable Deborah A. Kaplan. Defendants' motion and plaintiff's cross-motion on the issue of liability were denied. The court there found that there were triable issues of fact as to whether plaintiff was stopped at a red light or whether she cut off Fernandes, leaving him no opportunity to react safely and avert the collision.

A jury trial began on January 10, 2008 and a verdict was rendered in favor of defendants on January 23, 2008. Plaintiff now moves¹ for an order: (1) directing that judgment by entered in favor of plaintiff, notwithstanding the verdict, as a matter of law on the issue of liability and setting the matter down for an assessment of damages pursuant to CPLR 4404(a); or alternatively; (2) setting aside the verdict as being against the weight of the evidence and ordering a new trial on the issues of both liability and damages, also pursuant to CPLR 4404(a); and (3) deciding plaintiff's

¹Plaintiff, Halana Richardson, directed a letter to this Court, against the advice of counsel, and while this motion was *sub judice*, which the Court rejected, and returned to plaintiff unopened.

prior CPLR 4401 oral motion (reserved at trial) for a directed verdict on the issue of "serious injury."

Upon direct examination, plaintiff testified that on the date of the accident she was driving a Land Rover SUV along Northern Boulevard while following her car dealer, Adib Yousseffi, to a mechanic's shop. As she approached 50th Street she stopped for about "three to ten seconds" at a red light. She was in the middle lane and there were vehicles to her right and left at the light. She turned to her right to give her infant daughter, who was in the back seat, a bottle and felt "a heavy impact." She testified that Mr. Yousseffi was in front of her at the time of impact. She estimated that Mr. Fernandes was traveling at about forty to sixty miles per hour when he hit her vehicle.

Mr. Fernandes was also called as a witness by plaintiff at trial and testified that plaintiff cut him off, that he never saw, or does not remember seeing, any break lights and he did not have enough time to avoid hitting her car from the rear. Mr. Fernandes testified that after impact his and plaintiff's car "touched and then got apart" about four or five feet.² Photographs of the damage to the two vehicles were submitted at trial. The hood of Mr. Fernandes' Mercedes is dented and bent and there is no apparent damage to the rear of plaintiff's Land Rover.³

Mr. Yousseffi testified at trial that when he got close to 48th Street and Northern Boulevard, he looked in his rear view mirror and noticed that plaintiff was stopped "almost in the middle lane" and was getting out of her car. He pulled his car over and walked about a "hundred yards" back to where plaintiff and Mr. Fernandes were stopped⁴. He did not see any damage to her bumper but testified that the Mercedes "has a lot of damage on front of car." He also testified that the cars were "apart a couple of feet away from each other . . . maybe more." He did not hear any noise or

²Plaintiff testified that the Mercedes' final resting position after the accident was about a car length and a half away from the rear of her vehicle.

³Despite the appearance of the vehicle in photographs, plaintiff testified at trial that her vehicle "had a dent by the towbar and it had glass underneath the tire, the spare tire. And one of the glasses - - one of the back lights was damaged, and my whole bumper was raised and pressed up against the back of the vehicle."

⁴Upon cross examination, Mr. Yousseffi could not remember the exact distance that he walked and testified that it could have been sixty or seventy yards.

any type of bang from the impact.

CPLR 4404(a) states, in relevant part:

After a trial of a cause of action or issue triable of right by a jury, upon the motion of any party or on its own initiative, the court may set aside a verdict or any judgment entered thereon, and direct that judgment be entered in favor of a party entitled to judgment as a matter of law or it may order a new trial . . . where the verdict is contrary to the weight of the evidence . . .

Although contained in the same section of the CPLR, there are subtle differences between a court's inquiry into whether judgment should be entered notwithstanding the verdict and whether the verdict should be set aside as against the weight of the evidence. For a court to conclude as a matter of law that a jury verdict is not supported by sufficient evidence it is necessary to conclude that there is "no valid line of reasoning and permissible inferences which could possibly lead rational men to the conclusion reached by the jury on the basis of the evidence presented at trial." (Cohen v. Hallmark Cards, 45 N.Y.2d 493[1978]). In the inverse, if it cannot be said that the evidence is such that it would not be utterly irrational for a jury to reach the result it has, and thus a valid question of fact exists, the court may not conclude that the verdict is not supported by the evidence as a matter of law. (Id. at 499.) A decision based on this standard results in a final judgment in favor of the opposing party.

When the inquiry is whether the jury verdict should be set aside as against the weight of the evidence, a discretionary and factual determination must be made by the court. It does not involve a question of law, but rather requires a discretionary balancing of many factors. (Nicastro v. Park, 113 A.D.2d 129[2nd Dept. 1985]). When the court sets aside the jury verdict under this standard, a new trial must be granted. (Labriola v. City of New York, 129 A.D.2d 505[1st Dept. 1987]).

Plaintiff has not shown that as a matter of law, defendants were liable. It is well settled that a rear-end collision with a stopped vehicle creates a presumption that the operator of the rear vehicle was negligent. However, that presumption may be rebutted if the driver of the rear vehicle provides a non-negligent explanation for the collision. (Somers v. Condlin, 39 A.D.3d 289[1st Dept. 2007]). A sufficient explanation of non-negligence may be that the front vehicle swerved in front of the

rear vehicle or cut the rear vehicle off, leaving the rear vehicle with too little time to react. (Lebron v. IESI NY Corp., 6 A.D.3d 215[1st Dept. 2004]). Mr. Fernandes' explanation for the collision is that plaintiff cut in front of him, leaving him no time to stop, and causing him to hit plaintiff's vehicle from behind. Mr. Fernandes' testimony at trial was consistent with this theory. He testified that there was about twenty feet in between him and the car in front. Plaintiff came into his lane and he only had a second or a few seconds with which to apply his brakes but he was not able to stop his car in time to avoid hitting plaintiff. Plaintiff offered a different account of the accident, claiming that she was stopped at a red light when she was hit. The evidence here was not insufficient. Rather, the differing accounts of the accident testified to merely raised questions of fact and credibility to be submitted to the jury. Fact finding is the province of the jury. Thus in the absence of indications that substantial justice has not been done, a jury verdict should not be disturbed. (Nicastro at 133).

Nor can plaintiff show that the verdict rendered in defendants' favor was against the weight of the evidence. Mr. Fernandes testified that plaintiff changed lanes and cut him off and that she was not stopped when he hit her. His testimony that the two cars hit and then separated could lead to the logical inference that he hit plaintiff while she was still moving. His testimony is fortified by Mr. Yousseffi, who testified that the two vehicles were apart when he observed them after the accident. The photographs submitted could also lead the jury to the reasonable interpretation that the damage sustained by each vehicle is consistent with Mr. Fernandes' account that plaintiff's vehicle was not stationary when the impact occurred. Further, a rational jury could conclude that Mr. Yousseffi was not, as plaintiff alleges, stopped in front of her at the traffic light, because he did not hear any noise from the impact and had to walk back fifty to hundred yards to reach plaintiff's car. Thus, the jury assessed the evidence, credited the testimony of Mr. Fernandes and Mr. Yousseffi, and did not credit the testimony of Halana Richardson, and a new trial is not warranted.

The parties agreed that the first question on the verdict sheet should address the defendants' negligence. The jury's answer to that question ended deliberations, and the jury never reached the question of "serious injury." This Court reserved decision on plaintiff's motion, made at the close of plaintiff's direct case, asking that the Court find serious injury as a matter of law. Based on the foregoing, the motion is denied as moot.

Wherefore it is hereby

ORDERED that plaintiff's motion is denied, and the Clerk is directed to enter judgment in favor of defendants pursuant to the jury's verdict dated January 23, 2008.

DATED: February 27, 2008



EILEEN A. RAKOWER, J.S.C.

FILED

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