

Galicki v City of New York

2008 NY Slip Op 33583(U)

August 13, 2008

Supreme Court, New York County

Docket Number: 109029/05

Judge: Eileen A. Rakower

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY
HON. EILEEN A. RAKOWER

PRESENT

PART 5

Index Number : 109029/2005

GALICKI, OLEG

vs

INDEX NO. 109029/05

CITY OF NEW YORK

MOTION DATE _____

Sequence Number : 002

MOTION SEQ. NO. 002

SUMMARY JUDGMENT

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

1
2, 3, 4
5, 6

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

FILED

AUG 18 2009

COUNTY CLERK'S OFFICE
NEW YORK

DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION / ORDER

Dated: 8/13/09

[Signature]
HON. EILEEN A. RAKOWER, S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

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

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

-----X
OLEG GALICKI,

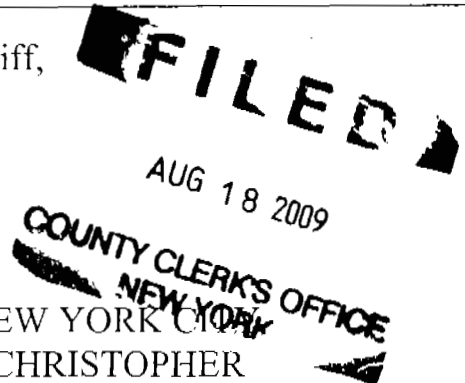
Plaintiff,

- against -

THE CITY OF NEW YORK, THE NEW YORK CITY
DEPARTMENT OF SANITATION, CHRISTOPHER
MURPHY and ANTON GALITSKIY,

Defendant.

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



Index No.
109029/05

Decision
and Order

Mot. Seq.
No.: 002

Plaintiff brings this action to recover for injuries allegedly sustained when he was a passenger in a vehicle that was struck in the rear by a garbage truck that was owned by defendants City of New York ("City") and driven by Christopher Murphy ("Murphy"). The vehicle that plaintiff was riding in was owned and operated by defendant Anton Galitskiy ("Galitskiy"). The accident occurred on West 62nd Street between Central Park West and Broadway in the county and state of New York on June 24, 2004. According to witness testimony and to accident reports appended to the motion papers, the accident occurred when Galitskiy stopped short to avoid hitting a third vehicle that was pulling out of a driveway in front of him. Upon stopping short, Galitskiy's vehicle was struck by Murphy in the rear. There is no dispute that Murphy was acting in the scope of his employment at the time of the accident. Galitskiy now moves for summary judgment pursuant to CPLR 3212 on the issue of liability. Plaintiff opposes Galitskiy's motion and cross-moves for summary judgment as against City. City and Murphy both oppose Galitskiy's motion. City opposes plaintiff's cross motion.

Galitskiy, in support of his motion, submits the following: the pleadings; the deposition transcript of Christopher Murphy; the deposition transcript of Domingo Guzman, Supervisor for the Department of Sanitation; the deposition transcript of

Oleg Galicki; a copy of a Department of Sanitation “Official Accident Report;” and a Department of Sanitation “Unusual Occurrence Report.” Galitskiy argues that he is entitled to summary judgment because his vehicle was stopped when it was hit in the rear by the City owned garbage truck. To support his contention, Galitskiy points to Murphy’s deposition testimony:

Q: What part of your vehicle was involved in the accident?

A: The front bumper.

...

Q: What part of the Cadillac was involved in the accident?

A: The rear.

...

Q: When you saw the Cadillac stop short just before the impact, was your foot on the gas or on the brake?

A: The brake.

Galitskiy points to the Sanitation Department’s Unusual Occurrence report, which states:

VEH #1 OPERATED BY SW. MURPHY WAS ENROUTE TO THE PAPER DUMP. HE WAS TRAVELING BEHIND VEH. #2 WHICH CAME TO AN ABRUPT STOP AT THE ABOVE LOCATION, VEH. #3 PULLED OUT OF A DRIVEWAY IN FRONT OF VEH. #2 AND VEH.#2 STOPPED SUDDENLY TO AVOID AN ACCIDENT. VEH. #1 STRUCK VEH. #2 IN THE REAR, CAUSING THE ABOVE DAMAGE . . .

In the Department of Sanitation Official Accident Report, Murphy states:

I was driving on 62nd St when a car pulled out of driveway suddenly car #2 in front of me stopped suddenly and I hit him in back.

City, in opposition to the motion, argues that summary judgment should be denied because it has not had the opportunity to depose Galitskiy and that there is a triable issue of fact as to whether Galitskiy’s stopping suddenly was “negligent and whether such action contributed to causing the accident.” City points to a so-ordered stipulation dated April 7, 2009 which directs that Galitskiy be deposed “on or before may 22, 2009.” City also argues that plaintiff’s cross-motion should be denied for the

same reasons.

The proponent of a motion for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law. That party must produce sufficient evidence in admissible form to eliminate any material issue of fact from the case. Where the proponent makes such a showing, the burden shifts to the party opposing the motion to demonstrate by admissible evidence that a factual issue remains requiring the trier of fact to determine the issue. The affirmation of counsel alone is not sufficient to satisfy this requirement. (*Zuckerman v. City of New York*, 49 N.Y.2d 557 [1980]). In addition, bald, conclusory allegations, even if believable, are not enough. (*Ehrlich v. American Moninger Greenhouse Mfg. Corp.*, 26 N.Y.2d 255 [1970]). (*Edison Stone Corp. v. 42nd Street Development Corp.*, 145 A.D.2d 249, 251-252 [1st Dept. 1989]).

It is well settled that “the driver of a stopped vehicle which is struck from behind by another vehicle is entitled to summary judgment unless the driver of the following vehicle presents a non-negligent explanation for the accident, or a non-negligent reason for her failure to maintain a safe distance between her car and the lead car.” (*Mullen v. Rigor* 8 A.D.3d 104 [First Department, 2004]). (*See also Hatzis v. Belliard*, 13 AD3d 106 [First Department, 2004] (where the driver of vehicle involved in chain rear-end collision made prima facie showing that accident was not due to his negligence, in that his vehicle was pushed into rear of plaintiff’s vehicle when it was itself hit in the rear by a third vehicle.)

Here, Murphy testifies only that he struck Galitskiy’s car in the rear when Galitskiy’s vehicle stopped suddenly. The various accident reports support Murphy’s version of the incident. Thus, a deposition of Galitskiy is unnecessary as it was Murphy, not Galitskiy, who was in the position to assert a non-negligent explanation for his failure to maintain a safe distance between himself and the vehicle in front of him. Murphy did not provide any such reason, despite having had several occasions to do so.

Wherefore it is hereby

ORDERED that defendant Anton Galitskiy’s motion for partial summary judgment on the issue of liability as to his cross-claims against defendant the City of New York, New York City Department of Sanitation and Christopher Murphy is granted and the issue of the amount of a judgment to be entered thereon shall be

determined at the trial herein; and it is further

ORDERED that plaintiff's cross-motion for summary judgment on the issue of liability as against defendants the City of New York, the New York City Department of Sanitation and Christopher Murphy is granted and the issue of the amount of a judgment to be entered thereon shall be determined at the trial herein .

This constitutes the Decision and Order of the Court. All other relief requested is denied.

DATED: August 13, 2008



EILEEN A. RAKOWER, J.S.C

FILED
AUG 18 2009
COUNTY CLERK'S OFFICE
NEW YORK