

Hassan v City of New York

2009 NY Slip Op 32923(U)

December 14, 2009

Supreme Court, New York County

Docket Number: 400600/08

Judge: Eileen A. Rakower

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

HON. EILEEN A. RAKOWER

PRESENT: RAKOWER

PART 5

Index Number : 400600/2008

HASSEN, AHMED A.

vs

CITY OF NEW YORK

Sequence Number : 002

SUMMARY JUDGMENT

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

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

DEC 16 2009

NEW YORK
COUNTY CLERK'S OFFICE

**MOTION IS DECIDED IN ACCORDANCE WITH
THE ACCOMPANYING MEMORANDUM DECISION.**

Dated: 12/14/09



HON. EILEEN A. RAKOWER

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

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

AHMED A. HASSAN,
Plaintiff,

Index No.400600/08

-against -

ORDER AND DECISION

Mot. Seq.: 002

THE CITY OF NEW YORK, NYC FIRE DEPARTMENT,
MICHAEL P. MAGNUS, ALYSSA LARRAGUIBEL,
JUAN A. LARRAGUIBEL and DAVID L. FRIEDMAN,

Defendants.

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-----X

EILEEN A. RAKOWER, J.S.C.

Plaintiff brings this action for personal injuries allegedly sustained when he was involved in a motor vehicle accident with a fire truck on the "eastbound roadway for the Triborough Bridge on the Manhattan side approximately 1/4 mile east of 125th Street and 2nd Avenue" in the County, and State of New York on November 4, 2005. Specifically, on the date of the accident, defendant Magnus testifies that, in the course of his employment, he was driving a pick up truck, owned by the NYC Fire Department. Magnus was the last in a string of four cars. The first car was owned and operated by plaintiff. The second car was owned and operated by defendant Friedman. The third car was owned by Alyssa Larraguibel and operated by Juan a. Larraguibel. Magnus struck the Larraguibel vehicle. Magnus pushed the Larraguibel vehicle into the stopped Friedman vehicle, which was pushed into the stopped plaintiff's vehicle. Plaintiff now moves for partial summary judgment on the issue of liability. Friedman cross moves to dismiss plaintiff's complaint as against him. The Larraguibels cross move to dismiss any claims and cross claims as against them. The City of New York and the Fire Department ("City") oppose the motion. The complaint as against Magnus was previously dismissed as abandoned by prior Order of this Court.

Plaintiff, in support of its motion, provides a sworn affidavit of merit by Ahmed Hassan, the summons and complaint, the answer of defendant City, the answer with cross claim by defendant Friedman, a fire department record reporting the accident, and the deposition of Michael Magnus dated April 27, 2009.

The Larraguibels, in support of their motion for summary judgment dismissing the claims and cross claims as against them, provide the deposition transcript of Ahmed Hassan dated March 20, 2009, and the deposition transcript of David Friedman, dated March 20, 2009.

Mr. Friedman, in support of his motion, relies on the exhibits provided in the motion and cross motion and submits a memorandum of law. Plaintiff, the Larraguibels and Friedman all argue that the rear most driver in a chain reaction collision bears responsibility for the accident.

City opposes, and points to Magnus's deposition testimony as raising an issue of fact. Magnus describes that plaintiff's vehicle, the first in the chain, stopped short. Still, he concedes that the Friedman vehicle stopped without contact and the Larraguibel vehicle stopped without contact. Magnus was unable to stop his vehicle without impact to the rear of the Larraguibel vehicle, which then caused the chain of collisions.

Mr. Friedman describes the vehicles as being on the approach to the tolls of the Triborough Bridge, and explains that plaintiff's vehicle did not stop short, but was stopped in front of him. He was also stopped, with five to seven feet between their vehicles. He heard the screeching of brakes and felt the impact of being hit in the rear. His foot was on his brake, and did not come off his brake pedal. The impact pushed his car forward into plaintiff's yellow taxicab.

Hassan explains that he was stopped, as were vehicles in front of him. He felt the impact of a car from the rear. Friedman testifies that after the impact, Hassan's vehicle did not move forward.

It is undisputed that at the time of the impacts, the Friedman vehicle and the Larraguibel vehicle were stopped, and that they did not cut off any vehicle or act in any way to cause these impacts.

It is well settled that the driver of a motor vehicle must maintain a safe distance between his vehicle and the one in front of him, and that a rear-end collision with a stopped vehicle establishes a prima facie case of negligence on the part of the driver who strikes the vehicle in front, unless the operator of the rear vehicle can come forth with an adequate, non negligent explanation for such accident[internal citations omitted]. (*Garcia v. Bakemark Ingredients (East) Inc.*, 19 AD3d 224 [1st Dept. 2005])

Where the un rebutted negligence of the rear vehicle in this four car collision has been established, and there is no evidence of negligence on the part of the center vehicles in the chain reaction accident, the claims and cross claims against the non-negligent vehicles must be dismissed. (*Grimes-Carrion v. Carroll*, 13 AD3d. 125 [1st Dept. 2004]).

Here, City claims the front most vehicle stopped short, causing each of the intervening cars to stop, and ultimately, causing Magnus to strike the Larraguibel vehicle in the rear. Still, the Friedman vehicle and Larraguibel vehicles were stopped safely, at the time of the impact. There is no assertion that any of the other vehicles cut the other off or acted in any other manner to cause the accident. That Hassan may have stopped short, which Hassan and Friedman maintain was not the case, was rendered remote in light of the fact that the two intervening vehicles were already stationary at the time Magnus hit Larraguibel.

Wherefore, it is hereby

ORDERED that the cross motion of defendants Larraguibel is granted and all claims and cross claims as against Allyssa Larraguibel and Juan A. Larraguibel are hereby dismissed, and the Clerk is directed to enter judgment accordingly; and it is further

ORDERED that the cross motion of defendant Friedman is granted and all claims and cross claims as against David L. Friedman are hereby dismissed, and the Clerk is directed to enter judgment accordingly; and it is further

ORDERED that plaintiff's motion for partial summary judgment on the issue of liability is granted and City's affirmative defenses are dismissed; and it is further

ORDERED that the trial of this matter shall be on the issue of damages only.

This constitutes the decision and order of the Court. All other relief requested is denied.

Dated: December 14, 2009



Eileen A. Rakover, J.S.C.

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DEC 16 2009
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