

Stephens v Libby Taxi, Inc.

2009 NY Slip Op 33435(U)

October 7, 2009

Supreme Court, New York County

Docket Number: 117030/05

Judge: Paul Wooten

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. PAUL WOOTE

PART 22

Justice

FILED

OCT 15 2009

COUNTY CLERK'S OFFICE
NEW YORK

INDEX NO. 117030/05

MYRIAM B. STEPHENS,
Plaintiff,

MOTION DATE _____

- v -

MOTION SEQ. NO. 001

LIBBY TAXI, INC., KWABENA OPPONG,
OCTAVIA MELLADO AND DAVID MELLADO,
Defendants.

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The following papers, numbered 1 to 1 were read on the motion by plaintiff for summary judgment on the issue of liability. No opposition papers were submitted.

MOTION SUPPORT OFFICE
NYS SUPREME COURT CLERKS NUMBERED

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

1

Answering Affidavits — Exhibits (Memo) _____

Replying Affidavits (Reply Memo) _____

Cross-Motion: Yes No

On October 19, 2004, plaintiff was involved in a collision while a passenger in a taxicab owned by defendant Liberty Taxi and operated by defendant Kwabena Oppong. While stopped at a red light, defendant Oppong's taxicab was struck in the rear by defendant Octavio Mellado and David Mellado's vehicle. The accident occurred on Park Avenue near its intersection with 33rd Street. Plaintiff commenced this action to recover damages for alleged personal injuries suffered as a result of the subject accident. Defendants Liberty Taxi and Kwabena now move for an order pursuant to CPLR § 3212, granting summary judgment on the issue of liability. Plaintiff cross-moves requesting the same relief. No opposition papers were submitted.

SUMMARY JUDGEMENT STANDARD

The proponent of a motion for summary judgment is required to make a *prima facie* showing of entitlement to judgment as a matter of law, by advancing sufficient

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"evidentiary proof in admissible form" to demonstrate the absence of any material issues of fact (*Winegrad v. New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]; *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; *Thomas v Holzberg*, 751 NYS2d 433, 434 [1 Dept 2002]. The motion must be supported "by affidavit [from a person having knowledge of the facts], by a copy of the pleadings and by other available proof . . ." (CPLR § 3212 [b]). A party may also demonstrate a *prima facie* entitlement to summary judgment through the affirmation of its attorney based upon documentary evidence (*Zuckerman, supra; Prudential Securities Inc. v. Rovello*, 692 NYS2d 67 [1 Dept 1999]).

Where the movant has established a *prima facie* case of negligence, respondents are required to submit evidentiary proof in admissible form raising triable issues of material fact in order to defeat the motion for summary judgment (*Mazurek v Metropolitan Museum of Art*, 812 NYS2d 12 [1 Dept 2006]; *Perez v Brux Cab Corp.*, 674 NY2d 343 [1 Dept 1998]; *Zuckerman v City of New York, supra*).

DISCUSSION

In support of their motion Defendants Liberty Taxi and Kwabena submit, *inter alia*, a copy of the pleadings and the deposition testimonies of plaintiff, defendant Oppong and defendant David Mellado which establish that defendant Oppong's taxicab was stopped at a traffic light when it was struck in the rear by defendants' vehicle. No opposition papers were submitted.

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" (see *Woodley, v. Ramirez*, 810 NYS2d 125 [1 Dept 2006]; *Garcia v Bakemark Ingredients Inc.*, 797 NY2d 467 [1 Dept 2005], quoting *Johnson v Phillips*, 690 NYS2d 545 [1 Dept 1999]; *Mullen v Rigor*, 778 NYS2d 168 [2004]; *Agramonte v City of New York*, 732 NYS2d 414 [2001]). In addition, a "driver is expected to drive at a sufficiently safe speed and to maintain enough distance between himself and cars ahead of him so as to avoid collisions with stopped vehicles taking into account the weather and road conditions" (*Malone v Morillo*, 775 NY2d 312 [1 Dept 2004], quoting *Mitchell v Gonzalez*, 703 NY2d 124 [1 Dept 2000]).

On the unrefuted evidence, plaintiff and defendants Liberty Taxi and Kwabena Oppong have established *prima facie* entitlement to summary judgment, as the defendants Liberty Taxi and Kwabena Oppong's vehicle was a stationary vehicle involved in a rear-end collision (see *Sandra Mariano v New York City Transit Authority*, 831 NYS2d 155 [1 Dept 2007]; *Woodley, v. Ramirez, supra*; *Garcia v Bakemark Ingredients, supra*).

The burden then shifted to defendants Octavio Mellado and David Mellado, to rebut the inference of negligence by offering a non-negligent explanation for the contact (*Ferguson v Honda Lease Trust*, 826 NYS2d 10 [1 Dept 2006]), and thereby, raise triable issues of material fact in order to defeat the motion for summary judgment (*Mazurek v Metropolitan Museum of Art, supra*; *Perez v Brux Cab Corporation, supra*; *Zuckerman v City of New York, supra*).

Defendants Octavio Mellado and David Mellado have failed to provide any such

explanation, or to demonstrate culpable negligence on the part of the other parties.

For these reasons and upon the foregoing papers, it is,

ORDERED that the defendants Liberty Taxi and Kwabena Oppong's motion for summary judgment on the issue of liability is granted, without opposition, and the complaint is dismissed as against defendant Liberty Taxi and Kwabena Oppong, only, and it is further

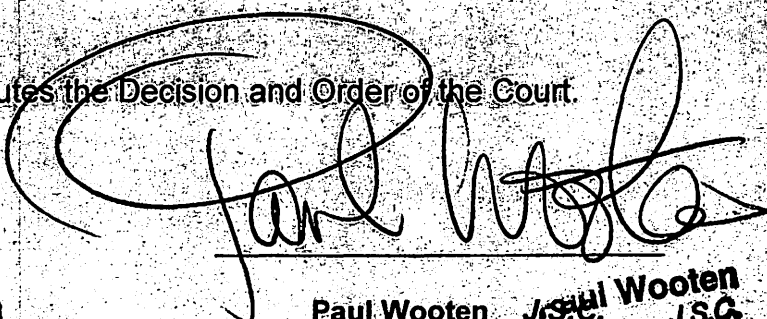
ORDERED that the plaintiff's cross-motion is hereby granted as against the defendants Octavio Mellado and David Mellado, only; and it is further

ORDERED that the matter be set down for a trial on the issue of damages against the defendants Octavio Mellado and David Mellado; and it is further,

ORDERED that the plaintiff shall serve a copy of this order with notice of entry upon all parties; and it is further,

ORDERED that within 60 days from the date hereof, plaintiff shall serve a copy of this order with a notice of entry, a note of issue and a statement of readiness upon the Clerk of the Trial Support Office and shall pay the proper fees, if any, and said Clerk shall thereupon place this action on the appropriate trial calendar for the assessment of damages directed herein.

This constitutes the Decision and Order of the Court.



Dated: October 7, 2009

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Paul Wooten J.S.C. Paul Wooten J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

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