

Arias v Youngson

2012 NY Slip Op 30128(U)

January 10, 2012

Sup Ct, Suffolk County

Docket Number: 08-29884

Judge: Hector D. LaSalle

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.

SHORT FORM ORDER

INDEX No. 08-29884
CAL No. 10-02482MV

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 48 - SUFFOLK COUNTY

PRESENT:

Hon. HECTOR D. LaSALLE
Justice of the Supreme Court

MOTION DATE 2-10-11 (#003)
MOTION DATE 4-19-11 (#005)
ADJ. DATE 8-18-11
Mot. Seq. # 003 - MD
005 - MG

-----X

ROSMIRA ARIAS,

Plaintiff,

Action No. 1
Index No. 08-29884

KEVIN T. GRENNAN, PLLC
Attorney for Plaintiff
1000 Franklin Avenue, Suite 302
Garden City, New York 11530

- against -

RICHARD T. LAU & ASSOCIATES
Attorney for Defendant Youngson, Action
1 & 2
300 Jericho Quadrangle, P.O. Box 9040
Jericho, New York 11753

SUSAN YOUNGSON and JOSEPH BIANCHI,

Defendants.

EPSTEIN, FRANKINI &
GRAMMATICO
Attorney for Defendant Bianchi, Action
1 & 2
1393 Veterans Memorial Highway
Hauppauge, New York 11788

-----X

ADRIANA V. FORERO and REINEL FORERO,

Plaintiffs,

Action No. 2
Index No. 08-19621

JOHN L. JULIANO, PC
Attorney for Plaintiffs, Action # 2
39 Doyle Court
East Northport, New York 11731

- against -

JOSEPH M. BIANCHI and SUSAN
YOUNGSON,

Defendants.

-----X

Arias v Youngson
Index No. 08-29884
Page No. 2

Upon the following papers numbered 1 to 61; read on these motions for summary judgment; Notice of Motion/ Order to Show Cause and supporting papers 1 - 17; 22 - 48; Notice of Cross Motion and supporting papers ; Answering Affidavits and supporting papers 18 - 19; 20 - 21; 49 - 53; 54 - 55; 56 - 57; Replying Affidavits and supporting papers 58 - 61; Other ; ~~(and after hearing counsel in support and opposed to the motion)~~ it is,

ORDERED that the motion (#005) by plaintiff Rosmira Arias seeking summary judgment in her favor on the issue of liability, and the motion (#003) by defendant Joseph Bianchi seeking summary judgment dismissing plaintiffs' complaint hereby are consolidated for the purposes of this decision; and it is

ORDERED that the motion by plaintiff Rosmira Arias seeking summary judgment in her favor on the issue of liability is granted; and it is further

ORDERED that the motion by defendant Joseph Bianchi for, inter alia, an order granting summary judgment in his favor on the complaint is denied.

Plaintiff Rosmira Arias commenced this action against defendants Susan Youngson and Joseph Bianchi to recover damages for injuries she allegedly sustained as a result of a motor vehicle accident that occurred at the intersection of Sunrise Highway and County Line Road in the Town of Oyster Bay on July 26, 2007. The accident allegedly occurred when the vehicle operated by plaintiff's daughter, Adriana Forero, and owned by her son-in-law, Reinel Forero, which was stopped at a red light, was struck in the rear by the vehicle operated by Bianchi. It is alleged that prior to striking the Forero vehicle, the Bianchi vehicle was struck in the rear by the vehicle owned and operated by Youngson, causing it to strike the Forero vehicle. Plaintiff was a front seat passenger in the Forero vehicle at the time of the accident.

Following the commencement of the instant action, Adriana Forero and Reinel Forero commenced an action, assigned index number 19261/08 ("Action 2"), against defendants Susan Youngson and Joseph Bianchi to recover damages for injuries they allegedly sustained in the same motor vehicle accident. By order, dated February 2, 2010, this Court joined the two actions for trial. Pursuant to the order, each action retained its own caption and index number.

Arias now moves for summary judgment in her favor on the issue of liability, arguing that Youngson's and Bianchi's inattention, failure to obey the traffic light at the intersection in violation of Vehicle and Traffic Law § 1111, and failure to maintain a safe driving distance behind the Forero vehicle are the reasons for the subject accident. In support of the motion, Arias submits copies of the pleadings, her own affidavit, an uncertified copy of the police accident report, and the parties' deposition transcripts. Bianchi opposes the motion on the ground that there are material issues of fact regarding the accident's occurrence that preclude the granting of summary judgment.

A court's task on a motion for summary judgment is issue finding rather than issue determination (*see Sillman v Twentieth Century Fox Film Corp.*, 3 NY2d 395, 165 NYS2d 498 [1957]), and it must view the evidence in the light most favorable to the party opposing the motion (*see Boyce v Vazquez*, 249 AD2d 724, 671 NYS2d 815 [3d Dept 1998]). Therefore, in determining a motion for summary judgment, the facts alleged by the nonmoving party and all inferences that may

Arias v Youngson
Index No. 08-29884
Page No. 3

be drawn are to be accepted as true (see *Roth v Barreto*, 289 AD2d 557, 735 NYS2d 197 [2d Dept 2001]). In the first instance, the moving party bears the burden and must tender evidence sufficient to eliminate all material issues of fact (see *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 487 NYS2d 316 [1985]). Once such showing has been made, the burden shifts to the nonmoving party to demonstrate the existence of material issues of fact (see *Alvarez v Prospect Hosp.*, 68 NY2d 320, 508 NYS2d 923 [1986]). Mere conclusions and unsubstantiated allegations are insufficient to raise any triable issues of fact (see *Zuckerman v City of New York*, 49 NY2d 557, 427 NYS2d 595 [1980]; *Perez v Grace Episcopal Church*, 6 AD3d 596, 774 NYS2d 785 [2d Dept 2004]).

It is well settled that a driver approaching a vehicle from the rear is bound to maintain a reasonably safe rate of speed and control over his or her vehicle, and to exercise reasonable care to avoid colliding with the other vehicle (see Vehicle and Traffic Law § 1129[a]; *Brooks v High St. Professional Bldg., Inc.*, 34 AD3d 1265, 825 NYS2d 330 [4th Dept 2006]). “A rear-end collision with a stopped or stopping vehicle creates a prima facie case of negligence against the operator of the rear vehicle, thereby requiring that operator to rebut the inference of negligence by providing a non-negligent explanation” (*DeLouise v S.K.I. Wholesale Beer Corp.*, 75 AD3d 489, 490, 904 NYS2d 761 [2d Dept 2010]; see *Reitz v Seagate Trucking, Inc.*, 71 AD3d 975, 898 NYS2d 173 [2d Dept 2010]; *Harrington v Kern*, 52 AD3d 473, 859 NYS2d 480 [2d Dept 2008]). However, the lead vehicle also has a duty not to stop suddenly or slow down without proper signaling so as to avoid a collision (*Chepel v Meyers*, 306 AD2d 235, 237, 762 NYS2d 95 [2d Dept 2003]; see *Carhuayano v J&R Hacking*, 28 AD3d 413, 813 NYS2d 162 [2d Dept 2006]; *Gaeta v Carter*, 6 AD3d 576, 775 NYS2d 86 [2d Dept 2004]; *Purcell v Axelsen*, 286 AD2d 379, 729 NYS2d 495 [2d Dept 2001]; *Colonna v Suarez*, 278 AD2d 355, 718 NYS2d 618 [2d Dept 2000]; see also Vehicle and Traffic Law § 1163). A non-negligent explanation for the collision, such as mechanical failure or the sudden and abrupt stop of the vehicle ahead, is sufficient to overcome the inference of negligence and preclude an award of summary judgment (*Danner v Campbell*, 302 AD2d 859, 859, 754 NYS2d 484 [4th Dept 2003]; see *Davidoff v Mullokandov*, 74 AD3d 862, 903 NYS2d 107 [2d Dept 2010]; *Rodriguez-Johnson v Hunt*, 279 AD2d 781, 718 NYS2d 501 [3d Dept 2001]).

Additionally, the conduct of motorists at a traffic signal is governed by Vehicle and Traffic Law § 1111, and not the more general provisions of the Vehicle and Traffic Law, such as those set forth in §§ 1140 or 1141, which govern the conduct of drivers at intersections that are not controlled by traffic lights (see *Dicke v Anci*, 31 AD3d 696, 821 NYS2d 93 [2d Dept 2006]; *Saggio v Ladone*, 21 AD3d 407, 799 NYS2d 586 [2d Dept 2005]; *Rudolph v Kahn*, 4 AD3d 408, 771 NYS2d 370 [2d Dept 2004]). Section 1111(d)(1) of the Vehicle and Traffic Law states, in pertinent part, that traffic facing a steady circular red signal shall stop at a clearly marked stop line, and shall remain standing until an indication to proceed is shown.

Based upon the adduced evidence, Arias demonstrated her prima facie entitlement to judgment as a matter of law on the issue of liability (see *Kastritsios v Marcello*, 84 AD3d 1174, 923 NYS2d 863 [2d Dept 2011]; *Volpe v Limoncelli*, 74 AD3d 795, 902 NYS2d 152 [2d Dept 2010]; *Macaulay v ELRAC, Inc.*, 6 AD3d 584, 775 NYS2d 78 [2d Dept 2004]). The evidence submitted by Arias establishes that the vehicle in which she was riding as a front seat passenger was struck in the rear while it was stopped at a red traffic light. At her deposition and in her affidavit, Arias states that

the Forero vehicle, while it was stopped in the left turning lane of Sunrise Highway, was struck multiple times in the rear by the Bianchi vehicle, and that the Bianchi vehicle was struck in the rear by the Youngson vehicle. Thus, Arias established that she was merely riding as a passenger in the Forero vehicle and was not a proximate cause of the accident (*see Andre v Pomeroy, supra; Briceno v Milbry*, 16 AD3d 448, 791 NYS2d 622 [2d Dept 2005]; *Garcia v Tri-County Ambulette Serv., Inc.*, 282 AD2d 206, 723 NYS2d 163 [2d Dept 2001]). In opposition, Youngson and Bianchi have failed to come forward with any evidence to rebut Arias's prima facie case. At his deposition, Bianchi testified that he was stopped behind the Forero vehicle in the left turning lane when his vehicle was impacted from the rear by the vehicle operated by Youngson; that his vehicle's air bag deployed; and that he "assumes" his vehicle struck the rear of the Forero vehicle as a result of the impact between his vehicle and the Youngson vehicle. At her deposition, Youngson testified that she was informed that she was involved in an accident by the nurses at Nassau County Medical Center's emergency room. Youngson testified that she has no independent recollection of having been involved in an accident, because she was suffering from low blood sugar and was unconscious prior to the accident's occurrence. Despite Bianchi's contentions that there only was one impact to his vehicle and that his vehicle was pushed forward into the Forero vehicle after being struck by the Youngson vehicle, an innocent passenger's right to summary judgment is not in any way restricted by potential issues of comparative negligence among defendants (*see Andre v Pomeroy*, 35 NY2d 361, 362 NYS2d 131 [1974]; *Petty v Dumont*, 77 AD3d 466, 910 NYS2d 46 [1st Dept 2010]; *Whitford v Carlson*, 19 AD3d 1177, 796 NYS2d 830 [4th Dept 2005]; *Johnson v Phillips*, 261 AD2d 269, 690 NYS2d 545 [1st Dept 1999]). Accordingly, Arias's motion for summary judgment in her favor on the issue of liability is granted.

Bianchi moves for summary judgment dismissing Arias's complaint on the basis that his conduct was not a proximate cause of the subject accident's occurrence, because his vehicle was stopped when it was struck in the rear by the Youngson vehicle. In support of the motion, Bianchi submits copies of the pleadings, an uncertified copy of the police accident report, the parties' deposition transcripts, and his own affidavit. Youngson opposes the motion on the ground that there are material issues of fact regarding the number of impacts sustained to the rear of the Forero vehicle. In opposition to the motion, Youngson submits the parties' deposition transcripts.

Based upon the adduced evidence, Bianchi failed to make a prima facie showing entitling him to judgment as a matter of law that he was not a proximate cause of the subject accident (*see generally Zuckerman v City of New York, supra*). In the first instance, the Court notes that the statements contained in the uncertified copy of the MV-104 Police Report constitute impermissible hearsay and, therefore, are inadmissible (*see Holloman v City of New York*, 74 AD3d 750, 904 NYS2d 79 [2010]; *Bates v Yasin*, 13 AD3d 474, 788 NYS2d 397 [2004]; *Lacagnino v Gonzalez*, 306 AD2d 250, 760 NYS2d 533 [2003]). However, even if these reports qualified as business records, no foundation was laid for their admissibility (*see CPLR 4518[a]; compare Westchester Med. Ctr. v State Farm Mut. Auto. Ins. Co.*, 44 AD3d 750, 843 NYS2d 182 [2d Dept 2007]).

Furthermore, Bianchi testified that he was at a complete stop when the impact to the rear of his vehicle occurred, and that he was informed by the responding police officer that he observed the Youngson vehicle being operated erratically. Bianchi further testified that his vehicle only sustained

Arias v Youngson
 Index No. 08-29884
 Page No. 5

one impact to the rear, and that he only realized that the front of his vehicle was damaged after he exited his vehicle. Arias testified that there were three cars involved in the subject accident, and that the third car was the one that caused the accident. She also testified that there were four impacts to the rear of the Forero's stopped vehicle and that the impacts occurred in rapid succession. At her deposition, Adriana Forero testified that her vehicle sustained four impacts to the rear, one impact immediately after the other. Given the conflicting testimony regarding how the accident initially occurred and how many impacts were sustained to the Forero and Bianchi vehicles, triable issues of fact, as well as, issues of credibility have been raised that cannot be determined on a motion for summary judgment (see *Negron v Garcia*, 85 AD3d 513, 925 NYS2d 58 [1st Dept 2011]; *Franzese v Consolidated Dairies, Inc.*, 83 AD3d 775, 920 NYS2d 688 [2d Dept 2011]; *Viggiano v Camara*, 250 AD2d 836, 673 NYS2d 714 [2d Dept 1998]; see generally *Zuckerman v City of New York*, supra). "There can be more than one proximate cause of an accident" (*Cox v Nunez*, 23 AD3d 427, 427, 805 NYS2d 604 [2d Dept 2005]), and issues of comparative negligence generally are a question for the jury (see *Sokolovsky v Mucip, Inc.*, 32 AD3d 1011, 821 NYS2d 463 [2d Dept 2006]; *Valore v McIntosh*, 8 AD3d 662, 779 NYS2d 782 [2d Dept 2004]). Accordingly, Bianchi's motion for summary judgment seeking dismissal of plaintiff Rosmira Arias's complaint is denied.

Inasmuch as the two actions arising out of the subject accident have been joined for trial and not consolidated, the portion of Bianchi's motion for summary judgment dismissing the action against him brought by Adriana Forero and Reinel Forero, bearing assigned index number 19261/08, is inappropriate, and is denied as such. Finally, since Adriana Forero and Reinel Forero are not parties to this action, the papers submitted by them in opposition to Bianchi motion were not considered in this determination.

Dated: January 10, 2012
Central Islip, NY


 HON. HECTOR D. LASALLE, J.S.C.

____ FINAL DISPOSITION X NON-FINAL DISPOSITION