

Kim v Sanfilippo

2012 NY Slip Op 31158(U)

April 24, 2012

Sup Ct, Queens County

Docket Number: 700930/11

Judge: Robert J. McDonald

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SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK
CIVIL TERM - IAS PART 34 - QUEENS COUNTY
25-10 COURT SQUARE, LONG ISLAND CITY, N.Y. 11101

P R E S E N T : HON. ROBERT J. MCDONALD
Justice

- - - - - x

BAN KIM, YEON JUNG CHO and BUM SUNG
CHO,

Plaintiffs,

- against -

Index No.: 700930/11
Motion Date: 04/19/2012
Motion No.: 18
Motion Seq.: 1

CLAUDIA R. SANFILIPPO, SUNNY V. CHUGH
and SURINDER P. CHUGH,

Defendants.

- - - - - x

The following papers numbered 1 to 17 were read on this motion by
defendants SUNNY V. CHUGH and SURINDER P. CHUGH for an order
pursuant to CPLR 3212(b) granting summary judgment and dismissing
plaintiffs' complaint and all cross-claims against them on the
ground that they are not liable for the causation of the
accident:

Table with 2 columns: Document Name and Page Range. Includes CHUGH Notice of Motion (1-6), Plaintiff's Affirmation (7-9), SANFILIPPO Affirmation (10-13), and CHUGH Reply Affirmations (14-17).

In this action for negligence, the plaintiffs seek to
recover damages for personal injuries they each sustained as a
result of a motor vehicle accident that occurred on December 10,
2010. The four-car, chain reaction accident, took place on the
eastbound lanes of the Northern State Parkway near the exit for
Glen Cove Road, Nassau County, New York.

Defendants SUNNY V. CHUGH and SURINDER P. CHUGH move for an
order pursuant to CPLR 3212(b), granting summary judgment and
dismissing each plaintiff's complaint against them. Defendants

contend that their vehicle, which was owned by defendant Surinder P. Chugh and operated by defendant Sunny V. Chugh, was stopped in traffic on the Northern State Parkway when it was struck in the rear by the vehicle owned and operated by defendant Claudia R. Sanfilippo. The impact caused the Chugh vehicle to be propelled into the plaintiffs' vehicle which was being operated by Ban Kim. Yeon Jung Cho and Bum Sung Cho were passengers in the Kim vehicle. The plaintiffs' vehicle was then propelled into the vehicle owned and operated by Patricia Lopez, a non-party.

Plaintiffs commenced their action by filing a summons and complaint on December 5, 2011. The Chugh defendants served an answer on January 6, 2012 and defendant Sanfilippo served an answer with counterclaims on January 30, 2012. The Chugh defendants, who were in the second of the four vehicles, now moves prior to discovery, for summary judgment dismissing the plaintiffs' complaint against them on the ground that a rear-end collision with a stopped vehicle creates a prima facie case of liability with respect to the operator of the following vehicle.

In support of the instant motion for summary judgment, the Chugh defendants submit an affidavit from counsel, Jeffrey D. Present, Esq; a copy of the pleadings; and a certified copy of the police accident report (MV-104).

The police report states in the section entitled "accident description/officer's notes"

"Vehicle 1 (Sanfilippo), vehicle 2 (Chugh), vehicle 3 (plaintiffs) and vehicle 4 (non-party Lopez) all on the Northern State Parkway, lane 2 traveling eastbound. Vehicle 2, vehicle 3 and vehicle 4 all stopped for traffic ahead when vehicle 1 operator (Sanfilippo) inattentive, failed to observe stopped traffic, unable to brake in time striking vehicle 2 (Chugh) in the rear pushing vehicle 2 into vehicle 3 (plaintiffs) and vehicle 3 into vehicle 4 (Lopez)."

In his affidavit in support of the motion, Sunny V. Chugh states that his was the second of four vehicles involved in the accident. He states that, "prior to the accident occurring, the two vehicles ahead of me (the Kim vehicle and the Lopez vehicle) stopped in traffic. I did as well. While my vehicle was stopped in traffic, it was struck in the rear by the vehicle owned and operated by Claudia Sanfilippo. After my vehicle was struck in the rear by the Sanfilippo vehicle, my car was pushed into the stopped vehicle of Kim. It is my understanding that the stopped vehicle of Kim was then pushed into the stopped vehicle of Lopez. When my car was struck from behind, it was stopped.

Prior to the accident, I had not suddenly changed lanes or come to a sudden stop.”

Chugh contends that the evidence submitted in support of the motion for summary judgment demonstrates that the Chugh vehicle, the second vehicle of the four cars, was lawfully stopped in traffic when it was rear-ended by the Sanfilippo vehicle which propelled their vehicle into the plaintiffs' vehicle. Counsel contends that summary judgment should be awarded to Chugh, dismissing the plaintiffs' respective complaints and all cross-claims against them because the evidence showed that Chugh was completely stopped in traffic at the time of the accident and the sole proximate cause of the accident was the negligence of Claudia R. Sanfilippo in rear-ending their vehicle and further, there is no evidence in the record that Chugh was negligent in any manner. Chugh contends that it is clear that Sanfilippo, in the moving vehicle, failed to maintain a proper lookout, failed to maintain a proper speed and a failed to maintain a safe distance from the vehicle in front of her in Violation of VTL § 1129(a).

As Chugh, in the second vehicle, was stopped and propelled into the plaintiffs' vehicle, counsel contends that the proof submitted shows that the complaint should be dismissed against Chugh as Chugh could not be liable for any of the injuries claimed by any of the plaintiffs (see Plummer v Nourddine, 82 AD3d 1069 [2d Dept. 2011]; Parra v Hughes, 79 AD3d 1113 [2d Dept. 2011]; Mustafaj v Driscoll, 5 AD3d 139 [1st Dept. 2004]; McNulty v DePetro, 298 AD2d 566 [2d Dept. 2002]; Harris v Ryder, 292 AD2d 499 [2d Dept. 2002]; Cerda v Paisley, 273 AD2d 339 [2d Dept. 2000]).

Martha D. Shepard, Esq., counsel for defendant Claudia Sanfilippo, submits an affirmation in opposition in which she states that there is a triable issue of fact sufficient to warrant denial of summary judgment. Counsel does not, however submit an affidavit from Ms. Sanfilippo. Jennifer Church, Esq., counsel for the plaintiffs opposes the motion on the ground that the motion is premature as substantial discovery including depositions of the parties are still outstanding. Plaintiffs state that they should be given the opportunity to depose Chugh and Sanfilippo regarding their respective version of the events before summary judgment may be granted.

The proponent of a summary judgment motion must tender evidentiary proof in admissible form eliminating any material issues of fact from the case. If the proponent succeeds, the burden shifts to the party opposing the motion, who then must

show the existence of material issues of fact by producing evidentiary proof in admissible form, in support of his position (see Zuckerman v City of New York, 49 NY2d 557[1980]).

It is well established law that a rear-end collision with a stopped or stopping vehicle creates a prima facie case of negligence on the part of the driver of the rearmost vehicle, requiring the operator of that vehicle to proffer an adequate, non-negligent explanation for the accident (see Klopchin v Masri, 45 AD3d 737 [2d Dept. 2007]; Hakakian v McCabe, 38 AD3d 493 [2d Dept. 2007]; Reed v New York City Transit Authority, 299 AD2 330 [2d Dept. 2002]; Velazquez v Denton Limo, Inc., 7 AD3d787 [2d Dept. 2004]).

Here, Chugh states in his affirmation that his vehicle was at a complete stop when Sanfilippo's vehicle struck his vehicle in the rear causing the chain reaction accident. "The rearmost driver in a chain-reaction collision bears a presumption of responsibility" (Ferguson v Honda Lease Trust, 34 AD3d 356 [1st Dept. 2006], quoting De La Cruz v Ock Wee Leong, 16 AD3d 199[1st Dept. 2005]). Evidence that a vehicle was rear-ended and propelled into the stopped vehicle in front of it may provide a sufficient non-negligent explanation (see Franco v Breceus, 70 AD3d 767 [2d Dept. 2010]; Katz v Masada II Car & Limo Serv., Inc., 43 AD3d 876 [2d Dept. 2007]). In multiple-car, chain-reaction accidents the courts have recognized that the operator of a vehicle which has come to a complete stop and is propelled into the vehicle in front of it as a result of being struck from behind is not negligent inasmuch as the operator's actions cannot be said to be the proximate cause of the injuries resulting from the collision (see Mohamed v Town of Niskayuna, 267 AD2d 909 [3rd Dept. 1999]). Here, Chugh, who was stopped at the time of the impact, demonstrated that his conduct was not a proximate cause of the rear-end collision between her vehicle and the plaintiff's vehicle in front of him (see Abrahamian v Tak Chan, 33 AD3d 947 [2d Dept. 2006]; Calabrese v Kennedy, 8 AD3d 505 [2d Dept. 2006]; Ratner v Petruso, 274 AD2d 566 [2d Dept. 2000]). Thus, defendant Chugh satisfied his prima facie burden of establishing entitlement to judgment as a matter of law by demonstrating that his vehicle was stopped at the time it was struck in the rear in a chain reaction which was commenced by defendant Claudia Sanfilippo.

Having made the requisite prima facie showing of its entitlement to summary judgment, the burden then shifted to the plaintiffs and/or co-defendant to raise a non-negligent explanation for the rear end collision or a triable issue of fact as to whether Chugh was also negligent, and if so, whether that

negligence contributed to the happening of the accident (see Goemans v County of Suffolk, 57 AD3d 478 [2d Dept. 2007]).

This court finds that the plaintiffs and co-defendant Sanfilippo failed to submit evidence as to any negligence on the part of Chugh or to provide a non-negligent explanation for the accident sufficient to raise a triable question of fact (see Lampkin v Chan, 68 AD3d 727 [2d Dept. 2009]; Gomez v Sammy's Transp., Inc., 19 AD3d 544 [2d Dept. 2005]). If the operator of the moving vehicle cannot come forward with evidence to rebut the inference of negligence, the occupants and owner of the stationary vehicles are entitled to summary judgment on the issue of liability (see Kimyagarov v Nixon Taxi Corp., 45 AD3d 736 [2d Dept. 2007]).

Plaintiffs' contention that the motion is premature is without merit as they failed to offer an evidentiary basis to suggest that discovery may lead to relevant evidence sufficient to oppose the motion or that facts essential to opposing the motion were exclusively within the knowledge and control of the defendants (see Kimyagarov v Nixon Taxi Corp., 45 AD3d 736, *supra*).

Accordingly, for the reasons set forth above, it is hereby

ORDERED, that the motion by defendants SUNNY V. CHUGH and SURINDER P. CHUGH for summary judgment dismissing the complaint of BAN KIM, YEON JUNG CHO and BUM SUNG CHO and all cross-claims against them is granted, and it is further and the Clerk of Court is authorized to enter judgment accordingly.

Dated: April 24 2012
Long Island City, N.Y.

ROBERT J. MCDONALD
J.S.C.