

<b>Jimenez v Prestige Car Rental</b>
2012 NY Slip Op 33902(U)
March 14, 2012
Supreme Court, Bronx County
Docket Number: 305500/10
Judge: Mark Friedlander
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NEW YORK SUPREME COURT - COUNTY OF BRONX  
PART IA-25

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ARIA JIMENEZ and RAMON JIMENEZ,

Plaintiffs,

MEMORANDUM DECISION/ORDER

Index No.: 305500/10

-against-

PRESTIGE CAR RENTAL, AYAMA F. WEBB-  
JOHNSON, GALILEE PARTNERS, INC.,  
SKROFA LLC and EMMANUEL AFOA-KWAH,  
DAVID CARMEN and D.B.I.T. ENTERPRISES  
CORP.,

Defendants.

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HON. MARK FRIEDLANDER

Defendants, Skrofa LLC ("Skrofa") and Emmanuel Afoa-Kwah ("Afoa-Kwah"), move for an order, pursuant to CPLR§3212, dismissing all claims and cross-claims against defendants Skrofa and Afoa-Kwah. The motion is decided as hereinafter indicated.

In support of their motion, defendants Skrofa and Afoa-Kwah submit an affidavit from defendant Afoa-Kwah and a copy of the Police Accident Report. Defendant Afoa-Kwah states in his affidavit, that on May 7, 2010, at approximately 8:00 p.m., he was operating a 2008 Toyota owned by defendant Skrofa. He was traveling westbound on West 145<sup>th</sup> Street, New York, New York, and stopped at the red traffic light at 8<sup>th</sup> Avenue. While stopped, his vehicle was hit in the rear by a vehicle owned by defendant Prestige Car Rental and operated by defendant Ayama F. Webb-Johnson.

In opposition to the motion, plaintiff, Aria Jimenez ("Jimenez"), submits her affidavit. She states, in her affidavit, that she was a passenger in the Skrofa/Afoa-Kwah vehicle, which was

traveling on West 145<sup>th</sup> Street. It was slowing down as it approached the intersection with 8<sup>th</sup> Avenue, when the Prestige/Webb-Johnson vehicle struck them from behind.

In opposition to the motion, defendants Ayama F. Webb-Johnson ("Webb-Johnson") and David Carmen submit the affidavit of Webb-Johnson. Ms. Webb-Johnson states in her affidavit, that she was driving behind a yellow taxicab (the Skrofa-Afoa-Kwah vehicle) in the right lane, approaching the intersection with 8<sup>th</sup> Avenue. There were no vehicles in the left lane in front of her. She activated her left turn signal to change lanes and to pass the taxicab in order to proceed through the traffic light. Upon doing so she came into contact with the taxicab. When she activated the left turn signal and proceeded to change lanes, she had sufficient room to pass the cab but still made contact with the taxicab. Ms. Webb-Johnson then states "I should not have struck the taxicab so I deduced from the position of my vehicle and the taxicab, that the taxicab attempted to change lanes at the same time and stopped suddenly, and that this caused me to hit him on the left side."

All parties cite to the Police Accident Report in their motion papers. The Police Accident Report states, under Accident Description/Officer's Notes, as follows:

Veh 1 (Afoa-Kwah) states that while stopping at a red light Veh 2 struck him from behind Veh 2 (Webb-Johnson) states that Veh 1 stopped suddenly causing her Veh to run into his.

The Police Accident Report further provides the following information:

- (1) This was a rear end accident. (Circled diagram that describes the accident); and
- (2) Vehicle Damages Codes - Points of impact and most damage to Skrofa-Afoa-Kwah vehicle ("8" & "8" respectively), indicating middle rear; points of impact and most damage to Webb-Johnson vehicle ("2" & "2" respectively), indicating middle front.

In opposition to the motion, the plaintiffs and/or co-defendants assert: (1) that contrary to the affidavit of Afoa-Kwah, the Skrofa/Afoa-Kwah vehicle was not stopped, but was stopping or moving at the time of the accident (the Jimenez affidavit and the Police Accident Report); (2) that the Skrofa/Afoa-Kwah vehicle “stopped suddenly”; (3) that Ms. Webb-Johnson’s version of the accident, per her affidavit, creates an issue of fact which precludes the granting of summary judgment to the movants; and (4) that the motion is premature.

A rear-end collision with a vehicle that is slowing down establishes a *prima facie* case of negligence of the part of the driver of the rear vehicle and imposes upon him a duty to come forward with an adequate non-negligent explanation for the accident. *Dattilo v. Best Trans. Inc.*, 79 A.D.3d 432 (1<sup>st</sup> Dept. 2010); *Cabrera v. Rodriguez*, 72 A.D.3d 553 (1<sup>st</sup> Dept. 2010). A claim that a driver stopped suddenly, standing alone, is insufficient to rebut the presumption of negligence. *Id.* at 553; *Dileo v. Greenstein*, 281 A.D.2d 586 (2d Dept. 2001) and *Diller v. City*, 269 A.D.2d 143 (1st Dept. 2000). A driver is expected to drive at a sufficiently safe speed and maintain enough distance between himself and cars ahead of him so as to avoid a rear-end collision, taking into account the weather and road conditions. *Malone v. Morillo*, 6 A.D.3d 324 (1st Dept. 2004); *Verdejo v. Aguirre*, 8 A.D.3d 63 (1st Dept. 2004); VTL §1129(a). The failure of an opposing party to rebut the presumption of negligence will entitle the moving party to summary judgment on the issue of fault. *Toulson v. Young Han Pae*, 6 A.D.3d 292, 774 N.Y.S.2d 706 (1st Dept. 2004).

Ms. Webb-Johnson’s affidavit, sworn to more than two and one half years after the accident, is equivocal and fails to address the contradictory facts contained in the Police Accident Report. Her speculative and self-serving conclusion as to what might have caused the accident

has no probative value when compared to the actual points of impact. The affidavit of Ms. Webb-Johnson creates only a feigned issue of fact and is insufficient to raise an issue of fact or defeat movant's motion for summary judgment. *Sanchez v. Nat'l Railroad Passenger Corp.*, 92 A.D.3d 600 (1<sup>st</sup> Dept. 2012). Lastly, the fact that discovery has not been completed does not prohibit the granting of summary judgment. *Chemical Bank v. PIC Motors Corp.*, 58 N.Y.2d 1023 (1983).

Accordingly, movant's motion is granted and plaintiffs' complaint against defendants Skrofa and Afoa-Kwah, only, is dismissed, as are all cross-claims.

The foregoing constitutes the Decision and Order of the Court.

Dated: 3/14/12

  
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MARK FRIEDLANDER, J.S.C.