

Kim v Main St. Book Shop, Inc.

2013 NY Slip Op 33744(U)

September 10, 2013

Sup Ct, Westchester County

Docket Number: 51423/2012

Judge: Francesca E. Connolly

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This opinion is uncorrected and not selected for official publication.

To commence the statutory time for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
YOUNGHYO KIM,

Plaintiff,

-against-

MAIN STREET BOOK SHOP, INC., ANDREW
R. MAFFEI AND STEVEN HELLER,

DECISION and ORDER
Sequence No. 1
Index No. 51423/2012

Defendants.

-----X
CONNOLLY, J.

The following documents were read in connection with the plaintiff's motion for summary judgment against the defendant Andrew R. Maffei on the issue of liability, and the defendants, Main Street Book Shop, Inc., and Steven Heller's, motion for summary judgment dismissing the complaint and all cross-claims:

Plaintiff's Notice of Motion, Affirmation, Exhibits	1-9
Defendants Main Street Book Shop and Steven Heller's Notice of Motion, Affirmation, Exhibits	10-18
Defendant Maffei's Affirmation in Opposition to plaintiff and co-defendants' summary judgment motions	19
Defendants Main Street Book Shop and Steven Heller's Reply Affirmation	20

The plaintiff moves for an order pursuant to CPLR 3212 granting him summary judgment on the issue of liability against the defendant Andrew R. Maffei (hereinafter referred to as Maffei). The defendants, Main Street Book Shop, Inc., and Steven Heller (hereinafter collectively referred to as Main Street), move for an order pursuant to CPLR 3212 granting them summary judgment dismissing the complaint and all cross-claims asserted against them by Maffei.¹

¹The parties attempted to discontinue this action as against Main Street Book Shop, Inc., and Steven E. Heller, however, the defendant Maffei refused to execute the stipulation of discontinuance.

FACTUAL BACKGROUND/PROCEDURAL HISTORY

The plaintiff commenced this action alleging he sustained personal injuries as a result of the negligence of the defendants arising out of a three-car accident that occurred on December 20, 2011 at approximately 1:35 p.m., on Virginia Road at its intersection with Washington Avenue in White Plains, New York. The plaintiff testified at his deposition that his vehicle was completely stopped for approximately five to six seconds before being impacted in the rear. He further testified that while he was stopped, there was a vehicle in front of his that was also stopped. According to the plaintiff, Maffei's vehicle impacted his vehicle in the rear, pushing it forward into the rear of Main Street's vehicle.

Maffei testified that he first observed the plaintiff's vehicle from approximately 100 to 200 feet prior to the accident. According to Maffei, he was traveling up an incline in the road, and when he came around a bend in the roadway, he observed that the vehicles in front of him were all stopped. At this point, his vehicle impacted the rear of the plaintiff's vehicle, which, in turn, impacted Main Street's vehicle.

The plaintiff, in support of his motion, argues that it is undisputed that the plaintiff's vehicle was stopped in heavy traffic and that Maffei rear-ended the plaintiff's vehicle while it was at a complete stop. Accordingly, the plaintiff contends there are no issues of fact to warrant a trial on the issue of liability. Maffei's counsel, in opposition, argues that the issue of his liability is a question of fact for the jury to determine. Additionally, Maffei submits that if the motions are granted, he should be permitted to contest the issue of serious injury.

Main Street moves for summary judgment dismissing the complaint and all cross-claims asserted against them on the basis that no issues of fact exist as to their liability. On behalf of Main Street, Steven Heller avers that on the day of the accident he was operating a van for Main Street Book Shop, Inc., and as he approached the southeast intersection of Washington Avenue and Virginia Road, he came to a complete stop for at least a minute prior to being rear-ended by the plaintiff's vehicle. According to Maffei, there were two impacts—the first being the vehicle driven by Maffei impacting the plaintiff's vehicle in front of Maffei, and the second being the plaintiff's vehicle impacting the Main Street vehicle in front of the plaintiff. Accordingly, Main Street argues that the undisputed testimony of all the parties establishes that the accident was caused by the sole negligence of Maffei, and that the Main Street vehicle was the front-most vehicle at a complete stop at the time of the accident. Thus, Main Street argues it is entitled to summary judgment dismissing the complaint and cross-claims of Maffei, who was the rear-most driver under a duty to maintain a safe distance between his vehicle and the plaintiff's vehicle, and he failed to do so. Main Street states that the plaintiff is in full agreement with it as to its liability as evidenced by the stipulation of discontinuance.

LEGAL ANALYSIS/DISCUSSION

“A rear-end collision with a stopped vehicle creates a prima facie case of liability with respect to the operator of the rearmost vehicle, thereby requiring that operator to rebut the inference of negligence by providing a nonnegligent explanation for the collision” (*Sayyed v Murray*, 2013 NY Slip Op 05563 [2d Dept Aug 7, 2013]) [“The operator of the moving vehicle is required to rebut the inference of negligence created by an unexpected rear-end collision because he or she is in the best position to explain whether the collision was due to, inter alia, a mechanical failure, an unavoidable skidding on a wet pavement, or some other reasonable cause”]; see generally *Klopchin v Masri*, 45 AD3d 737 [2d Dept 2007]; see generally *Filippazzo v Santiago*, 277 AD2d 419, 420 [2d Dept 2000]). If the defendants fail to offer competent and probative evidence of a reasonable cause of the accident, the plaintiff is entitled to summary judgment on the issue of liability (*Power v Hupart*, 260 AD2d 458 [2d Dept 1999]).

Through his deposition testimony, the plaintiff has met his prima facie burden for summary judgment against Maffei, which establishes that plaintiff’s vehicle was stopped when it was struck from behind by Maffei (see generally *Alvarez v Prospect Hospital*, 68 NY2d 320, 324 [1980]). Thus, the burden shifted to Maffei to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action” (*id.*).

In opposition, Maffei fails to present a non-negligent explanation for his failure to maintain control of his vehicle, including maintaining a safe distance between the two vehicles (*Sayyed v Murray*, 2013 NY Slip Op 05563 [“When the driver of an automobile approaches another automobile from the rear, he or she is bound to maintain a reasonably safe distance and rate of speed under the prevailing conditions to avoid colliding with the other vehicle”]). Viewing the papers submitted in support of and in opposition to the motion for summary judgment in a light most favorable to Maffei, he fails to establish the existence of a triable question of fact to warrant a denial of the motion for summary judgment (see *Rotuba Extruders, Inc. v Ceppos*, 46 NY2d 223, 231 [1979]).

Additionally, Main Street has established its prima facie entitlement to summary judgment dismissing the complaint and all cross-claims asserted against it by submitting evidence demonstrating its vehicle was at a complete stop when it was rear-ended. In opposition, Maffei failed to rebut the inference of negligence. Accordingly, Main Street’s motion for summary judgment dismissing the complaint and all cross-claims asserted against it is, likewise, granted.

Based upon the foregoing, it is hereby

ORDERED, that the plaintiff’s motion pursuant to CPLR 3212 for summary judgment on the issue of liability is granted as against Maffei; and it is further

ORDERED, that the defendants Main Street Book Shop, Inc., and Steven Heller's motion pursuant to CPLR 3212 for summary judgment dismissing the complaint and all cross-claims asserted against them is granted; and it is further

ORDERED, that the remaining parties appear in the Settlement Conference on November 13, 2013 at 9:30 a.m., in Room 1600 of the Westchester County Supreme Court, 111 Dr. Martin Luther King, Jr., Boulevard, White Plains, New York; and it is further

ORDERED, that all other relief requested and not decided herein is denied.

This constitutes the decision and order of the Court.

Dated: White Plains, New York
September 10, 2013


HON. FRANCESCA E. CONNOLLY, J.S.C.

To: John I. Kim & Associates
Attorneys for plaintiff
163-10 Northern Boulevard, Suite 308
Flushing, NY 11358
By NYSCEF

Law Offices of Karen L. Lawrence
Attorneys for defendant Maffei
660 White Plains Rd, Suite 660
Tarrytown, New York 10591
By NYSCEF

Armienti, DeBellis, Guglielmo & Rhoden, LLP
Attorneys for defendants Main Street Book, Shop & Steven E. Heller
39 Broadway, Suite 520
New York, NY 10006
By NYSCEF