

Pimentel v Vasquez-Diaz
2013 NY Slip Op 33993(U)
June 10, 2013
Supreme Court, Bronx County
Docket Number: 305469/09
Judge: Jr., Kenneth L. Thompson
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX IA 20
ONASIS PIMENTEL,

Plaintiff,

-against-

ROGELIO VASQUEZ-DIAZ, LUIS A. DIAZ-COLON,
ELBA N. CURET, BLAS ABADIA, JR., HONDA LEASE
TRUST, SHENDLE D. KUHLOR, SHANTEL L.
CLIMESON, AND MARCEL HOPKINS,

Defendants.

ELBA CURET,

Plaintiff,

-against-

SHENELLE D. KUHLOR, HONDA LEASE TRUST,
BLAS ABADIA JR., MARCEL HOPKINS, SHANTEL L.
CLIMESON, LUIS A. DIAZ-COLON AND
ROGELIO VASQUEZ-DIAZ,

Defendants.

BLAS ABADIA, JR.,

Plaintiff,

-against-

SHENELLE D. KUHLOR, HONDA LEASE TRUST,
MARCEL HOPKINS, SHANTEL L. CLIMESON,
LUIS A. DIAZ-COLON AND ROGELIO VASQUEZ-DIAZ,

Defendants.

The following papers numbered 1 to 8 read on this motion,

for summary judgment

No On Calendar of 04/01/13

Notice of Motion-Order to Show Cause - Exhibits and Affidavits Annexed-----

Answering Affidavit and Exhibits-----

Replying Affidavit and Exhibits-----

Affidavit-----

Memorandum of Law-----

Notice of Cross- Motion -----

Filed papers-----

PAPERS NUMBERED

1

4,5,6

7,8

2,3.

Action No.: 1

Index No.: 305469/09

DECISION/ORDER

Present:

HON. KENNETH L. THOMPSON, Jr.

Action No.: 2

Index No.: 304343/10

Action No.: 3

Index No.: 304645\10

Upon the foregoing papers and due deliberation thereof, the Decision/Order on this motion is as follows:

*File under
this index*

*(Action No.: 1
Index No.: 305469/09)*

Defendants, Shanelle D. Kuhlor, (Kuhlor), and Honda Lease Trust, (Honda), move pursuant to CPLR 3212 for summary judgment dismissing the complaint and all cross-claims as against them. Co-defendants, Shantel L. Climeson and Marcel Hopkins, (Hopkins), cross-move pursuant to CPLR 3212 for summary judgment dismissing the complaint and all cross-claims as against them. Defendant, Blas Abadia, jr., (Abadia), cross-moves for summary judgment pursuant to CPLR 3212 dismissing the complaint and all cross-claims as against Abadia in both action no.1 and action no. 2. The accident herein is a four vehicle chain reaction accident that occurred on October 28, 2008. The three actions in the caption were joined for trial and have the same set of facts.

By decision and order of this Court dated May 8, 2013, the complaint and all cross-claims were dismissed as against Kuhlor and Honda in Index no. 304373/10. Under collateral estoppel Kuhlor and Honda are entitled to summary judgment dismissing the complaint.

Furthermore, Kuhlor was the operator of the lead vehicle. She testified at her deposition that she was stopped at a traffic light when her vehicle was rear-ended.

It is well settled that a rear-end collision with a stopped or stopping vehicle establishes a prima facie case of negligence on the part of the driver of the rear vehicle, and imposes a duty on the part of the operator of the moving vehicle to come forward with an adequate nonnegligent explanation for the accident (see *Tutrani v County of Suffolk*, 10 NY3d 906, 908 [2008];

(Agramonte v City of New York, 288 AD2d 75, 76 [1st Dept 2001]).

Furthermore, Kuhlor testified that her vehicle was leased from Honda. Under the Graves Amendment, VTL 388 is pre-empted, as leasing companies do not have vicarious liability for personal injuries caused by leased vehicles.

Plaintiff opposes the motion on grounds that Kuhlor's deposition transcript is inadmissible as it is not signed. However, pursuant to CPLR 3116(a), if "the witness fails to sign and return the deposition within sixty days, it may be used as fully as though signed."

"A shadowy semblance of an issue is, like conjecture, surmise or suspicion, insufficient to defeat a motion for summary judgment." (*Brecher v. Mutual Life Ins. Co. of New York*, 120 A.D.2d 423, 426 [1st Dept 1986]).

With respect to the cross-motion of Hopkins, by decision and order of this Court dated May 8, 2013, Hopkins motion to dismiss was denied in Index no. 304373/10, an action that will be tried jointly with the two other actions in the hereinabove caption. Under collateral estoppel Hopkin's mation for summary judgment must be denied.

Furthermore, the driver of the third in line vehicle, Hopkins averred that his vehicle was at a stop when his vehicle was rear-ended. However, Abadis testified (page 25 transcript), that the Hopkins vehicle hit the Abadis vehicle in the rear before the Hopkins vehicle was struck in the rear. Therefore, there is an issue of fact as to whether the Hopkin's vehicle negligently struck the Abadis' vehicle in the rear. "It is settled that the function of a court on a motion for summary judgment is issue finding, not issue determination." *Clearwater v. Hernandez*, 256 A.D.2d 100 (1st Dept. 1998).

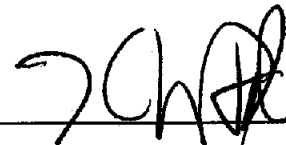
Abadis' motion for summary judgment is unopposed. Abadis testified that his vehicle was at a complete stop when his vehicle was hit from the rear and the Abadis' vehicle was pushed into the vehicle in front of him.

Accordingly, the motion for summary judgment of defendant Shenelle D. Kuhlor and Honda Lease Trust is granted and the complaint and all cross-claims are dismissed as against defendants, Shenelle D. Kuhlor and Honda Lease Trust. The cross-motion of defendants,

Shantel L. Climeson and Marcel Hopkins for summary judgment is denied. The cross-motion of Blas Abadia jr. for summary judgment dismissing the complaint and all cross-claims is granted without opposition. The action is dismissed as against Blas Abadia jr. in action no. 1, 305469/2009 and action no. 2, 304373/2010.

The foregoing constitutes the decision of the Court.

Dated: JUN 10 2013



J.S.C.

KENNETH L. THOMPSON, JR.