

Cephas v Collins

2014 NY Slip Op 33108(U)

November 7, 2014

Supreme Court, Queens County

Docket Number: 8235/2012

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

ONEIL CEPHAS, NICKEISHA CEPHAS, JAYLON CEPHAS, AN INFANT UNDER THE AGE OF EIGHTEEN YEARS OLD BY HIS FATHER AND NATURAL GUARDIAN ONEIL CEPHAS, and REMONIA CEPHAS, AN INFANT UNDER THE AGE OF EIGHTEEN YEARS OLD BY HER FATHER AND NATURAL GUARDIAN, ONEIL CEPHAS,
Index No.: 8235/2012
Motion Date: 10/29/14
Motion No.: 29
Motion Seq.: 3

Plaintiffs,

- against -

BRENDA G. COLLINS and DEANA S. COLLINS,

Defendants.

- - - - - x

The following papers numbered 1 to 15 were read on the motion by plaintiff on the counterclaim, ONEIL CEPHAS, for an order pursuant to CPLR 3212(b) granting summary judgment dismissing the counterclaim of defendants, BRENDA G. COLLINS and DEANA S. COLLINS on the ground that no liability exists for the for the occurrence of the accident against plaintiff on the counterclaim, ONEIL CEPHAS:

Papers
Numbered

Notice of Motion-Affidavits-Exhibits-Memo of Law.....1 - 7
Defendant's Affirmation in Opposition.....8 - 11

In this negligence action, the plaintiffs, ONEIL CEPHAS, NICKEISHA CEPHAS, JAYLON CEPHAS and REMONIA CEPHAS seek to recover damages for personal injuries they each allegedly

sustained as a result of a motor vehicle accident that occurred on January 1, 2012, between plaintiffs' vehicle and the vehicle owned by defendant BRENDA COLLINS and operated by defendant, DEANA S. COLLINS.

At the time of the accident, plaintiff on the counterclaim, ONEIL CEPHAS, was operating his vehicle on Sunrise Highway at the intersection of Brookville Boulevard in Queens County, New York. The plaintiffs' vehicle was stopped waiting for a red traffic signal when their vehicle was allegedly struck in the rear by the vehicle being operated by defendant Deana S. Collins. The plaintiffs allegedly sustained serious physical injuries as a result of the impact.

The plaintiffs commenced this action by filing a summons and verified complaint on April 18, 2012. Issue was joined by service of defendants' verified answer with counterclaim on June 6, 2012. Plaintiff on the counterclaim filed a reply to the counterclaim on July 2, 2013. Plaintiff filed a Note of Issue of October 11, 2013. This matter is presently on the calendar of the Trial Scheduling Part for December 2, 2014. Plaintiff on the counterclaim, ONEIL CEPHAS now moves for an order pursuant to CPLR 3212(b), granting summary judgment on the issue of liability and dismissing the defendants' counterclaim.

In support of the motion, the plaintiff on the counterclaim submits an affirmation from counsel, Katie A. Walsh, Esq., a copy of the pleadings; and copies of the transcripts of the examinations before trial of plaintiffs, ONEIL CEPHAS, REMONIA CEPHAS and JAYLON CEPHAS, and defendant, DEANA S. COLLINS.

In her examination before trial, defendant, Deana S. Collins, age 27, testified that on the date of the accident, January 1, 2012, she was operating a 1997 Nissan Maxima owned by her mother, Brenda Collins. At approximately 7:30 p.m. she was going from the Green Acres Mall to her home in Queens County. She was proceeding 30 miles per hour in the far right westbound lane of Sunrise Highway. As she was driving she observed that the traffic light at the intersection of Brookville Boulevard turn from green to yellow. It turned yellow when she was a 1/4 of a block away from the intersection. There was a grey pickup truck in front of her in the middle lane to her left. About 30 -40 seconds prior to the accident she observed the pickup engage its right turn signal and move to the right lane in front of her. At that point she slowed down. She stated that the plaintiffs' vehicle was stopped at the yellow traffic signal, in the crosswalk, for approximately 10 seconds when the front her vehicle struck the rear of the Cephas vehicle with the front

bumper. When the police arrived at the scene she told them that when the vehicle in front of her stopped at the yellow light she applied pressure to her brakes but because the road was wet she skidded into the rear of the plaintiffs' vehicle.

Oneil Cephas, age 40, the driver of the plaintiffs' vehicle, testified at an examination before trial on May 28, 2014. He stated that on the date of the accident, he was operating a 2006 Honda Ridgeline pickup truck in the westbound lanes of Sunrise Highway. His passengers were Nickeisha, his wife, his son Jaylon and his daughter Remonia. He was coming from the Green Acres Mall and traveling to his home. He stated that he stopped his vehicle at a red traffic signal at the intersection of Brookville Boulevard. He was stopped for five to ten seconds when his vehicle was struck in the rear with a heavy impact. He stated that it was raining lightly at the time of the accident and the roads were wet.

Remonia Cephas, a college student, testified at an examination before trial on May 28, 2014. She stated that on the date of the accident she was a rear seat passenger in her father's motor vehicle. She stated that her father's vehicle was in the far right lane of westbound Sunrise Highway and completely stopped at a red traffic signal at the intersection of Brookville Boulevard for 30 seconds when it was struck in the rear.

Jaylon Cephas age 14, testified hat on the date of the accident his father's vehicle was stopped when it was struck in the rear with a heavy impact.

Plaintiff on the counterclaim's counsel contends that there is no dispute that plaintiff on the counterclaim, Oneil Cephas, was lawfully stopped at a traffic signal when it was hit in the rear by the motor vehicle being operated by Deana Collins. Counsel contends that the accident was caused solely by the negligence of the defendant in that defendants' vehicle was traveling too closely in violation of VTL § 1129 and the defendant driver failed to safely stop her vehicle prior to rear-ending the plaintiff's vehicle. Counsel contends that there is no evidence of any negligent act on the part of the plaintiff on the counterclaim that caused or contributed to the plaintiff's damages herein. Counsel contends, therefore, that the plaintiff on the counterclaim is entitled to an order granting summary judgment as to liability and an order dismissing the counterclaim because the defendant driver was solely responsible for causing the accident.

In opposition to the motion, counsel for the defendants, Paul P. Novak, Esq., states that the instant motion should be denied because there are questions of fact which preclude the granting of summary judgment. Counsel claims that the Ms. Collins testified that Mr. Cephas merged from the middle lane to the right lane immediately in front of her vehicle and stopped. Counsel asserts, therefore, that the fact that there is a question of fact as to whether the Cephas vehicle made an unsafe lane change prior to the accident (citing Abbott v Picture Cars East, Inc., 78 AD3d 869 [2d Dept. 2010]; Rozengauz v Lok Wing Ha, 280 AD2d 534 [2d Dept. 2001]; Figueroa v Cadbury Util. Constr. Corp., 239 AD2d 285 [1st Dept. 1997]).

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]).

"When the driver of an automobile approaches another automobile from the rear, he or she 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" (Macauley v ELRAC, Inc., 6 AD3d 584 [2d Dept. 2003]). The driver of an automobile is required to maintain a safe distance between his or her own vehicle and the vehicle in front of him or her (see Vehicle and Traffic Law § 1129[a]; Billis v Tunjian, 120 AD3d 1168 [2d Dept. 2014]; Byrne v Calogero, 96 AD3d 704[2d Dept. 2012]). It is well established law that a rear-end collision 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 Delgado v Bang, 2014 NY Slip Op 05828 [2d Dept. 2014]; Kertesz v Jason Transp. Corp., 102 AD3d 658 [2d Dept. 2013]; Ramos v TC Paratransit, 96 AD3d 924 [2d Dept. 2012]; Pollard v Independent Beauty & Barber Supply Co., 94 AD3d 845 [2d Dept. 2012]; Klopchin v Masri, 45 AD3d 737 [2d Dept. 2007]).

Here, plaintiff on the counterclaim testified that his vehicle was completely stopped for five to ten seconds at a red traffic signal when it was suddenly struck from behind by the defendants' vehicle. The defendant stated that she observed the plaintiffs' vehicle to be completely stopped but when she applied her brakes her vehicle skidded on wet pavement and she could not stop in time. Thus, plaintiff on the counterclaim satisfied his prima facie burden of establishing entitlement to judgment as a matter of law on the issue of liability (see Rodriguez v Farrell,

115 AD3d 929 [2d Dept. 2014]; Williams v Spencer-Hall, 113 AD3d 759 [2d Dept. 2014]; Robayo v Aghaabdul, 109 AD3d 892 [2d Dept. 2013]; Sayyed v Murray, 109 AD3d 464 [2d Dept. 2013]; Prosen v Mabella, 107 AD3d 870 [2d Dept. 2013]; Xian Hong Pan v Buglione, 101 AD3d 706 [2d Dept. 2012]).

Having made the requisite prima facie showing of entitlement to summary judgment, the burden then shifted to the defendant to raise a triable issue of fact as to whether the operator of plaintiffs' vehicle 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]). Here, there is no dispute that plaintiffs' vehicle was rear-ended by defendants' vehicle and no dispute that defendant admitted she attempted to stop her vehicle but that it skidded into the rear of plaintiffs' vehicle. In opposition, the defendants failed to raise a triable issue of fact. Ms. Collins' explanation for striking the plaintiffs' vehicle in the rear, to wit, that plaintiff stopped his vehicle suddenly at the yellow light on the crosswalk, was insufficient to raise a triable issue of fact as to whether plaintiffs' actions contributed to the happening of the accident (see Cheow v Cheng Lin Jin, 2014 NY Slip Op 07337 [2d Dept. 2014]). In addition, the testimony of the defendant does not raise a question of fact as to whether Oneil cephas may have made an unsafe or abrupt lane change. Defendant testified that she observed the plaintiff engage his right turn signal prior to making the lane change and she stated that the plaintiff's vehicle was traveling in front of her vehicle in the right lane for 30 - 40 seconds prior to the impact. Thus, the testimony indicates that the plaintiff on the counterclaim did not abruptly cut in front of the defendants' vehicle before it stopped at the traffic signal. In addition, the courts have held that an allegation that the lead vehicle stopped short is insufficient to rebut the inference of negligence on the part of the driver of the following vehicle (see Xian Hong Pan v Buglione, 101 AD3d 706 [2d Dept. 2012]).

This court finds, therefore, that defendant has failed to provide evidence as to a non-negligent explanation for the accident sufficient to raise a triable question of fact (see Bernier v Torres, 79 AD3d 776 [2d Dept. 2010]; Lampkin v Chan, 68 AD3d 727 [2d Dept. 2009]; Cavitch v Mateo, 58 AD3d 592 [2d Dept. 2009]; Garner v Chevalier Transp. Corp., 58 AD3d 802 [2d Dept. 2009]; Kimyaqarov v Nixon Taxi Corp., 45 AD3d 736 [2d Dept. 2007]).

As the evidence in the record demonstrates that the defendant failed to provide a non-negligent explanation for the collision, and as no triable issues of fact have been put forth as to whether plaintiff on the counterclaim may have borne comparative fault for the causation of the accident, and based on the foregoing, it is hereby,

ORDERED, that the plaintiff on the counterclaim's motion is granted, and the counterclaim contained on the answer of the defendants is dismissed.

Dated: November 7, 2014
Long Island City, N.Y.

ROBERT J. MCDONALD
J.S.C.