

Santos v Adams

2014 NY Slip Op 33332(U)

January 23, 2014

Supreme Court, Bronx County

Docket Number: 308856/2010

Judge: Lucindo Suarez

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: I.A.S. PART 19

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JUAN SANTOS, KENIA ROSARIO and JOSE
CRESPO,

DECISION AND ORDER

Plaintiffs,

Action No. 1
Index No. 308856/2010

- against -

NATHANIEL ADAMS,

Defendant.

-----X

SERVANDO RAFAEL ABREU,

Plaintiff,

Action No. 2
Index No. 301383/2012

- against -

JUAN SANTOS and NATHANIEL ADAMS,

Defendants.

-----X

CHERYL H. LEWIS,

Plaintiffs,

Action No. 3
Index No. 302785/2012

- against -

NATHANIEL ADAMS and JUAN SANTOS,

Defendants.

-----X

PRESENT: Hon. Lucindo Suarez

Upon the notice of motion dated November 7, 2013 of plaintiff Juan Santos and the affirmation and exhibits submitted in support thereof; the affirmation in opposition dated November 26, 2013 of defendant Nathaniel Adams; the reply affirmation dated December 10, 2013 of plaintiff Jose Santos;

the notice of cross-motion dated December 3, 2013 of plaintiff Servando Rafael Abreu and the affirmation and exhibits submitted in support thereof; the notice of cross-motion dated January 13, 2014 of defendant Juan Santos and the affirmation and exhibits submitted in support thereof; the affirmation in opposition dated January 15, 2014 of plaintiff Servando Rafael Abreu; the affirmation in opposition dated January 20, 2014 of defendant Nathaniel Adams; and due deliberation; the court finds:

These personal injury actions arise out of a multi-vehicle accident that occurred on February 27, 2010 on Grand Concourse and 181st Street, Bronx County. Plaintiff Juan Santos (“Santos”) now moves pursuant to CPLR 3212 for partial summary judgment on liability against defendant Nathaniel Adams (“Adams”). In support of the motion, Santos submits the pleadings, his deposition transcript and the police accident report. The uncertified police accident report is not in admissible form. *See Coleman v. Maclas*, 61 A.D.3d 569, 877 N.Y.S.2d 297 (1st Dep’t 2009). The deposition testimony reveals that Santos was the driver of a Lincoln Town car that was struck twice in the rear. Santos had been stopped for three or seconds prior to the first rear end impact. His vehicle then moved forward, causing him to strike another vehicle three or four feet in front of him.

Generally, a driver traveling behind another vehicle has a duty to maintain a safe distance behind the front vehicle, whether it is moving or stopped, to avoid a rear end collision in the event the front vehicle slows down or stops, even suddenly, *see* New York Vehicle and Traffic Law §1129(a), and taking into account the weather and road conditions. *See Francisco v. Schoepfer*, 30 A.D.3d 275, 817 N.Y.S.2d 52 (1st Dep’t 2006). A rear-end collision with a stopped or stopping vehicle constitutes a *prima facie* case of negligence on the part of the operator of the rear vehicle and imposes upon the driver of the rear vehicle to provide a non-negligent explanation for the accident. *See Cabrera v. Rodriguez*, 72 A.D.3d 553, 900 N.Y.S.2d 29 (1st Dep’t 2010); *Woodley v. Ramirez*, 25 A.D.3d 451, 810 N.Y.S.2d 125 (1st Dep’t 2006). Santos has demonstrated his entitlement to partial summary judgment.

The burden having shifted, Adams opposes the application as premature as depositions are

outstanding. The argument is unavailing as the party opposing the motion must lay bare his proof and present evidence sufficient to raise a triable issue of fact. *See Avant v. Cepin Livery Corp.*, 74 A.D.3d 533, 904 N.Y.S.2d 381 (1st Dep't 2010). Adams, the driver of the rearmost vehicle, has personal knowledge of the accident but failed to provide a non-negligent explanation for the accident in opposition to the motion. *See Soto-Marroquin v. Mellet*, 63 A.D.3d 449, 880 N.Y.S.2d 279 (1st Dep't 2009); *Somers v. Condlin*, 39 A.D.3d 289, 833 N.Y.S.2d 83 (1st Dep't 2007).

Servando Rafael Abreu ("Abreu"), the plaintiff in an action consolidated for joint trial (*Abreu v. Santos*, Index No. 301383/2012) cross-moves for summary judgment against Santos and Adams, as defendants, on the issue of their liability. He relies upon his verified complaint and an uncertified copy of the police accident report, which is inadmissible. *See Coleman v. Maclas, supra*. Abreu argues that as an innocent passenger, he is entitled to judgment on liability against Santos and Adams.

Santos, as a defendant, cross-moves for summary judgment dismissing Abreu's complaint on the ground that he is not liable for causing the collision. While the cross-motion was untimely served, *see* CPLR 2215(b), Abreu and Adams have both submitted opposition. Thus, there has been no showing of prejudice for the delay. *See Keller v. Merchant Capital Portfolios, LLC*, 103 A.D.3d 532, 962 N.Y.S.2d 48 (1st Dep't 2013). Here, defendant Santos has demonstrated that he was not at fault for causing the collision. *See Golubchik v. Das Trading Corp.*, 62 A.D.3d 480, 879 N.Y.S.2d 408 (1st Dep't 2009). Abreu's argument that Santos lost control of the vehicle after the initial impact is not supported by any admissible evidence. Indeed, Abreu did not proffer an affidavit detailing his observations as to Santos' actions prior to and after the impacts to raise a triable issue of fact. Furthermore, the order consolidating all three actions was entered on July 31, 2012 (Hon. Laura Douglas, J.S.C.), and three orders setting forth deposition dates were entered prior to the filing date of plaintiff Santos' motion in the first action. Abreu may not rely upon the Santos deposition to support his own cross-motion and then oppose the Santos' motions as premature based on the lack of discovery.

As to the liability of Adams, Abreu also relies upon the Santos deposition transcript to demonstrate that the Santos vehicle was “allegedly” struck in the rear. As the accident occurred when the Santos vehicle was at a complete stop, Adams must come forward with a non-negligent explanation for the collision. Adams has failed to do so, and thus Abreu is entitled to judgment on the issue of his liability. *See Bailey v. City of New York*, 102 A.D.3d 606, 959 N.Y.S.2d 58 (1st Dep’t 2013).

Accordingly, it is

ORDERED, that the motion of plaintiff Juan Santos in *Santos v. Adams*, Index No. 308856/2010, for partial summary judgment on the issue of the liability of defendant Nathaniel Adams for causing the collision is granted; and it is further

ORDERED, that the cross-motion of plaintiff Servando Rafael Abreu in *Abreu v. Adams*, Index No. 309609/2010, for partial summary judgment on the issue of the liability of defendants Juan Santos and Nathaniel Adams, is granted to the extent of granting the motion only against Adams; and it is further

ORDERED, that the cross-motion of defendant Juan Santos in *Abreu v. Adams*, Index No. 309609/2010, for summary judgment dismissing the complaint of plaintiff Servando Rafael Abreu and the cross-claims asserted against him is granted; and it is further

ORDERED, that the Clerk of the Court is directed to enter judgment in favor of plaintiff Juan Santos in *Santos v. Adams*, Index No. 308856/2010, and in favor of plaintiff Servando Rafael Abreu in *Abreu v. Adams*, Index No. 309609/2010, on the issue of the liability of defendant Nathaniel Adams in causing the accident; and it is further

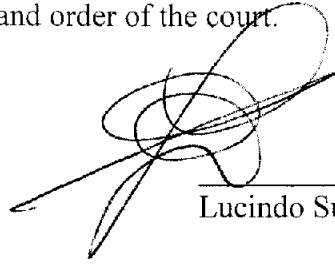
ORDERED, that the Clerk of the Court is directed to enter judgment in favor of defendant Juan Santos in *Abreu v. Adams*, Index No. 309609/2010, dismissing the complaint of plaintiff Servando Rafael Abreu and all cross-claims asserted against him; and it is further

ORDERED, that plaintiff Juan Santos in *Santos v. Adams*, Index No. 308856/2010, and plaintiff

Servando Rafael Abreu in *Abreu v. Adams*, Index No. 309609/2010, shall have the burden at trial to establish that they sustained “serious injuries” in the subject motor vehicle accident. *See Shinn v. Catanzaro*, 1 A.D.3d 195, 767 N.Y.S.2d 88 (1st Dep’t 2003); *Reid v. Brown*, 308 A.D.2d 331, 764 N.Y.S.2d 260 (1st Dep’t 2003).

This constitutes the decision and order of the court.

Dated: January 23, 2014

A handwritten signature in black ink, appearing to read 'Lucindo Suarez', is written over a horizontal line. The signature is stylized and somewhat illegible due to its cursive nature.

Lucindo Suarez, J.S.C.