

Davi v Ialacci

2014 NY Slip Op 33344(U)

August 22, 2014

Supreme Court, Queens County

Docket Number: 701745/2014

Judge: Robert J. McDonald

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SUPREME COURT - STATE OF NEW YORK
CIVIL TERM - IAS PART 34 - QUEENS COUNTY
25-10 COURT SQUARE, LONG ISLAND CITY, N.Y. 11101

FILED
AUG 27 2014
COUNTY CLERK
QUEENS COUNTY

P R E S E N T : HON. ROBERT J. MCDONALD
Justice

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FRANK DAVI,

Index No.: 701475/2014

Plaintiff,

Motion Date: 08/12/14

- against -

Motion No.: 34

Motion Seq.: 1

SCOTT IALACCI,

Defendant.

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The following papers numbered 1 to 12 were read on this motion by plaintiff, Frank Davi, for an order pursuant to CPLR 3212(b), granting plaintiff partial summary judgment on the issue of liability and setting the matter down for a trial on the issues of serious injury and damages only:

	Papers Numbered
Notice of Motion-Affidavits-Exhibits.....	1 - 6
Defendant's Affirmation in Opposition.....	7 - 9
Reply Affirmation.....	10 - 12

In this negligence action, the plaintiff, Frank Davi, seeks to recover damages for personal injuries he allegedly sustained as a result of a motor vehicle accident that occurred on February 7, 2012, between the vehicle in which he was a passenger and the vehicle owned and operated by defendant, Scott Ialacci.

At the time of the accident, plaintiff's vehicle was on 34th Street at the intersection of Park Avenue in New York County New York. The plaintiff's vehicle came to a stop at a red traffic signal and was allegedly struck in the rear by the vehicle being operated by defendant. The plaintiff allegedly sustained injuries as a result of the impact.

The plaintiff commenced this action by filing a summons and verified complaint on March 5, 2014. Issue was joined by service of defendants' verified answer on May 9, 2014. Plaintiff now moves for an order pursuant to CPLR 3212(b), granting partial summary judgment on the issue of liability and setting the matter down for a trial on serious injury and damages only.

In support of the motion, the plaintiff submits an affirmation from counsel, Zachary M. Beriloff, Esq., a copy of the pleadings, and an affidavit from the plaintiff dated April 3, 2014.

In his affidavit, the plaintiff, age 41, states that on February 7, 2012, he was involved in a motor vehicle accident on 34th Street and Park Avenue in New York County. At the time of the accident the plaintiff was a seat-belted front seat passenger in a 2010 Chevrolet motor vehicle. The vehicle in which he was riding came to a stop for a red light at the intersection of 34th Street and Park Avenue when it was struck in the rear by the vehicle operated by a 2011 Infiniti owned and operated by the defendant, Scott Ialacci. The plaintiff states that the impact involved the rear-end of the Chevrolet he was in and the front end of the defendant's Infiniti.

Plaintiff's counsel contends that the accident was caused solely by the negligence of the defendant in that defendant's vehicle was traveling too closely in violation of VTL § 1129 and the defendant driver failed to safely stop his vehicle prior to rear-ending the plaintiff's vehicle. Counsel contends, therefore, that the plaintiff is entitled to partial summary judgment as to liability because the defendant driver was solely responsible for causing the accident.

In opposition to the motion, counsel for the defendant, Timothy Tenke, Esq., states that the instant motion should be denied as premature as depositions have not yet been held. In addition, counsel claims that the question of whether defendant's conduct amounts to negligence is a question of fact for trial. The defendant, Scott Ialacci, has not submitted an affidavit in opposition to the motion.

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]). 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 testified that the vehicle in which he was a passenger was stopped at a red traffic signal when it was suddenly struck from behind by the defendant's vehicle. Thus, plaintiff 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 plaintiff's 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 plaintiff was a passenger in a vehicle that was rear-ended the defendant's vehicle (see Griffin v Pennoyer, 49 AD3d 341 [1st Dept. 2008]). This court finds, therefore, that defendant Scott Ialacci, who did not submit an affidavit in opposition to the motion, 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]; Kimyagarov v Nixon Taxi Corp., 45 AD3d 736 [2d Dept. 2007]; Gomez v Sammy's Transp., Inc., 19 AD3d 544 [2d Dept. 2005][the defendants failed to raise a triable issue of fact by only interposing an affirmation of their attorney who lacked knowledge of the facts]). Further, the lack of disclosure does not excuse the failure of the party with personal knowledge to submit an affidavit in opposition to the motion (see

Rainford v Han, 18 AD3d 638 [2d Dept. 2005] citing Niyazov v Bradford, 13 AD3d 501 [2d Dept. 2004]).


The defendant's contention that plaintiff's motion for summary judgment is premature is without merit. Defendant failed to offer any evidentiary basis to suggest that discovery may lead to relevant evidence. The mere hope and speculation that evidence sufficient to defeat the motion might be uncovered during discovery is an insufficient basis upon which to deny the motion (see CPLR 3212[f]; Medina v Rodriguez, 92 AD3d 850 [2d Dept. 2012]; Hanover Ins. Co. v Prakin, 81 AD3d 778 [2d Dept. 2011]; Essex Ins. Co. v Michael Cunningham Carpentry, 74 AD3d 733 [2d Dept. 2010]; Peerless Ins. Co. v Micro Fibertek, Inc., 67 AD3d 978 [2d Dept. 2009]; Gross v Marc, 2 AD3d 681 [2d Dept. 2003]).

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 or the driver of plaintiff's vehicle may have borne comparative fault for the causation of the accident, and based on the foregoing, it is hereby,

ORDERED, that the plaintiff's motion is granted, and the plaintiff, FRANK DAVI, shall have partial summary judgment on the issue of liability against the defendant, SCOTT IALACCI, and the Clerk of Court is authorized to enter judgment accordingly; and it is further,

ORDERED, that upon completion of discovery on the issue of damages, filing a Note of Issue, and compliance with all the rules of the Court, this action shall be placed on the trial calendar of the Court for a trial on serious injury and damages.

Dated: August 22, 2014
Long Island City, N.Y.



ROBERT J. MCDONALD
J.S.C.