

Kim v Santana

2014 NY Slip Op 33345(U)

August 14, 2014

Supreme Court, Queens County

Docket Number: 701665/2012

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

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YOUNG BAE KIM, KISOO PARK and
HAN JIN PARK,

Index No.: 701665/2012

Motion Date: 07/21/14

Plaintiffs,

Motion No.: 65

- against -

ANDY SANTANA and ESTHER H. SUN,

Motion Seq.: 3

Defendants.

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The following papers numbered 1 to 9 were read on this motion by
plaintiffs YOUNG BAE KIM, KISOO PARK and
HAN JIN PARK 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 damages only:

Papers
Numbered

Plaintiff on the Counterclaim's Notice of Motion1 - 6
Defendants' Affirmation in Opposition.....7 - 9

In this action for negligence, the Plaintiffs, Young Bae
Kim, Kisoo Park and Han Jin Park, seek to recover damages for
personal injuries they each sustained as a result of a motor
vehicle accident that occurred on August 3, 2011. The motor
vehicle accident took place on the eastbound lanes of Northern
Boulevard near the intersection with the Clearview Expressway in
Queens County, New York. Plaintiffs allege that they each
sustained injuries when their vehicle, which was stopped at a red
traffic signal, was struck in the rear by the vehicle owned by
defendant Esther H. Suh, and operated by defendant Andy Santana.
At the time of the accident plaintiff Young Bae Kim was operating
the plaintiffs' vehicle and plaintiffs KISOO PARK and HAN JIN
PARK were passengers.

FILED
AUG 25 2014
COUNTY CLERK
QUEENS COUNTY

This action was commenced by the plaintiff by the filing of a summons and complaint on August 17, 2012. Issue was joined by service of defendants' verified answer with counterclaim against plaintiff Young Bae Kim dated October 3, 2012. A reply to counterclaim was served by the plaintiff on the counterclaim on December 4, 2012. By decision dated June 24, 2014 this Court granted the motion by plaintiff on the counterclaim for an order granting summary judgment dismissing the defendants' counterclaim. During the course of the litigation, the bodily injury claims for plaintiffs Young Bae Kim and Kisoo Park were settled leaving only the action by plaintiff Han Jin Park still active.

Plaintiff Han Jin Park now moves for an order pursuant to CPLR 3212(b), granting partial summary judgment on the issue of liability and setting this matter down for a trial on serious injury and damages.

In support of the motion, the plaintiff submits an affirmation from counsel, Yosef H. Lee, Esq; a copy of the pleadings; and a copies of the deposition testimony of the plaintiffs, Young Bae Kim and Han Jin Park.

In his examination before trial, taken on December 4, 2013, plaintiff, Young Bae Kim, age 60, testified that he was involved in a motor vehicle accident at 12:30 a.m. on August 3, 2011. He stated that he was coming from a restaurant in Queens and was traveling towards Great Neck in the eastbound lane of Northern Boulevard. He was traveling with passengers Han Jin Park and Kisoo Park. When he arrived at the intersection of Northern Boulevard and the Clearview Expressway he stopped at a red traffic signal. He was stopped for approximately 30 seconds when his car was struck in the rear with a heavy impact by the front of the defendants' vehicle.

Han Jin Park, age 46, in his examination before trial, testified that he is employed as a subscription manager for the Korea Central Daily News. He stated that on the date of the accident he was a back seat passenger in the motor vehicle operated by plaintiff Young Bae Kim. They were heading to their homes after eating at a restaurant in Flushing. He stated that the accident occurred at the intersection of Northern Boulevard and the Clearview Expressway. At the time of impact he was resting and had his eyes closed. His vehicle was struck in the rear but at the intersection but he did not know the color of the light at the time of the impact. He said he did not see anything prior to the impact but he believes that the vehicle he was in was stopped for 15 - 20 seconds before it was struck. He was transported from the scene by ambulance.

Defendant/driver, Andy Santana, submits an affidavit dated May 12, 2014, stating that prior to the accident he was in the middle of three lanes on Northern Boulevard near the intersection with the Clearview Expressway. He states, "as my vehicle approached the intersection the traffic light controlling my direction of travel was green. The traffic light remained green from the time I first observed the light until the moment of impact. The other vehicle in the accident stopped suddenly and without warning in a dangerous and abrupt fashion. In order to avoid an impact with the short stopping plaintiffs' vehicle, I applied my brakes with heavy pressure. The front of my vehicle then impacted the rear of the plaintiffs' vehicle. The accident was due to the plaintiffs' vehicle, which did not come to a gradual stop and stopped without warning or signal."

The plaintiff contends that the defendant driver was negligent in the operation of his vehicle in striking the plaintiffs' vehicle in the rear. Plaintiffs' counsel contends that the accident was caused solely by the negligence of the defendant driver in that his vehicle was traveling too closely in violation of VTL § 1129(a) and that the driver failed to safely stop his vehicle prior to rear-ending the plaintiff's vehicle. Counsel contends that the evidence indicates that the plaintiffs' vehicle was lawfully stopped at a red traffic signal on Northern Boulevard when it was struck from behind by the defendants' vehicle. Counsel contends, therefore, that the plaintiff is entitled to partial summary judgment on the issue of liability because the defendant did not stop his vehicle in time. Plaintiff alleges that the defendant was solely responsible for causing the accident while the plaintiff was free from culpable conduct.

In opposition, defendant's counsel, Philip Rydz, Esq. contends that a question of fact exists as to the happening of the accident as the defendant testified that the plaintiff's vehicle came to a sudden, abrupt stop in front of the defendant's vehicle. He states that based upon the testimony of the defendant it appears that the abrupt stop allegedly made by plaintiff Young Bae Kim was the cause of the accident.

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 with a stopped or stopping vehicle 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 Klopchin v Masri, 45 AD3d 737 [2d Dept. 2007]; Hakakian v McCabe, 38 AD3d 493 2d Dept. 2007]; Reed v New York City Transit Authority, 299 AD2 330 [2d Dept. 2002]; Velazquez v Denton Limo, Inc., 7 AD3d787 [2d Dept. 2004]).

Here, plaintiff/driver Young Bae Kim testified that his vehicle was completely stopped for 30 seconds on Northern Boulevard while waiting at a red traffic signal when it was struck from behind by defendants' motor vehicle. Thus, the plaintiff satisfied his prima facie burden of establishing entitlement to summary judgment as a matter of law by demonstrating that his vehicle was stopped when it was struck in the rear by the vehicle operated by defendant Andy Santana (see Volpe v Limoncelli, 74 AD3d 795 [2d Dept. 2010]; Vavoulis v Adler, 43 AD3d 1154 [2d Dept. 2007]; Levine v Taylor, 268 AD2d 566 [2d Dept. 2000]).

Having made the requisite prima facie showing of entitlement to summary judgment, the burden then shifted to defendants to raise a triable issue of fact as to whether plaintiff was also negligent, and if so, whether his negligence contributed to the happening of the accident (see Goemans v County of Suffolk, 57 AD3d 478 [2d Dept. 2007]).

This court finds that the defendant failed to submit evidence as to any negligence on the part of plaintiff or to provide a non-negligent explanation for the accident sufficient to raise a triable question of fact (see Lampkin v Chan, 68 AD3d 727 [2d Dept. 2009]; Gomez v Sammy's Transp., Inc., 19 AD3d 544 [2d Dept. 2005]). If the operator of the moving vehicle cannot come forward with evidence to rebut the inference of negligence, the occupants and owner of the stationary vehicle are entitled to summary judgment on the issue of liability (see Kimyagarov v. Nixon Taxi Corp., 45 AD3d 736 [2d Dept. 2007]). The evidence demonstrated that the plaintiff, who was in a stopped vehicle, operated his vehicle in a nonnegligent manner and no evidence was presented to show that he contributed to the happening of the injury-producing event (see Aikens-Hobson v. Bruno, 2012 NY Slip Op 5604 [2d Dept. 2012]; Daramboukas v Samlidis, 84 AD3d 719 [2d Dept. 2011]; Franco v Breceus, 70 AD3d 767[2d Dept. 2010]; Shirman v Lawal, 69 AD3d 838 [2d Dept. 2010]; Katz v Masada II

Car & Limo Serv., Inc., 43 AD3d 876 [2d Dept. 2007]).

Further, although defendant contends that the accident was the result of the plaintiff driver stopping suddenly, this does not explain his failure to maintain a safe distance from the vehicle in front of him [see Dicturel v Dukureh, 71 AD3d 558 [1st Dept. 2010]; Shirman v Lawal, 69 AD3d 838 [2d Dept. 2010]; Lampkin v Chan, 68 AD3d 727 [2d Dept. 2009]; Zdenek v Safety Consultants, Inc., 63 AD3d 918 [2d Dept. 2009]]. Although the defendant claims that the light was green at the intersection when the plaintiff came to an abrupt stop, the defendant did not provide any evidence that he maintained a reasonably safe speed and reasonable safe distance behind the plaintiffs' vehicle and that he attempted to exercise reasonable care to avoid colliding with the lead vehicle (see Hackney v Monge, 103 AD3d 844 [2d Dept. 2013]; Hearn v Manzolillo, 103 AD3d 689 [2d Dept. 2013]; Byrne v Calogero, 96 AD3d 704 [2d Dept. 2012]).


The defendants' contention that the plaintiff's motion for summary judgment is premature is without merit. The defendants 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]; 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]). Moreover, the moving plaintiff, Han Jim Park, an innocent passenger, established his freedom from comparative fault.

Accordingly, this court finds that in opposition to plaintiffs' motion, defendant failed to submit evidence sufficient to raise a triable issue of fact (see Arias v Rosario, 52 AD3d 551 [2d Dept. 2008]; Smith v Seskin, 49 AD3d 628 [2d Dept. 2008]; Campbell v City of Yonkers, 37 AD3d 750 [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 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, HAN JIN PARK, shall have partial summary judgment on the issue of liability against the defendants, and the Clerk of Court is authorized to enter judgment accordingly; and it is further,

ORDERED, that this matter remains on the calendar of the Trial Scheduling Part on August 18, 2014 for a trial on serious injury and damages.

Dated: August 14, 2014
Long Island City, N.Y



ROBERT J. MCDONALD
J.S.C.