

Reyna v Al-Hassan

2014 NY Slip Op 34049(U)

January 9, 2014

Supreme Court, Bronx County

Docket Number: Index No.21012/2012E

Judge: Lizbeth González

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: PART 10(e)

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Nilo Reyna and Yahira Reyna,

Plaintiffs,

DECISION and ORDER
Index No 21012/2012E

-against-

Rahmat Al-Hassan, Shades Trans, Inc. a/k/a Shades
Transit Inc., Jose R. Diaz, Jr. and Teresa Dellicarpini,

Defendants.

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Recitation of the papers considered in reviewing the underlying motion for summary judgment as
required by CPLR § 2219(a):

Notice of Motion and annexed Exhibits and Affidavits.....	1
Affirmations in Opposition and annexed Exhibits.....	2
Reply Affirmation.....	3

The plaintiffs claim that plaintiff Nilo Reyna sustained serious injuries as a result of the
defendants' negligence. The plaintiffs allege that on 4/4/12 Mr. Nilo was the rear-seat passenger in
a yellow taxicab owned by defendant Shades Trans, Inc. a/k/a Shades Transit Inc. ("Shades") and
operated by defendant Al-Hassan when it rear-ended a vehicle owned by defendant Dellicarpini and
operated by defendant Diaz. Plaintiff Yahira Reyna, the spouse of Nilo Reyna, seeks loss of
consortium damages. The plaintiffs move for partial summary judgment on liability grounds. The
defendants respectively oppose the plaintiffs' motion.

DISCUSSION

Summary judgment is a drastic remedy which "deprives the litigant of his day in court [and
therefore] should only be employed when there is no doubt as to the absence of triable
issues."(*Martin v Briggs*, 235 AD2d 192 [1st Dept 1997].)

In New York State, drivers are required to maintain a safe distance between their vehicles

and any vehicles in front of them. (Vehicle and Traffic Law § 1129 [a]; *De La Cruz v Ock Wee Leong*, 16 AD3d 199 [1st Dept 2005].) In a chain-reaction collision, responsibility presumptively rests with the rearmost driver (*De La Cruz v Ock Wee Leong*, 16 AD3d 199 [1st Dept 2005]; *Mustafaj v Driscoll and Lugo*, 5 AD3d 138 [1st Dept 2004]) who must rebut the inference of negligence by providing a non-negligent explanation for the collision. (*Garcia v. Bakemark Ingredients (East) Inc.*, 19 AD3d 224 [1st Dept 2005].) However, a triable issue of fact may be presented if the driver of the forward vehicle stopped or slowed suddenly. (*Sawhney v Bailey*, 13 AD3d 203 [1st Dept 2004].)

In support of their motion, the Reyna plaintiffs proffer a certified police report and the affidavit of Nilo Reyna.

By affidavit dated 9/25/13, Mr. Reyna states that on 4/4/12 at approximately 4:47PM he was in a taxicab on his way to meet his wife and mother-in-law for dinner. Mr. Reyna was a rear-seated passenger in the taxicab when it collided with the Dellacarpini/Diaz vehicle. He states that when the collision occurred, his body was thrown into the plexiglass separating the taxicab driver from the rear cabin causing him to break his nose, cut his lips and chin and injure his shoulder and knees. Mr. Reyna states that he possessed no control over the operation of the taxi at any time.

The police report states the following:

At T/P/O motorist of vehicle #1 states that he was going straight and was hit by vehicle #2. Vehicle #2 states that vehicle #1 made a quick right turn without signaling and vehicle #2 motorist didn't had [sic] time to break. Vehicle #2 passenger and one witness said that vehicle #1 motorist made a quick right turn with no signal light. Vehicle #1 motorist and the passenger from vehicle #2 went to St. Lukes Hosp by 323 bus. No towed required.

Defendants Shades and Al-Hassan oppose the plaintiffs' motion on the ground that simply because the plaintiff was not negligent does not constitute negligence on behalf of the defendants. This argument is not dispositive since the initial question before the Court is whether plaintiff Nilo

Reyna caused, created or contributed to the accident. The defendants also contend that the plaintiffs' motion is premature because discovery is incomplete but they proffer no evidence that further discovery may uncover something. (*W&W Glass Systems, Inc. v Admiral Insurance Company*, 91 AD3d 530 [1st Dept 2012].)

Defendants Dellicarpini and Diaz state that partial summary judgment as to the plaintiff's liability "may be appropriate" but oppose the plaintiff's motion to the extent that the "apportionment of liability between the defendants remain at issue."

CONCLUSION

The Reyna plaintiffs move for partial summary judgment on liability grounds. The Court has reviewed the plaintiffs' evidence and finds that they have met their burden. The defendants, however, have not met their shifting burden.

An attorney's affirmation lacks probative value on a summary judgment motion unless accompanied by competent evidence which constitutes admissible proof. (*Adam v Cutner & Rathkopf*, 238 AD2d 234 [1st Dept 1997].) Here, defendant Al-Hassan, the driver of the offending vehicle, submits no affidavit to explain, first-hand, the events leading to the rear-end collision. Defendants Shades and Al-Hassan contend that the plaintiffs' motion is premature but present nothing to suggest that discovery may impute liability to the taxi passenger plaintiff Nilo Reyna. (*Progressive Northeastern Insurance Company v Penn-Star Insurance Company*, 89 AD3d 547 [1st Dept 2011] citing *Bailey v New York City Tr. Auth.*, 270 AD2d 156 [2000].) The defendants cannot avoid summary judgment based on mere speculation. (*W&W Glass Systems, Inc. v Admiral Insurance Company*, 91 AD3d 530, *supra*.)

Defendants Dellicarpini and Diaz do not oppose the granting of partial summary judgment to the plaintiff-passenger.

[* 4]

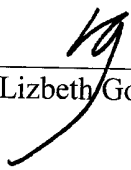
Based on the foregoing, the plaintiffs' motion for partial summary judgment on liability grounds is granted; no evidence establishing plaintiff Reyna's culpability has been presented.

The plaintiffs shall serve a copy of this Decision and Order upon the defendants with notice of entry within 20 days.

This is the Decision and Order of the Court.

Dated: January 9, 2014

So ordered,



Hon. Lizbeth González, JSC