

Werthner v Lewis

2015 NY Slip Op 31056(U)

June 12, 2015

Supreme Court, Suffolk County

Docket Number: 10-11344

Judge: Arthur G. Pitts

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ORDERED that the motion by the defendant Miream Cruz seeking summary judgment in her favor on the issue of liability is granted; and it is

ORDERED that the cross motion by the defendants Christa Shiffer and Anthony DiMartini seeking summary judgment in their favor on the issue of liability is granted; and it is further

ORDERED that the motion by the defendant Miream Cruz for, inter alia, an order compelling the plaintiff to provide the documents and information requested in the supplemental notice of discovery dated August 10, 2011 is denied, as moot.

The plaintiff Robert Werthner commenced this action to recover damages for injuries he allegedly sustained as a result of a motor vehicle accident that occurred in the right lane of eastbound Sunrise Highway, approximately one-half mile west of Exit 58 South, in the Town of Brookhaven on November 30, 2009. It is alleged that the accident occurred when the vehicle operated by the defendant Michelle Lewis and owned by the defendant Paul Lewis (hereinafter collectively referred to as the “Lewis defendants”) struck the rear of the vehicle operated by the defendant Anthony DiMartini and owned by the defendant Christa Shiffer (hereinafter collectively referred to as the “DiMartini defendants”). As a result of the collision, the DiMartini vehicle was propelled forward and struck the rear of the vehicle operated by the defendant Miream Cruz. When the accident occurred the DiMartini vehicle was traveling at approximately 25 miles per hour in the right lane of eastbound Sunrise Highway, and the plaintiff was riding as a front seat passenger in such vehicle.

In 2012, the Lewis defendants moved for summary judgment on the basis that the injuries the plaintiff allegedly sustained as a result of the subject collision failed to meet the “serious injury” threshold requirement of § 5102 (d) of the Insurance Law. The DiMartini defendants cross-moved for summary judgment on the issue of liability and on the issue of serious injury. Lastly, the defendant Cruz moved for an order granting summary judgment in her favor on liability and compelling the plaintiff to respond to her discovery requests. By order dated March 8, 2013, this Court granted the motion by the DiMartini defendants and the cross motion by the Lewis defendants for summary judgment dismissing the complaint against each of them on the ground that plaintiff did not sustain a serious injury as a result of the subject accident. The order also denied, as moot, the motions by the defendant Cruz and the DiMartini defendants seeking summary judgment in their favor on the issue of liability. It also denied the defendant Cruz’s motion to compel plaintiff to produce the requested discovery documentation, and granted, sua sponte, summary judgment dismissing the complaint as against the defendant Cruz. Subsequently, by order issued August 6, 2014, the Appellate Division, Second Department, reversed this Court’s order, finding that the defendants failed to meet their burden on the serious injury threshold motions (*see Werthner v Lewis*, 120 AD2d 490, 990 NYS2d 267 [2d Dept 2104]). The Appellate Division remitted the matter to this Court to determine the merits of the motion by the defendant Cruz and the cross motion by the DiMartini defendants for summary judgment on the issue of liability, and the separate motion of the defendant Cruz to compel plaintiff to produce the requested discovery.

The plaintiff opposes the defendants’ motions on liability on the grounds that there are triable issues of fact as to whether Anthony DiMartini’s and Miream Cruz’s operation of their vehicles contributed to the

happening of the subject collision. In particular, the plaintiff argues that there are questions of fact as to the exact location of the Cruz vehicle at the time of the subject collision's occurrence, and as to whether the DiMartini vehicle was following too closely behind the Cruz vehicle prior to the impact's occurrence. In addition, the Lewis defendants oppose the defendant Cruz's motion on the ground that there are triable issues of fact as to whether Cruz's operation of her vehicle contributed to the happening of the subject collision.

It is axiomatic that on a motion for summary judgment the proponent must make a prima facie showing of entitlement to judgment as a matter of law by providing sufficient evidence to demonstrate the absence of material issues of fact (*see Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 165 NYS2d 498 [1957]; *Alvarez v Prospect Hosp.*, 68 NY2d 320, 508 NYS2d 923 [1986]). The court's task on a motion for summary judgment is issue finding rather than issue determination (*see Sillman v Twentieth Century Fox Film Corp.*, *supra*), and it must view the evidence in the light most favorable to the party opposing the motion (*see Boyce v Vazquez*, 249 AD2d 724, 671 NYS2d 815 [3d Dept 1998]). Thus, to obtain summary judgment, the moving party must establish his or her claim or defense by tendering sufficient evidentiary proof, in admissible form, to warrant the court to direct judgment in the movant's favor (*see Friends of Animals, Inc. v Associated Fur Mfrs., Inc.*, 46 NY2d 1065, 416 NYS2d 790 [1979]; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 487 NYS2d 316 [1985]). Once such showing has been made, the burden shifts to the nonmoving party to demonstrate the existence of material issues of fact (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 508 NYS2d 923 [1986]). Mere conclusions and unsubstantiated allegations are insufficient to raise any triable issues of fact (*see Zuckerman v City of New York*, 49 NY2d 557, 427 NYS2d 595 [1980]; *Perez v Grace Episcopal Church*, 6 AD3d 596, 774 NYS2d 785 [2d Dept 2004]).

A rear-end collision with a stopped vehicle creates a prima facie case of negligence against the operator of the moving vehicle, thereby requiring that operator to rebut the inference of negligence by providing a non-negligent explanation for the collision (*see Cortes v Whelan*, 83 AD3d 763, 922 NYS2d 419 [2d Dept 2011]; *Ramirez v Konstanzer*, 61 AD3d 837, 837 NYS2d 381 [2d Dept 2009]; *Hakakian v McCabe*, 38 AD3d 493, 833 NYS2d 106 [2d Dept 2007]). However, the lead vehicle also has a duty not to stop suddenly or slow down without proper signaling so as to avoid a collision (*Chepel v Meyers*, 306 AD2d 235, 237, 762 NYS2d 95 [2d Dept 2003]; *see Carhuayano v J&R Hacking*, 28 AD3d 413, 813 NYS2d 162 [2d Dept 2006]; *Gaeta v Carter*, 6 AD3d 576, 775 NYS2d 86 [2d Dept 2004]; *Purcell v Axelsen*, 286 AD2d 379, 729 NYS2d 495 [2d Dept 2001]; *Colonna v Suarez*, 278 AD2d 355, 718 NYS2d 618 [2d Dept 2000]; *see also* Vehicle and Traffic Law § 1163). A non-negligent explanation for the collision, such as mechanical failure or the sudden and abrupt stop of the vehicle ahead, is sufficient to overcome the inference of negligence and preclude an award of summary judgment (*Danner v Campbell*, 302 AD2d 859, 859, 754 NYS2d 484 [4th Dept 2003]; *see Davidoff v Mullokandov*, 74 AD3d 862, 903 NYS2d 107 [2d Dept 2010]; *Carhuayano v J&R Hacking*, 28 AD3d 413, 812 NYS2d 162 [2d Dept 2006]); *Rodriguez-Johnson v Hunt*, 279 AD2d 781, 718 NYS2d 501 [3d Dept 2001]).

Here, although the vehicle operated by Anthony DiMartini rear-ended the defendant Cruz's vehicle while it was traveling in the right lane of traffic on Sunrise Highway, the record demonstrates that the parties were involved in a chain collision accident that started when the Lewis defendants' vehicle struck the rear

of the DiMartini defendants' vehicle, and pushed it forward into the defendant Cruz's vehicle. "Evidence that a vehicle was rear-ended and propelled into the vehicle in front of it may provide a sufficient non-negligent explanation" (*Katz v Masada II Car & Limo Serv., Inc.*, 43 AD3d 876, 877, 841 NYS2d 370 [2d Dept 2007]; see *Harris v Ryder*, 292 AD2d 499, 739 NYS2d 195 [2d Dept 2002]; *Campanella v Moore*, 266 AD2d 423, 699 NYS2d 76 [2d Dept 1999]; *Escobar v Rodriguez*, 243 AD2d 676, 664 NYS2d 568 [2d Dept 1997]). Under these circumstances, the DiMartini defendants have demonstrated that the actions of Anthony DiMartini were not the proximate cause of the subject accident's occurrence or the injuries sustained by the plaintiff (see *Hauser v Adamov*, 74 AD3d 1024, 904 NYS2d 102 [2d Dept 2010]; *Hyeon Hee Park v Hi Taek Kim*, 37 AD3d 416, 831 NYS2d 422 [2d Dept 2007]; *Bournazos v Malfitano*, *supra*, *Smith v Cafiero*, 203 AD2d 355, 610 NYS2d 76 [2d Dept 1994]).

In addition, based upon the adduced evidence, the defendant Cruz established her prima facie entitlement to judgment as a matter of law on the issue of liability by showing that she did not cause or contribute to the subject accident (see *Winegrad v New York Univ. Med. Ctr.*, *supra*; *Vaden v Rose*, 4 AD3d 468, 771 NYS2d 670 [2004]; *McNulty v DePetro*, 298 AD2d 566, 750 NYS2d 89 [2002]). The evidence in the record, including the parties' deposition testimony, demonstrates that the vehicle operated by the defendant Cruz was struck in the rear by the DiMartini vehicle after it had been struck in the rear by the Lewis vehicle. Therefore, under these circumstances, any purported negligence by Miream Cruz was not the proximate cause of the subject accident (see *Batista v City of New York*, 101 AD3d 773, 956 NYS2d 85 [2d Dept 2012]; *Ianello v O'Connor*, 58 AD3d 684, 871 NYS2d 667 [2d Dept 2009]; *Lejkowski v Siedlarz*, 2 AD3d 791, 769 NYS2d 748 [2d Dept 2003]), or the proximate cause of any injuries sustained by the plaintiff (see *Aikens-Hobson v Bruno*, 97 AD3d 709, 949 NYS2d 102 [2d Dept 2012]; *Daramboukas v Samlidis*, 84 AD3d 719, 922 NYS2d 207 [2d Dept 2011]; *Elezovic v Harrison*, 292 AD2d 416, 739 NYS2d 410 [2d Dept 2002]).


In opposition to the prima facie showing by the defendant Cruz and by the DiMartini defendants, neither the plaintiff nor the Lewis defendants have raised a triable issue of fact as to whether any negligence on the part of either the defendant Cruz or the DiMartini defendants contributed to the collision (see *Shirman v Lawal*, 69 AD3d 838, 894 NYS2d 458 [2d Dept 2010]; *Arias v Rosario*, 52 AD3d 551, 860 NYS2d 168 [2d Dept 2008]; *Campbell v City of Yonkers*, 37 AD3d 750, 833 NYS2d 101 [2d Dept 2007]). 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 (see Vehicle and Traffic Law § 1129(a); *Mandel v Benn*, 67 AD3d 746, 889 NYS2d 81 [2d Dept 2009]; *Malone v Morillo*, 6 AD3d 324, 775 NYS2d 312 [1st Dept 2004]; *Barile v Lazzarini*, 222 AD2d 635, 635 NYS2d 694 [2d Dept 1995]). Although the defendant Cruz testified at her examination before trial that before the collision occurred, she heard a "backfire" sound from her vehicle while she was traveling in the right eastbound lane of Sunrise Highway, she further testified that she did not lose control of her vehicle, nor did the speed of her vehicle rapidly decelerate. She testified that her highest rate of speed was 40 mph per hour, and that she already had reduced her speed to approximately 20 to 25 mph before her vehicle was impacted by the DiMartini vehicle. In fact, the defendant Michelle Lewis admitted at her examination before trial that she was traveling approximately 55 mph in the eastbound right lane of Sunrise Highway when her vehicle struck the rear of the DiMartini vehicle. She further testified that the DiMartini vehicle was traveling approximately 20 to 30 mph prior to the accident's occurrence, and that she did not observe the Cruz vehicle

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before the accident occurred, because there was a vehicle traveling in front of her vehicle, which changed lanes immediately before the impact between her vehicle and the DiMartini vehicle.

Accordingly, the motion by the defendant Cruz and the cross motion by the DiMartini defendants seeking summary judgment on the issue of negligence are granted. The separate motion by the defendant Cruz for an order compelling the plaintiff to provide the requested discovery is denied, as moot. The cause of action is severed and continued only as against the Lewis defendants.

Dated: June 12, 2015



J.S.C.

____ FINAL DISPOSITION X NON-FINAL DISPOSITION