

Vargas v Casas

2015 NY Slip Op 32175(U)

October 5, 2015

Supreme Court, Bronx County

Docket Number: 309462/11

Judge: Wilma Guzman

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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX**

309462/11
Index No. ~~306357/15~~
Motion Calendar No. 24

Motion Date: 7/13/15

CONNIE VARGAS,
Plaintiff,

-against-

DECISION/ORDER
Present:
Hon. Wilma Guzman
Justice Supreme Court

ELLIOT CASSAS, LEON DONOVIC, DAVID
WOLOVICK, and "JOHN DOE," name being fictitious
and unknown,

Defendant,

<u>Papers</u>	<u>Numbered</u>
Wolovick Notice of Motion, Affirmation in Support, Exhibits Thereto	1
Cassas Cross-Motion, Affirmation in Support, Exhibits Thereto	2
Affirmation in Opposition	3, 4, 5
Reply Affirmation	6, 7

Upon the foregoing papers and after due deliberation, and following oral argument, the Decision/Order on this motion is as follows:

Defendant Wolovick moves this Court for an Order dismissing the plaintiff's complaint and all cross-claims on the grounds that no liability lies with this defendant. Defendant Cassas partially opposes the Wolovick motion. Defendant Cassas submits a cross-motion seeking an Order dismissing the plaintiff's complaint and all cross-claims on the grounds that no liability lies with this defendant. Defendant Donovic, plaintiff separately oppose the Cassas motion.

Plaintiff commenced this action seeking damages for injuries allegedly sustained as the result of a multiple vehicle accident which occurred on July 9, 2011 on the Northbound Bronx River Parkway, Bronx, NY.

Plaintiff testified that on July 9, 2011 was operating her 2005 Hyundai SUV on the Bronx River Parkway. At the time of the accident, her vehicle was at a full stop in the exit lane behind

other vehicles waiting to take the Gun Hill Road exit. While her vehicle was stopped she observed, through her rearview mirror, a black SUV swerve from the middle lane into the right lane. She heard two bangs and then She observed the silver four door vehicle that was behind her strike her vehicle in the rear driver's side, causing her vehicle to jerk forward. She got out her vehicle and observed the damage to her car as well as two other vehicles and the black SUV which were in the third right lane of the Bronx River Parkway.

Defendant Elliot Cassas testified that on July 9, 2011 he was operating his black 2002 Ford explorer on the Bronx River Parkway. He was in the middle lane as he approached the Gunhill Road exit. He observed the exit lane to be backed up and decided to bypass the exit and go to the next exit. He continued in the middle lane when a silver Toyota hit his vehicle causing it to move to the left. He then stopped his vehicle in the exit lane.

Leon Donovic testified that he was operating a silver 2010 Toyota Camry in the right lane of the Bronx River Parkway. He was approaching the Gunhill Road exit and realized that he was in the exit lane and put on his left signal. He then looked in the side view and rear view mirror and proceeded into the middle lane. He testified that he was then struck by a Black SUV which caused his vehicle to be pushed to the right into a grey prius Toyota Prius which was in front of him, causing it to strike a Grey Hyundai SUV.

David Wolovick testified that he was operating his Prius on the Bronx River Parkway. He was stopped in the right lane at the base of the exit ramp for Gun Hill Road. The plaintiff's vehicle was stopped in front of him. Defendant Wolovick's vehicle was stopped for several minutes when he was looking through his rear view mirror. He observed the vehicle behind him get bumped and then hit his vehicle, which caused his vehicle to strike the plaintiff's vehicle which was in front of him.

The proponent of a motion for summary judgment must tender sufficient evidence to show the absence of any material issue of fact and the right to judgment as a matter of law. *See, Alvarez v. Prospect Hospital*, 68 N.Y.2d 923 (NY 1986) and *Winegrad v. New York University Medical Center*, 64N.Y.2d 851, 487 N.Y.S.2d 316 (NY 1985) Summary judgment is a drastic remedy that deprives a litigant of his or her day in Court. Therefore, the arty opposing a motion for summary judgment is entitled to all favorable inferences that can be drawn from the evidence submitted and

the papers will be scrutinized carefully in a light most favorable to non-moving part. *See, Assaf v. Ropog Cab Corp.*, 153 A.D.2d 520, 544 N.Y.S.2d 834 (1st Dept. 1989). It is well settled that issue finding, not issue determination, is the key to summary judgment. *See, Rose v. Da Ecib USA*, 259 A.D.2d 258, 686 N.Y.S.2d 19 (1st Dept. 1999). Summary judgment will only be granted if there are no material, triable issues of fact. *See, Sillman v. Twentieth Century-Fox Film Corp.*, 3 N.Y.2d 395, 144 N.E.2d 387, 165 N.Y.S.2d 498 (NY 1957) Summary judgment in negligence cases may be granted where the facts clearly point to the negligence of one party without any culpable conduct by the other. *See, Barnes v. Lee*, 158 A.D.2d 414, 551 N.Y.S.2d. 247 (1st Dept. 1990).

A rear-end collision with a stopped vehicle creates a presumption that the driver of the moving vehicle was negligent and entitles the passengers of the stopped vehicle to summary judgment, unless the driver of the moving vehicle comes forward and demonstrates a non-negligent explanation for the accident or for the failure to maintain a safe distance between the cars as provided by Vehicle and Traffic Law § 1129.¹ *See, Burns v. Gonzalez*, 207 A.D.2d 863, 763 N.Y.S.2d 603 (1st Dept. 2003) and *Agramonte v. City of New York*, 288 A.D.2d 75, 732 N.Y.S.2d 414 (1st Dept. 2001).

In *Castro v. Rivera*, 116 A.D.3d 517, 983 N.Y.S.2d 270 (1st Dept. 2014), the Appellate Division, First Department, held that questions of fact exist where a driver abruptly changes into a lane prior to the accident. That a lead vehicle made a sudden lane change is sufficient to rebut the prima facie entitlement to summary judgment. *See also, Jeffrey v. DeJesus*, 116 A.D.3d 574 N.Y.S.2d (1st Dept. 2014).

The rear driver in a chain reaction collision is presumptively responsible for that collision absent any non-negligible excuse. *De La Cruz v. Leong*, 16 A.D.3d 199 (1st Dept. 2005); *Mustafaj v. Driscoll*, 5 A.D. 3d 139 (1st Dept. 2004). Defendant Wolovick's motion for summary judgment is granted. The testimony provided in the depositions, indicate that the Wolovick vehicle, which was stopped immediately behind the plaintiff was not the last vehicle in the multi-car accident.

¹ V.T.L. § 1129 (a) The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon the condition of the highway

Furthermore, defendant Donovan concedes that his vehicle struck the Wolovick Vehicle. Thus, defendant Wolovick has provided a non-negligible excuse for the accident.

It is well settled that on a motion for summary judgment the court may not weigh the credibility of witnesses. See, Glick v. Dolleck v. Tri-Pack Export Corp., 22 N.Y.2d 439 (1968); Perez v. Bronx Park South Associates, 285 A.D.2d 402 (1st Dept. 2001). The court in the case of Quinn v. Krumland, 179 A.D.2d 448 (1st Dept. 1992) stated: "The function of a court on a motion for summary judgment is not to determine credibility or to engage in issue determination, but rather to determine the existence or non-existence of a material issue of fact." *Assuming arguendo*, that the Cassas cross-motion was timely, the factual differences of the testimony of Donovan and Cassas nonetheless preclude summary judgment on the Cassas cross-motion.

Accordingly, it is

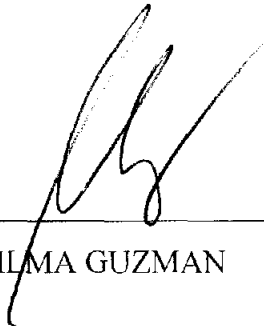
ORDERED that defendant Wolovick's motion for summary judgment is hereby granted and the plaintiff's complaint and all cross-claims are hereby denied. It is further

ORDERED that defendant Cassas cross-motion for summary judgment is hereby denied. It is further

ORDERED that plaintiff serve a copy of this Order with Notice of Entry on the Defendant within 30 days of entry of this Order.

This constitutes the decision and Order of the Court.

10/5/15
DATE


HON. WILMA GUZMAN