Davenport v Reyes
2015 NY Slip Op 32405(U)
November 2, 2015
Supreme Court, Bronx County
Docket Number: 307195/2013
Judge: Howard H. Sherman
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX
PART 4

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Dominique Davenport

Decision and Order

Plaintiff

Index No. 307195/2013

-against -

Kristina Reyes ,
Tina Car Limo Inc., Ibrahima Jailoh
and **Mohamadou Ramadane**

Defendants

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FACTS AND PROCEDURAL HISTORY

Plaintiff Dominique Davenport (" Davenport ") seeks recovery for injuries allegedly sustained on July 20, 2013, in a three-vehicle collision that occurred at or near the intersection of 163rd Street and Westchester Avenue, Bronx County, New York.

Davenport was the driver of a motor vehicle that was impacted in the rear by a vehicle owned and operated by Kristina Reyes ("Reyes") that also sustained a rear-end collision by a taxi driven by defendant Mohamadou Ramadane ("Ramadane"), and owned by the co-defendants Ibrahima Jailoh ("Jailoh") and Tina Car Limo, Inc.

This action was commenced in December 2013 and issue was joined with the service of defendants' Ramadane and Jailoh answer in March 2014. The answer interposed a cross-claim against Reyes who served an amended answer in May 2014. Reyes asserted a cross-claim against the co-defendants.

The Note of Issue was filed on April 3, 2015.

Motion

By timely motion defendant Reyes seeks an award of summary judgment dismissing the complaint and the cross-claim contending that there is no issue of fact that the culpable conduct of the rearmost driver was the sole proximate cause of the motor vehicle accident. In support she submit copies of the pleadings , as well as the transcripts of her deposition testimony, and that of plaintiff.

Plaintiff opposes the motion as premature as the depositions of the co-defendants have yet to be conducted.

Discussion and Conclusions

It is by now well settled that the proponent of a motion for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law , tendering sufficient evidence to demonstrate the absence of a material issues of fact. Zuckerman v. City of New York, 49 N.Y.2d 557 [1980] To support the granting of such a motion , it must clearly appear that no material and triable issue of fact is presented , the "drastic remedy should not be granted where there is any doubt as to the existence

of such issues (Braun v. Carey, 280 App.Div. 1019) or where the issue is 'arguable' (Barrett v. Jacobs, 255 N.Y. 520, 522); 'issue-finding, rather than issue-determination, is the key to the procedure' (Esteve v. Avad, 271 App. Div. 725, 727)." Sillman v. Twentieth Century-Fox Film Corp., 3 NY2d 395, 404 [1957]. Failure to make such a showing requires the denial of the motion , regardless of the sufficiency of the papers in opposition. Alvarez v. Prospect Hospital , 68 NY2d 320,324 [1986]; see also, Smalls v. AJI Industires, Inc., 10 NY3d 733, 735 [2008] Moreover, " '[a]s a general rule, a party does not carry its burden in moving for summary judgment by pointing to gaps in opponent's proof , but must affirmatively demonstrate the merit of its claim or defense'" (Pace v. International Bus. Mach., 248 AD2d 690,691 [2d Dept 1998], quoting Larkin Trucking Co. V. Lisbon Tire Mart, 185 AD2d 614, 615 [4th Dept. 1992]; see also, Peskin v. New York City Transit Auth., 304 AD2d 634 [2d Dept. 2003] Once such a showing is made, the burden shifts to the party opposing the motion to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact requiring a trial of the action. Romano v. St. Vincent's Medical Center of Richmond, 178 AD2d 467 [1st Dept. 1991].

While summary judgment is "is rarely granted in negligence cases since the very question of whether a defendant's conduct amounts to negligence is inherently a question for the trier of fact in all but the most egregious instances (Wilson v. Sponable,

81 AD2d 1, 5; Siegel , Practice Commentaries , McKinney's Cons Laws of NY Book 7B, CPLR C3212:8,p. 430) " Johnannsdottir v. Kohn, 90 AD2d 842 [1st Dept. 1982] , such a motion will be granted "where the facts clearly point to the negligence of one party without any fault or culpable conduct by the other party." (Morowitz v. Naughton , 150 AD2d 536 [1st Dept. 1989[; see also, Gramble v. Precision Health, Inc., 267 AD2d 66,67 [1st Dept. 1999]; Spence v. Lake Service Station, Inc., 13 Ad3d 276 [1st Dept. 2004]).

In addition, it is settled that a rear end collision with a vehicle establishes a *prima facie* case of negligence against the rearmost driver (see, Woodley v. Ramirez, 25 Ad3d 451 [1st Dept. 2006], as the "rule is that a driver must maintain a safe distance between his vehicle and the one in front of him ....." (Johnson v. Phillips, 261 AD2d 269,271 [1st Dept. 1999]; see also, Vehicle and Traffic Law § 1129 [a])

In such a case, summary judgment on liability would properly lie " unless the driver of the following vehicle presents a nonnegligent explanation for the accident, or a nonnegligent reason for his failure to maintain a safe distance between his car and the lead car [and] [a] claim that the lead vehicle 'stopped suddenly' is *generally* insufficient to rebut the presumption of non-negligence on the part of the lead vehicle [emphasis added]." (Woodley v. Ramirez, 25 A.D.3d 451.452 [1st Dept. 2006]).

As here, the " rearmost driver in a chain-reaction collision bears a presumption of responsibility" (De La Cruz v Ock Wee Leong, 16 AD3d 199, 200, 791 NYS2d 102 [1st Dept. 2005]; Ferguson v. Honda Lease Trust, 34 A.D.3d 356, 826 N.Y.S.2d 10 [1st Dept. 2006]; Morales v. Morales, 55 A.D.3d 306, 864 N.Y.S.2d 30 [1st Dept. 2008]).

Upon consideration of the record including the undisputed testimony of plaintiff that her stopped vehicle sustained one rear impact , and that her post-accident observation of the three vehicles revealed damage to the rear of her car , and to the rear of the Reyes vehicle , as well as to the front of the co-defendants taxi, and Reyes' account of being stopped at the traffic light when her car was hit in the rear and pushed about three feet into plaintiff's vehicle, it is submitted that defendant has made her *prima facie* case of entitlement to summary judgment by demonstrating as a matter of law a non-negligent explanation for the rear-end collision with the Davenport vehicle (see, Chang v. Rodriguez, 57 A.D.3d 295, 869 N.Y.S.2d 427 [1st Dept. 2008]).

In opposition, plaintiff comes forward with no proof to raise an issue of fact to rebut this showing, and makes no showing that facts essential to oppose the motion for summary judgment are exclusively within the knowledge and control of the movant (see, Global Mins. & Metals Corp v Holme, 35 AD3d 93, 103, 824 N.Y.S.2d 210 [1st Dept 2006], lv denied 8 NY3d 804, 863 N.E.2d 111, 831 N.Y.S.2d 106 [2007]).

Accordingly, for the reasons above stated, it is ORDERED that the motion of defendant Kristina Reyes for an order awarding summary judgment is granted pursuant to CPLR 3212, and it is further

ORDERED that summary judgment be entered in favor of defendant dismissing as asserted against her the complaint and the cross-claim herein.

This constitutes the decision and order of this court.

Dated: November 4, 2015

Howard H. Sherman