

Rios v Sachko

2015 NY Slip Op 32532(U)

December 30, 2015

Supreme Court, Bronx County

Docket Number: 305396/2011

Judge: Howard H. Sherman

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

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Luz Rios and Louis Rios
Plaintiffs

Decision and Order

-against-

Index No. 305396/2011

**Anna Sachko,
Ferdinand Plaza, Lissette Jacquez
and Nenyi K. Eduafo**

Defendants

Howard H. Sherman
J.S.C.

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Facts and Procedural Background

This personal injury action arises out of a motor vehicle accident that occurred on January 3, 2011 on I-87 near the Hall Place Overpass in Yonkers , New York.

Luz Rios ¹was the owner and operator of a motor vehicle that was impacted in the rear by a vehicle owned and then being driven by defendant Anna Sachko (Sachko”).

The Note of Issue was filed on October 22, 2013.

Defendants Ferdinand Plaza (“Plaza”), Lissette Jacquez (“Jacquez”), and Nenyik Eduafo (“Eduafo”), move for summary judgment on the issue of liability dismissing all claims and cross-claims as asserted against them, and plaintiff moves for an award of summary judgment on the issue of liability as against Sachko . The four motions are supported by the transcripts of the deposition testimony of plaintiff Luz Rios, and the

¹By supplemental summons and complaint Louis Rios interposed a derivative claim.

defendant -drivers, and are consolidated for purposes of disposition .

Prior to the rear-end collision with her vehicle , plaintiff observed that cars in the middle and the left lane were slowing down and/or at a full stop ahead of her and "people out of their vehicles" and "the hood up", and someone "leaning like if they were going to fix a tire." [RIOS EBT: 17-25;33:16-17]. The two cars directly in front of her had their flashers on [67]. Concluding that there had been an accident , she brought her car to a stop in the left lane, and turned on her hazard lights and flashers. She turned on her right directional signal as she observed cars passing in the middle lane [27], and after about ten seconds, she felt one impact to the rear of her vehicle [29]. Throughout this period , her car remained in a stationary position.

Defendant Eduafo

Eduafo moves for summary judgment on the issue of liability on the grounds that there is no material issue of fact that his conduct caused or contributed to the rear-end collision, and while the tire blowout on his car that triggered his collision with the concrete guardrail preceded plaintiff's accident, it furnished only the occasion for the rear-end collision, not one of its causes.

Plaintiffs oppose the motion contending that approximately five minutes passed between the time of the tire blow-out/collision and the collision with the Rios vehicle, and as such , "the happening of plaintiff's accident is not so removed in time [from that event] as to preclude recovery as a matter of law. It is also argued that there is a question of fact

as to whether Eduafo's failure to control his vehicle after the blowout and/or to place hazard flares behind his vehicle after hitting the guardrail, caused or contributed to the collision with the Rios vehicle.

Defendant Sachko also opposes the motion contending that an award of dispositive relief is precluded in view of unresolved issues of Eduafo's maintenance /operation of his vehicle causing or contributing to the "chain" accident at issue.

In reply to plaintiffs' opposition, defendant contends that no evidence is offered to rebut his showing of either the exigent circumstances preceding the collision with the guardrail, or of his regular maintenance of his vehicle, and specifically, the tires. With respect to any claim of causative negligence devolving from the failure to utilize hazard flares, it is maintained that there is no issue of fact that the Eduafo vehicle could be seen by the following drivers, including plaintiff, while it was disabled on the highway.

Ferdinand Plaza

Plaza moves for summary judgment dismissal of the complaint and any and all cross-claims on the grounds that there is no triable issue of fact as to his liability for the rear-end collision with plaintiff's vehicle, the undisputed evidence demonstrating that there was no contact between Rio's vehicle and that of the defendant, and that Sachko rear-ended plaintiff's vehicle five minutes after Plaza's vehicle had been rear-ended by defendant Jacquez at a considerable distance in front of those vehicles. A copy of the police report is

submitted, however as uncertified, it is not admissible for consideration here (see, Coleman v. Maclas, 61 A.D.3d 569, 877 N.Y.S.2d 297 [1st Dept. 2009]).

The motion is opposed by plaintiffs and defendant Sachko, with both parties arguing that by leaving his vehicle in the roadway for a sufficient length of time he contributed to the happening of the second rear-end collision.

Lissette Jacquez

Defendant moves for summary judgment on the grounds that there is no triable issue of fact that Jacquez's involvement in the collision with Plaza's vehicle, an event which occurred five minutes before plaintiff's accident, caused or contributed to the subsequent rear-end collision that was caused solely by defendant Sachko's failure to maintain a safe distance behind the Rios vehicle.

Plaintiffs oppose the motion on the grounds that there are issues of fact as to whether Jacquez's culpable conduct in striking Plaza's vehicle "set into motion an eminently foreseeable chain of events that resulted in the collision between plaintiff and defendant Sachko."

Sachko also opposes the motion on the grounds that defendant's conduct relative to her lane change and following distance caused or contributed to the "chain accident at issue."

In reply, defendant maintains that both plaintiffs and co-defendant Sachko fail to address the salient issue raised in the motion, i.e., that while Jacquez's conduct might have furnished the occasion for the rear-end collision to the Rios vehicle, it was not a causative event. Rios testified that she brought her car to a stop prior to the impact, and the force of that impact did not cause her to strike any vehicle in front of it, including that of Jacquez that was stopped two car lengths ahead, with its hazard lights on.

Plaintiffs' Motion

Plaintiffs move for summary judgment on the issue of liability as against defendant Sachko on the grounds that the rear-end collision with her stopped vehicle creates a presumption of negligence on the part of Sachko.

Sachko opposes the motion and contends that there is an issue of fact as to whether the plaintiff utilized flashers while stopped on the highway precluding an award of summary judgment.²

In reply, plaintiffs contend that the issue of the use of flashers does not raise a triable issue of fact of a non-negligent reason for Sachko to have failed to observe the then prevailing traffic conditions and maintain a safe distance behind the Rios vehicle.

² Defendant also argues that the transcripts of the deposition testimony on which plaintiffs rely are inadmissible as neither executed by the witness, nor is there a showing of compliance with CPLR 3116(a). To the extent, that the transcripts were certified by the court reporters, and defendant does not challenge their accuracy, the deposition testimony will be considered by the court (see, Sass v TMT Restoration Consultants Ltd., 100 AD3d 443, 443, 953 NYS2d 574 [1st Dept 2012]).

Discussion and Conclusions

Upon consideration of the papers on submission and the oral argument thereon, it is the finding of this court that the actions of defendants Eduafo, Plaza, and Jacquez merely furnished the condition for the accident, and they neither caused nor contributed to the subsequent rear-end collision, and the sole proximate cause of that accident was the failure of Sachko to drive at a sufficiently safe speed to maintain sufficient distance from the vehicles in front to avoid collisions with stopped vehicles, taking into account weather and road conditions, including as here notable, a curve in the roadway "so that you couldn't see the straightaway" [SACHKO EBT: 20] (see, LaMasa V. Bachman, 56 AD3d 340, 869 NYS2d 17 [1st Dept. 2008], Renteria v. Simakov, 109 A.D.3d 749, 972 NYS2d 15 [1st Dept. 2013]; see also, Ely v. Pierce, 302 A.D.2d 489, 755 N.Y.S.2d 250 [2d Dept. 2003], app.den. 100 N.Y.2d 505, 795 N.E.2d 37 [2003], Iqubal v. Thai, 83 AD3d 897, 920 NYS2d 789 [2d Dept. 2011]; Blaso v. Parente, 79 AD3d 923, 913 NYS2d 306 [2d Dept. 2010]).

In opposition, nether plaintiffs nor Sachko come forward with probative evidence to raise an issue of fact that any acts or omissions on the part of the moving defendants contributed to the second rear-end collision, nor does Sachko raise an issue of fact of a non-negligent explanation for her failure to maintain a safe distance behind the plaintiff's vehicle in light of the road and then prevailing traffic conditions.

Accordingly, it is

ORDERED that the motion of defendant **Nenyi K. Eduafo** be and hereby is granted and it is further

ORDERED that summary judgment be entered in favor of the moving defendant dismissing the complaint and all cross-claims asserted against him , and it is further

ORDERED that the motion of defendant **Ferdinand Plaza** be and hereby is granted and it is further

ORDERED that summary judgment be entered in favor of the moving defendant dismissing the complaint and all cross-claims asserted against him , and it is further

ORDERED that the motion of defendant **Lissette Jacquez** be and hereby is granted and it is further

ORDERED that summary judgment be entered in favor of the moving defendant dismissing the complaint and all cross-claims asserted against her , and it is further

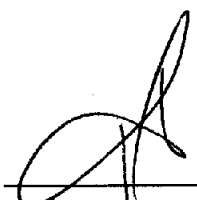
ORDERED that the motion of **plaintiffs Luz Rios and Louis Rios** be and hereby is granted and it is further

ORDERED that summary judgment be entered in favor of the plaintiffs as against **defendant Anna Sachko** on the issue of liability , and it is further

ORDERED that upon the completion of all discovery with respect thereto, and upon proof of the service upon defendant Sachko of a copy of this decision and order, this matter be set down for an assessment of damages to include the issues of "serious injury" and proximate cause.

This shall constitute the decision and order of this court.

Dated: December 30, 2015



Howard H. Sherman