

Craig v Recon Recon Wheels, Inc.
2016 NY Slip Op 30250(U)
January 8, 2016
Supreme Court, Bronx County
Docket Number: 305694/2014
Judge: Wilma Guzman
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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX**

Index No. **305694/2014**
Motion Calendar No. 6
Motion Date: 10/26/15

NICHOLE CRAIG

Plaintiff,

-against-

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

RECON RECON WHEELS, INC., Z SOBERANIS-DEPAZ,
GENIUS and COMPANY OF NY, INC., FEDEX GROUND
PACKAGE SYSTEM, INC., and ANTOINE EASTON
Defendants.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion for summary judgment:

<u>Papers</u>	<u>Numbered</u>
Notice of Motion, Affirmation in Support,	
Exhibits Thereto.....	1
Affirmation in Opposition	2
Reply Affirmation	3

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

Plaintiff moves this Court pursuant to CPLR § 3212 for an Order seeking summary judgment on the issue of liability. Defendant Recon Wheels, Inc. and Z. Depaz-Soberanis failed to appear for oral argument and as such this motion is considered on the default of defendants Recon Wheels, Inc. and Z. Depaz-Soberanis and their opposition papers not considered. Defendants Genius and Company of NY, Inc., Fedex Ground Package System, Inc., and Antoine Easton oppose the plaintiff's motion.

Plaintiffs commenced this action seeking damages for injuries allegedly sustained as the result of a motor vehicle accident which occurred on October 16, 2013. Plaintiff avers that she was a front seat passenger in a stopped motor vehicle owned by the City of New York Police Department and operated by Florence Henry when it was struck in the rear by a vehicle owned by Recon Wheels, Inc., Z Soeberanis-Depaz, Genius and Company of NY, Inc. And Fed Ex Ground Package

System, Inc. And operated by defendant Easton.

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 320, 508 N.Y.S.2d 923 (NY 1986) and *Winegrad v. New York University Medical Center*, 64 N.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 party 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 party. *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). 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 her failure to maintain a safe distance between the cars as provided by Vehicle and Traffic Law § 1129.¹ *see, Burns v. Gonzalez*, 307 A.D.2d 863, 763

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 and the condition of the highway.

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 Cabrera v. Rodriguez, 72 A.D.3d 553 (1st Dept. 2010), the Appellate Division, First Department, affirmed its holding that the assertion that a rear end collision with a stopped or stopping vehicle, even with allegations of non-functioning lights on the lead vehicle, is *prima facie* establishment of liability in rear-end collision cases. That a lead vehicle made a sudden stop is insufficient to rebut the prima facie entitlement to summary judgment. See also, Corrigan v. Porter Cab Corp., 101 A.D.3d 471 (1st Dept 2012); Profita v. Diaz, 100 A.D.3d 481 (1st Dept. 2012). 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).

Applying the analysis of Cabrera and its progeny , this Court finds that defendant Perez has failed to offer a non-negligent reason for failing to maintain a safe distance between the vehicles and his affidavit to rebut the testimony of plaintiff Perkins. As such, defendant Perez's counter-claim is dismissed and incidentally, plaintiff's are granted summary judgment on the issue of liability.

Furthermore, upon review of the opposition papers of defendants Genius and Company of NY, Inc., Fedex Ground Package System, Inc., and Antoine Easton, no evidence supports any theory that passenger plaintiff bore any culpable conduct in the occurrence of the accident. Tselebis v. Ryder Truck Rental, Inc., 2010 N.Y. Slip Op. 01442 (1st Dept. 2010); Strychalski v. Dailey, 65 A.D.3d 546 (2nd Dept. 2009).

Accordingly, it is

ORDERED that plaintiff's motion for summary judgment on the issue of liability is hereby granted on default as to defendants Recon Wheels, Inc. and Z. Depaz-Soberanis. It is further

ORDERED that plaintiff's motion as to defendants Genius and Company of NY, Inc., Fedex Ground Package System, Inc., and Antoine Easton is hereby granted/ all cross-claims against defendant Vizacorrondo are hereby dismissed. It is further

ORDERED that the Clerk is directed to enter a judgment in favor of plaintiff Craig against defendants Recon Wheels, Inc. and Z. Depaz-Soberanis, Genius and Company of NY, Inc., Fedex Ground Package System, Inc., and Antoine Easton . Upon the completion of discovery, the payment

of the appropriate fees and the filing of the Note of Issue, this matter shall be set down for an trial on the issue of damages. It is further

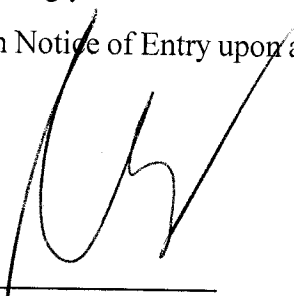
ORDERED that the Clerk of the Court mark the file accordingly. It is further

ORDERED that plaintiff shall serve a copy of this Order with Notice of Entry upon all parties within thirty (30) days of entry of this Order.

This constitutes the decision and Order of the Court.

JAN 08 2016

DATE



HON. WILMA GUZMAN
Justice Supreme Court