

Cadle v Figueroa

2016 NY Slip Op 30251(U)

January 8, 2016

Supreme Court, Bronx County

Docket Number: 306726/13

Judge: Howard H. Sherman

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

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TRICIA CADLE,

Index No.: 306726/13

Plaintiff,

-against-

DECISION/ORDER

ELIZABETH FIGUEROA, JODIANN CLARKE,
ROHINI CIAMPI, ASHA CIAMPI and HECTOR L.
SANTIAGO,

Present:
Hon. Howard H. Sherman
J.S.C.

Defendants.
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Facts and Procedural Background

Plaintiff seeks damages for injuries alleged to have been sustained on January 24, 2013 when the vehicle she was driving on the Bronx River Parkway came into contact with the vehicles directly in front and behind it, then respectively being operated by defendants Elizabeth Figueroa and Hector Santiago. Positioned in front of the Figueroa vehicle were those of defendants Rohini Ciampi ("Ciampi")¹ and Jodiann Clarke ("Clarke"), both of which were stopped in the right lane awaiting police to respond to an earlier collision between their vehicles.

To date, no Note of Issue has been filed.

Motions

Defendant Clarke and the Ciampi defendants move for summary judgment dismissing the claims and cross-claims asserted against them on the grounds that they bear no liability for plaintiff's accident or the injuries she sustained since their actions were not the proximate cause of plaintiff's accident.

The motions are each supported by the pleadings and affidavits of the moving defendant

¹ Defendant Asha Ciampi was the owner of the vehicle .

drivers , and by an uncertified copy of the police report. ²

The motions are consolidated for purposes of disposition.

Affidavits

Clarke attests that she was involved in a collision with the Ciampi vehicle after which both drivers “came to a stop in the right lane of the Bronx River Parkway and called for the police to come to the scene.” Both drivers waited at the scene for approximately an hour when “the accident occurred between the Figueroa, Cadle and Santiago vehicles.” Clarke contends that as there was no contact between her vehicle and those involved in the subsequent accident, the complaint against her should be dismissed.

Renata Ciampi attests that she was driving in the right lane at about 8:00 a.m. on January 24, 2013 when there was collision with Clarke’s vehicle that impacted both doors on the driver’s side of her vehicle. As a result, she brought her vehicle to a stop “on the right side of the right lane as there was no shoulder in the area and put the emergency lights on.” Clarke brought her vehicle to a stop in front of hers. Ciampi called the police, and after waiting more than an hour, an accident occurred involving plaintiff , and co-defendants Figueroa and Santiago.

The motions are opposed by Figueroa who attests in pertinent part that she was traveling at approximately 40 to 50 miles per hour when the vehicle directly in front of her came to an abrupt stop, and in order to avoid hitting it, she applied her brakes and turned her steering wheel sharply to the right and “drove onto the grassy shoulder of the road.” Her vehicle was stopped for three to five seconds when it was impacted in the rear by plaintiff’s vehicle after which, plaintiff’s vehicle was also struck in the rear by a vehicle operated by Santiago. After the

² The reports as tendered are inadmissible (see, Coleman v. Maclas, 61 A.D.3d 569, 877 N.Y.S.2d 297 [1st Dept. 2009]).

accident, Figueroa observed that the Clarke and Ciampi vehicles had been involved in a collision and were positioned in the right lane about three to four car lengths ahead. She did not observe any emergency flares or other devices on the roadway nor did she observe emergency flashers activated on the vehicles.

Discussion and Conclusions

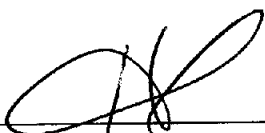
Issues of proximate cause are typically fact questions to be decided by a jury and are only appropriately decided on summary judgment " 'where only one conclusion may be drawn from the established facts (see, Derdiarian v Felix Contr. Corp., 51 NY2d 308, 315, 414 NE2d 666, 434 NYS2d 166 [1980]; see also, Geralds v. Damiano, 128 A.D.3d 550 [1st Dept. 2015]). It is submitted that the tersely worded affidavits of the moving defendants are insufficient to make the requisite showing here, as there are unresolved issues of fact as to the circumstances by which the defendants were caused to remain stopped in the active lane of a parkway for over an hour's period , and whether hazard lights were deployed on the vehicles at the time of the subsequent accident. It is noted that neither Clarke nor Ciampi attests that their vehicles were disabled as a result of their collision, and in direct contradiction of Ciampi's assertion, Figueroa attests that she was able to steer her car into a grassy shoulder of the roadway. In this scant and contradictory record the court cannot make the dispositive findings sought .

Accordingly, it is

ORDERED that the motions be and hereby are denied with leave to renew at the completion of discovery .

This shall constitute the decision and order of this court.

Dated: January 8, 2016
Bronx, New York



Howard H. Sherman
J.S.C.