Cooperman v Goodman
2016 NY Slip Op 30254(U)
January 22, 2016
Supreme Court, Queens County
Docket Number: 700430/2015
Judge: Robert J. McDonald
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SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK
CIVIL TERM - IAS PART 34 - QUEENS COUNTY
25-10 COURT SQUARE, LONG ISLAND CITY, N.Y. 11101

P R E S E N T : **HON. ROBERT J. MCDONALD**
Justice

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STUART COOPERMAN,	Index No.: 700430/2015
Plaintiff,	Motion Date: 1/5/16
- against -	Motion No.: 57
DANIEL GOODMAN and EDWARD GOODMAN,	Motion Seq.: 1
Defendants.	

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DANIEL GOODMAN and EDWARD GOODMAN,

Third-Party Plaintiffs,

- against -

JEFFREY NOTT,

Third-Party Defendant.

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The following papers numbered 1 to 8 read on this motion by third-party defendant JEFFREY NOTT for an Order pursuant to CPLR 3212 granting summary judgment in favor of third-party defendant JEFFREY NOTT and dismissing the third-party complaint of defendants/third-party plaintiffs DANIEL GOODMAN and EDWARD GOODMAN:

	Papers Numbered
Notice of Motion-Affirmation-Exhibits	1 - 4
Affirmation in Opposition	5 - 6
Reply Affirmation	7

In this action for negligence, plaintiff, a passenger in third-party defendant's vehicle, seeks to recover damages for personal injuries allegedly sustained as a result of a motor vehicle accident that occurred on February 10, 2012.

This action was commenced by the filing of a summons and complaint on May 28, 2014. Issue was joined by defendants Daniel Goodman and Edward Goodman serving an answer on April 2, 2015. Defendants then served a third-party summons and complaint on third-party defendant Jeffrey Nott on April 8, 2015. Third-party defendant served an answer on May 27, 2015. Third-party defendant now seeks summary judgment dismissing the third-party complaint on the ground that he is not liable for the happening of the accident.

In support of the motion, third-party defendant submits an affirmation from counsel, Evan B. Cohen, Esq.; a copy of the pleadings; a copy of the police accident report, and his own affidavit dated October 8, 2015.

The police officer who responded to the scene prepared a motor vehicle accident report which reads in the description portion of the report: "MV2 (plaintiff and third-party defendant's vehicle) stopped on Bayview waiting for traffic to clear to make left turn onto Hillcrest, with left turn signal on was struck in rear by MV1 (defendants/third-party plaintiffs' vehicle). Both vehicles removed from scene. Passengers in MV2 complained of back pain, refused medical aid."

In his affidavit, third-party defendant states that on February 10, 2012, at approximately 10:00 p.m., he was waiting to make a left hand turn from northbound Bayview Avenue onto westbound Hillcrest Drive when he was involved in a motor vehicle accident. He states that he brought his vehicle to a complete when he was rear ended by the vehicle operated by defendant/third-party plaintiff Daniel Goodman.

Based on the police accident report and third-party defendant's sworn affidavit, counsel argues that third-party defendant not at fault for the happening of the accident, and therefore, was not negligent as his vehicle was fully stopped when it was rear ended by defendants/third-party plaintiffs' vehicle.

In opposition, counsel for defendants/third-party plaintiffs, Amelia R. Nicoletti, Esq., submits an affirmation contending that summary judgment is premature as depositions have not been held. Counsel further contends that third-party defendant's affidavit is insufficient and conclusory.

The proponent of a summary judgment motion must tender evidentiary proof in admissible form, eliminating any material issues of fact from the case. If the proponent succeeds, the burden shifts to the party opposing the motion, who then must show the existence of material issues of fact by producing evidentiary proof in admissible form, in support of his or her position (see Zuckerman v City of New York, 49 NY2d 557[1980]).

"When the driver of an automobile approaches another automobile from the rear, he or she is bound to maintain a reasonably safe rate of speed and control over his or her vehicle, and to exercise reasonable care to avoid colliding with the other vehicle" (Macauley v ELRAC, Inc., 6 AD3d 584 [2d Dept. 2003]). It is well established law that a rear-end collision with a stopped or stopping vehicle creates a prima facie case of negligence on the part of the driver of the rearmost vehicle, requiring the operator of that vehicle to proffer an adequate, non-negligent explanation for the accident (see Delgado v Bang, 120 AD3d 608 [2d Dept. 2014]; Kertesz v Jason Transp. Corp., 102 AD3d 658 [2d Dept. 2013]; Ramos v TC Paratransit, 96 AD3d 924 [2d Dept. 2012]; Pollard v Independent Beauty & Barber Supply Co., 94 AD3d 845 [2d Dept. 2012]; Klopchin v Masri, 45 AD3d 737 [2d Dept. 2007]).

Here, based on third-party defendant's affidavit and the police report confirming same, third-party defendant has established that his vehicle was stopped to make a left hand turn when it was rear-ended by defendants/third-party plaintiffs' vehicle. Thus, third-party defendant satisfied his prima facie burden of establishing entitlement to summary judgment as a matter of law (see Volpe v Limoncelli,74 AD3d 795 [2d Dept. 2010]; Vavoulis v Adler, 43 AD3d 1154 [2d Dept. 2007];Levine v Taylor, 268 AD2d 566 [2d Dept. 2000]).

Having made the requisite prima facie showing of entitlement to summary judgment, the burden then shifted to the non-moving parties to raise a triable issue of fact as to whether third-party defendant was also negligent, and if so, whether his negligence contributed to the happening of the accident (see Goemans v County of Suffolk, 57 AD3d 478 [2d Dept. 2007]).

Here, no evidence has been submitted disputing that third-party defendant's stopped vehicle was struck in the rear by defendants/third-party plaintiffs' vehicle. This court finds, that defendants/third-party plaintiffs, who did not submit affidavits in opposition to the motion, failed to provide evidence of a non-negligent explanation for the accident

sufficient to raise a triable question of fact (see Bernier v Torres, 79 AD3d 776 [2d Dept. 2010]; Lampkin v Chan, 68 AD3d 727 [2d Dept. 2009]; Cavitch v Mateo, 58 AD3d 592 [2d Dept. 2009]; Garner v Chevalier Transp. Corp, 58 AD3d 802 [2d Dept. 2009]; Kimyagarov v Nixon Taxi Corp, 45 AD3d 736 [2d Dept. 2007]; Gomez v Sammy's Transp., Inc., 19 AD3d 544 [2d Dept. 2005]).

Defendants/third-party plaintiffs' counsel's contention that this motion for summary judgment is premature is without merit. Defendants/third-party plaintiffs failed to offer any evidentiary basis to suggest that discovery may lead to relevant evidence. The mere hope and speculation that evidence sufficient to defeat the motion might be uncovered during discovery is an insufficient basis upon which to deny the motion (see CPLR 3212[f]; Medina v Rodriguez, 92 AD3d 850[2d Dept. 2012]; Hanover Ins. Co. v Prakin,81 AD3d 778 [2d Dept. 2011]; Essex Ins. Co. v Michael Cunningham Carpentry, 74 AD3d 733 [2d Dept. 2010]; Peerless Ins. Co. v Micro Fibertek, Inc., 67 AD3d 978 [2d Dept. 2009]; Gross v Marc, 2 AD3d 681 [2d Dept. 2003]).

As the evidence in the record demonstrates that the non-moving parties failed to provide a non-negligent explanation for the accident, and as no triable issues of fact have been put forth as to whether third-party defendant may have borne comparative fault for the causation of the accident, and based on the foregoing, it is hereby,

ORDERED, that third-party defendant JEFFREY NOTT's motion is granted, the Third-Party Complaint is dismissed, and the Clerk of Court is authorized to enter judgment accordingly.

Dated: January 22, 2016
Long Island City, N.Y

ROBERT J. MCDONALD
J.S.C.

FILED

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COUNTY CLERK
QUEENS COUNTY