

Luna v Garvey-Carmel
2016 NY Slip Op 31154(U)
May 25, 2016
Supreme Court, Bronx County
Docket Number: 307941/2012
Judge: Lucindo Suarez
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: I.A.S. PART 19

-----X
YULISA FRANCISCA CACERES LUNA,

Plaintiff,

DECISION AND ORDER

Index No. 307941/2012

- against -

LEE GARVEY-CARMEL, GREGORY N. MAYO, and
ROMMEL CARTWRIGHT,

Defendants.

-----X
LEE GARVEY-CARMEL,

Third-Party Plaintiff,

Index No. 84176/2012

- against -

ALFREDO LUNA,

Third-Party Defendant.

-----X
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: I.A.S. PART 19

-----X
ALFREDO LUNA,

Plaintiff,

Index No. 307080/2013

- against -

LEE GARVEY-CARMAL and GREGORY MAYO,

Defendants.

-----X
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LEE GARVEY-CARMAL,

Third-Party Plaintiff,

Third-Party Index No.
83720/2014

- against -

ROMMEL CARTWRIGHT, NEW YORK STATE
POLICE,

Third-Party Defendants.

-----X

PRESENT: Hon. Lucindo Suarez

Upon the notice of motion dated January 14, 2016 of defendant/third-party plaintiff Lee Garvey-Carmel and the affirmation, exhibits, and memorandum of law submitted in support thereof; the affirmation in opposition dated March 21, 2016 of defendant Rommel Cartwright and the exhibit submitted therewith; the reply affirmation dated March 30, 2016 of defendant/third-party plaintiff Lee Garvey-Carmel; the notice of cross-motion dated February 9, 2016 of defendant Gregory N. Mayo and the affirmation submitted in support thereof; the notice of cross-motion dated March 9, 2016 of third-party defendant Alfredo Luna and the affirmation, exhibits and memorandum of law submitted in support thereof; the reply affirmation dated May 3, 2016 of third-party defendant Alfredo Luna; the notice of cross-motion dated April 11, 2016 of plaintiff Alfredo Luna and the affirmation and exhibits submitted in support thereof; the affirmation in opposition dated April 26, 2016 of defendant Rommel Cartwright and the exhibit submitted therewith; and due deliberation; the court finds:

These actions arise out of a multi-vehicle chain collision accident that occurred on August 8, 2011 near the Bronx River Parkway exit on the Bruckner Expressway. Defendant/third-party plaintiff Lee Garvey-Carmel ("Garvey-Carmel") moves pursuant to CPLR 3212 for summary judgment dismissing the complaint of plaintiff Yulisa Francisca Caceres Luna ("Caceres Luna") and the complaint of plaintiff Alfredo Luna ("Luna") in the two actions consolidated for joint trial on the

ground that she is not liable for causing the collision.¹ Defendant Gregory N. Mayo (“Mayo”) cross-moves for summary judgment dismissing the complaint against him on the ground that he is not liable for causing the collision.² Third-party defendant Luna cross-moves for summary judgment dismissing all claims and cross-claims against him on the ground that he was not the proximate cause of the accident. Luna as plaintiff in the second action cross-moves for partial summary judgment against Garvey-Carmel and Mayo on the issue of their liability in causing the collision.

Submitted for consideration are the pleadings and deposition transcripts. There are numerous issues with the affidavits of service submitted on the motion, cross-motions, and replies such as the failure to serve one or more than one party in one or both actions and service upon an attorney at a different mailing address than the address listed in the other affidavits of service. *See* CPLR 2103(b). Because it appears that each party was of aware the applications, the court will overlook these deficiencies in the absence of prejudice.

Caceres Luna testified that she was a front-seat passenger in her husband’s white Honda when she felt a single, heavy rear-end impact. Luna testified that he was bringing his vehicle to a stop in the right lane of the Bruckner Expressway because the vehicle directly in front of his came to a stop. Luna’s vehicle was then struck in the rear by Garvey-Carmel’s blue Audi. Neither heard any sounds like horns, screeching brakes or tires before the impact.

Garvey-Carmel testified that her station wagon had been stopped in the right lane for one to two seconds one-half car length behind Luna’s white Honda. Her vehicle was then struck in the rear by a silver Honda driven by Mayo. The impact propelled her vehicle forward into the rear of Luna’s vehicle.

Mayo testified that he was traveling in the right lane behind Garvey-Carmel’s station wagon

¹ Garvey-Carmel spells her name “Garvey-Carmal” in the caption bearing Third-Party Index No. 83720/2014.

² Mayo refers generally to “Plaintiff” in his notice of motion. It is assumed he is moving against plaintiffs in both actions.

when her vehicle came to a sudden stop. Mayo was able to come to a complete stop two to three feet behind Garvey-Carmel's vehicle. He had been stopped for two to three seconds when he felt a heavy rear-end impact. The impact pushed his vehicle forward into the rear of Garvey-Carmel's vehicle.

Cartwright, the fourth driver in the chain, testified that his red minivan was struck in the rear by a "junky" van that drove away from the scene. The impact pushed the minivan forward into the rear of the car directly in front of him. Cartwright did not see the junky van until after the accident.

Generally, a driver traveling behind another vehicle has a duty to maintain a safe distance behind the front vehicle, whether it is moving or stopped, to avoid a rear end collision in the event the front vehicle slows down or stops, even suddenly, *see* New York Vehicle and Traffic Law §1129(a), and taking into account the weather and road conditions. *See Francisco v. Schoepfer*, 30 A.D.3d 275, 817 N.Y.S.2d 52 (1st Dep't 2006). A rear-end collision with a stopped or stopping vehicle constitutes a prima facie case of negligence on the part of the operator of the rear vehicle and imposes a duty upon the driver of the rear vehicle to provide a non-negligent explanation for the accident. *See Cabrera v. Rodriguez*, 72 A.D.3d 553, 900 N.Y.S.2d 29 (1st Dep't 2010); *Woodley v. Ramirez*, 25 A.D.3d 451, 810 N.Y.S.2d 125 (1st Dep't 2006). The rearmost driver in a chain-reaction collision bears a presumption of responsibility. *Ferguson v. Honda Lease Trust*, 34 A.D.3d 356, 357, 826 N.Y.S.2d 10, 11 (1st Dep't 2006) (internal citation and quotation marks omitted). Where there is a question of fact regarding the sequence of collisions, "it cannot be said as a matter of law there was only one proximate cause of plaintiffs' injuries." *Passos v. MTA Bus Co.*, 129 A.D.3d 481, 482, 13 N.Y.S.3d 4, 6 (1st Dep't 2015) (internal citation omitted). Garvey-Carmel and Mayo (as defendants in both actions) and Luna (as third-party defendant) have demonstrated their entitlement to summary judgment.

As for Luna's cross-motion as plaintiff, Garvey-Carmel and Mayo have offered non-negligent explanations for the happening of the accident. *See Tejada v. Aifa*, 134 A.D.3d 549, 22 N.Y.S.3d 18 (1st Dep't 2015); *Butler v. Petrova*, 116 A.D.3d 580, 983 N.Y.S.2d 732 (1st Dep't 2014). They testified

unequivocally that their vehicles were struck from behind and that those impacts pushed their vehicles forward. Both Cartwright and Luna (as plaintiff) failed to raise a triable issue of fact. To the extent that Mayo failed to comply with CPLR 3212(b), the record is sufficiently complete. *See Daramboukas v. Samlidis*, 84 A.D.3d 719, 922 N.Y.S.2d 207 (2d Dep't 2011). The uncertified police accident report annexed to Cartwright's opposition is both incomplete and in inadmissible form.

Accordingly, it is

ORDERED, that the motion of defendant Lee Garvey-Carmel for summary judgment dismissing the complaint of plaintiff Yulisa Francisca Caceres Luna under Index No. 307941/2012 and the complaint of plaintiff Alfredo Luna under Index No. 307080/2013 is granted; and it is further

ORDERED, that the cross-motion of defendant Gregory N. Mayo for summary judgment dismissing the complaint of plaintiff Yulisa Francisca Caceres Luna under Index No. 307941/2012 and the complaint of plaintiff Alfredo Luna under Index No. 307080/2013 is granted; and it is further

ORDERED, that the cross-motion of third-party defendant Alfredo Luna for summary judgment dismissing the third-party complaint against him under Index No. 84176/2012 is granted; and it is further

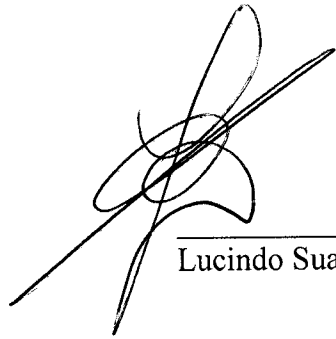
ORDERED, that the cross-motion of plaintiff Alfredo Luna for summary judgment on the issue of defendants' liability in Index No. 307080/2013 is denied; and it is further

ORDERED, that the clerk of the court is directed to enter judgment in favor of defendants Lee Garvey-Carmel and Gregory N. Mayo dismissing the complaint of plaintiff Yulisa Francisca Caceres Luna against them under Index No. 307941/2012 and the complaint of plaintiff Alfredo Luna against them under Index No. 307080/2013; and it is further

ORDERED, that the clerk of the court is directed to enter judgment in favor of third-party defendant Alfredo Luna dismissing the third-party complaint against him in Index No. 84176/2012.

This constitutes the decision and order of the court.

Dated: May 25, 2016

A handwritten signature in black ink, consisting of several overlapping loops and a long, sweeping stroke that extends downwards and to the left.

Lucindo Suarez, J.S.C.