

**Williams v Sala**

2016 NY Slip Op 32755(U)

March 14, 2016

Supreme Court, Kings County

Docket Number: 21841/09

Judge: Wayne P. Saitta

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At an IAS Term, Part ~~25~~ of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 14<sup>th</sup> day of March, 2016.

P R E S E N T:

HON. WAYNE P. SAITTA,  
Justice.

-----X  
HASAN SHARIF WILLIAMS and ARGELIS SOLIS,

Plaintiffs,

- against -

ALBERT A. SALA AND MARIA SALA,

Defendants.  
-----X

**DECISION, ORDER,  
AND JUDGMENT**

Index No. 21841/09

Mot. Seq. No. 3

The following papers numbered 1 to 6 read herein:

Papers Numbered

Notice of Motion/Order to Show Cause/  
Petition/Cross Motion and  
Affirmation (Affidavit) Annexed \_\_\_\_\_  
Opposing Affirmation (Affidavit) \_\_\_\_\_  
Reply Affirmation (Affidavit) \_\_\_\_\_

1-2 \_\_\_\_\_  
3-4 \_\_\_\_\_  
5-6 \_\_\_\_\_

This case arises from an automobile accident involving three vehicles. The plaintiff Hasan Sharif Williams (Williams), the driver of the plaintiffs' vehicle, testified at his pretrial deposition that he had stopped the plaintiffs' lead vehicle at a red light, that the second vehicle operated by the defendant Albert A. Sala (Sala) and owned by the defendant Maria Sala stopped immediately behind the plaintiffs' vehicle, and that the second vehicle hit the rear of the plaintiffs' vehicle. He testified that the second vehicle was completely stopped behind him before it contacted his vehicle. (at page 23 lines 9-19 of his pretrial deposition). The plaintiff Argelis Solis, who was Williams' wife and the front-seat passenger in the plaintiffs' vehicle, testified at her pretrial deposition that the plaintiffs' lead vehicle, the second vehicle operated by Sala, and the rear vehicle operated by nonparty Antonio Vitale

(Vitale) were all involved in the accident but could not recall the sequence of collisions.<sup>1</sup> The defendant Sala testified (at page 23, lines 8-11 and at page 24, lines 14-17 of his pretrial deposition) that the plaintiffs' lead vehicle was stopped at a red light, that his second vehicle came to a complete stop about four feet behind the plaintiffs' vehicle, and that the Vitale (*i.e.*, the rear) vehicle struck his second vehicle from the rear, propelling it into the plaintiffs' vehicle.

After discovery was completed and a note of issue was filed, the defendants timely moved for summary judgment dismissing the complaint on the grounds that the accident was caused by the rear vehicle. The defendants' motion is supported by the pretrial deposition transcripts of the plaintiffs and of Sala. The plaintiffs oppose with the police accident report and Vitale's affidavit. The police accident report may not be considered because it is uncertified and thus constitutes inadmissible hearsay (*see Torres v Kalloff*, 128 AD3d 1052 [2d Dept 2015]). Although Vitale is not a party, his affidavit will be considered. Vitale's affidavit states that:

“When the first vehicle [*i.e.*, the plaintiffs' vehicle] suddenly stopped, the second vehicle (red Jeep) [*i.e.*, the Sala vehicle] hit the first vehicle in the rear with the front of the red Jeep. My 2005 Jeep (third vehicle) hit the second vehicle in the rear with the front of the 2005 Jeep.”

As the quoted language makes it clear, Vitale's affidavit states that there was more than one impact but does not state the sequence of impacts.

In reply, the plaintiffs submit Sala's affidavit with the post-accident photographs of the Vitale and the Sala vehicles. There, Sala opines, based on the damage to the Vitale and the Sala vehicles as shown on those photographs, that if the Sala vehicle had made contact

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<sup>1</sup> Although Solis initially testified that the Vitale vehicle had hit the Sala vehicle before the latter hit the plaintiffs' vehicle, she immediately recanted her answer, stating (at page 31 of her pretrial deposition) that she could not recall “[w]ho hit who first.”

with the rear of the plaintiffs' vehicle before the rear vehicle struck the second vehicle with the force depicted in those photographs, the second vehicle would have suffered substantial damage when, in fact, it did not.

### *Discussion*

Although a rear-end collision with a stopped vehicle establishes a prima facie case of negligence against the driver of the moving vehicle, the driver can overcome that presumption by providing a non-negligent explanation for the collision (*see D'Agostino v YRC, Inc.*, 120 AD3d 1291, 1292 [2d Dept 2014]), including "sudden or unavoidable circumstances" (*Gambino v City of New York*, 205 AD2d 583, 583 [2d Dept 1994]). Here, defendants have established their prima facie entitlement to judgment as a matter of law by providing a non-negligent explanation for the collision in the form of Sala's pretrial deposition testimony that, immediately before the accident, the second vehicle, which he was operating, was struck in the rear by the Vitale vehicle, thereby propelling his vehicle into the plaintiff's vehicle (*see Perez v Roberts*, 91 AD3d 620, 621 [2d Dept 2012]).

In opposition, the plaintiffs have failed to show a triable issue of fact. The deposition testimony of neither plaintiff rebuts defendants' non-negligent explanation for the collision. Plaintiff Solis did not recall which impact occurred first. Plaintiff Williams in fact testified in his deposition that defendant Sala had completely stopped behind him before there was any contact between his vehicle and the Sala vehicle. Even according full credit to the affidavit of Vitale who was the driver of the rear vehicle, his affidavit does not raise a triable issue of fact because he merely states that there was more than one impact but fails to state which impact occurred first. Contrary to the plaintiffs' position (in ¶ 5 of the Sanders Affirmation), Vitale's affidavit does not state that "he observed the front of defendant Sala's vehicle . . . strike the rear of plaintiffs' vehicle . . . prior to the front of his vehicle striking

the Sala vehicle pushing [it] into the plaintiffs' vehicle for the *second time*" (italics added; capitalization omitted). The italicized language does not appear anywhere in Vitale's affidavit. Given the lack of clarity in Vitale's affidavit, the Court need not consider Sala's reply affidavit which challenges Vitale's credibility.

In sum, there is no record evidence from which a jury could infer that the defendants' second vehicle hit the plaintiffs' lead vehicle *before* the rear vehicle hit the defendants' vehicle. Stated differently, there is no record evidence indicating that the defendants' second vehicle hit the plaintiffs' lead vehicle for any reason other than that it (the defendants' vehicle) had been hit by the rear vehicle immediately prior. Accordingly, summary judgment is granted to the defendants, and the complaint is dismissed in its entirety without costs or disbursements.

This constitutes the decision, order, and judgment of the Court.

E N T E R,



J. S. C.

HON. WAYNE SAIITA  
J.S.C.

Nancy T. Sunshine

NANCY T. SUNSHINE  
Clerk

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