

Roussos v Accord Limousine Inc.

2017 NY Slip Op 30330(U)

February 16, 2017

Supreme Court, Queens County

Docket Number: 12963/2014

Judge: Robert J. McDonald

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.

This opinion is uncorrected and not selected for official publication.

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

- - - - - x

ATANASIO ROUSSOS and DIANA LUZ
ROUSSOS,

Index No.: 12963/2014

Motion Date: 2/3/17

Plaintiffs,

Motion No.: 94

- against -

Motion Seq.: 2

ACCORD LIMOUSINE INC., ERNEST SCHWARZ
INC., HUGO O. MANRIQUE and RONALD
MCKEOWN,

Defendants.

- - - - - x

The following papers numbered 1 to 14 read on this motion by defendant RONALD MCKEOWN for an order pursuant to CPLR 3212, granting defendant RONALD MCKEOWN summary judgment and dismissing the complaint and any and all cross-claims asserted against him:

	<u>Papers</u> <u>Numbered</u>
Notice of Motion-Affirmation-Memo. of Law-Exhibits.....	1 - 5
Co-Defendants' Affirmation in Opposition.....	6 - 7
Plaintiffs' Affirmation in Opposition.....	8 - 9
Reply Affirmations(2)-Exhibit.....	10 - 14

In this negligence action, plaintiffs seek to recover damages for personal injuries sustained as a result of a motor vehicle accident that occurred on May 15, 2014 on the Grand Central Parkway heading westbound near 83rd Street, in Queens County, New York. This was a three car accident in which plaintiffs' vehicle was the lead vehicle and movant's vehicle was the middle vehicle. Movant contends that his vehicle was completely stopped behind plaintiffs' vehicle when it was struck in the rear by co-defendants' vehicle and, as a result, was pushed forward into plaintiffs' vehicle.

Plaintiffs commenced this action by filing a summons and complaint on August 29, 2014. Movant joined issue by service of a verified answer with cross-claim dated December 11, 2014. Co-defendants' joined issue by service of a verified answer with cross-claim dated January 5, 2015. Plaintiffs filed a Note of Issue on July 29, 2016. Movant now timely moves for an order pursuant to CPLR 3212(b), granting summary judgment on the grounds that he was not negligent, is not liable, and did not breach any duty owed.

In support of the motion, movant submits an affirmation from counsel, Lauren E. Marron, Esq.; a copy of the pleadings; a copy of the Note of Issue; and copies of the transcripts of the examinations before trial of co-defendant Hugo O. Manrique, movant, and plaintiff Atanasio Roussos.

Co-defendant Hugo O. Manrique appeared for a deposition on February 2, 2016. He testified that he was involved in the subject accident. He was the operator of a limousine owned by Accord Limousine Inc. The accident occurred on the Grand Central Parkway, approximately two thousand feet before the exit to the Brooklyn-Queens Expressway. Traffic was heavy and moving really slow. He was in the far right lane at the time of the accident. There was a significant amount of distance between his vehicle and movant's vehicle prior to the accident. He saw the brake lights of movant's vehicle prior to the impact. Movant's vehicle was stopped at the time of the impact. Within two seconds of movant's vehicle coming to a stop, he forcefully applied his brakes. He did not learn that movant's vehicle hit plaintiffs' vehicle until after the accident.

Movant appeared for a deposition on July 11, 2016. He testified that he was involved in the subject accident. Co-defendants' vehicle hit his vehicle in the rear. He observed co-defendants' vehicle in his rear view mirror seconds before the impact. He observed plaintiffs' vehicle for a few minutes prior to the accident. There were two impacts involving his vehicle. The first impact was to the rear of his vehicle. The second impact was to the front of his vehicle. At the time of the first impact, his vehicle had been stopped for thirty seconds. His foot was on the brake at the time of the first impact. As a result of the first impact, his vehicle was pushed forward into plaintiffs' vehicle. Immediately before the accident, the distance between his vehicle and plaintiffs' vehicle was approximately inches to one foot. He also testified that the distance could have been five feet.

Plaintiff Atanasio Roussos was deposed on January 26, 2016. He testified that he was involved in the subject accident. Traffic was very heavy. His vehicle was at a complete stop for about thirty seconds prior to the accident. He felt only one impact. There was at least six feet of space between his vehicle and the vehicle in front of his. His vehicle did not make contact with the vehicle in front of his vehicle.

Based on the above testimony, movant's counsel contends that the accident was caused solely by co-defendants' negligence in that Mr. Manrique's vehicle was traveling too closely in violation of VTL § 1129, and he failed to safely stop his vehicle prior to rear-ending movant's vehicle. Therefore, counsel argues that movant is entitled to summary judgment because co-defendants were solely responsible for causing the accident while movant was free from culpable conduct.

In opposition, co-defendants' counsel, David M. Goldman, Esq., contends that based on Mr. Manrique's testimony that movant made a sudden and abrupt stop, combined with the testimony regarding the distance separating the vehicle, there are issues of fact sufficient for a jury to decide whether movant's negligence contributed to the accident. Plaintiffs' counsel, Jaclyn E. Howe, Esq., adopts the arguments set forth by co-defendants in opposition to the motion.

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 Klopchin v Masri, 45 AD3d 737 [2d Dept. 2007]; Hakakian v McCabe, 38 AD3d 493 2d Dept. 2007]; Reed v New York City Transit Authority, 299 AD2 330 [2d Dept. 2002]; Velazquez v Denton Limo, Inc., 7 AD3d787 [2d Dept. 2004]).

Here, movant testified that his vehicle was stopped for thirty seconds when it was struck from behind by co-defendants' vehicle. "The rearmost driver in a chain-reaction collision bears a presumption of responsibility" (Ferguson v Honda Lease Trust, 34 AD3d 356 [1st Dept. 2006], quoting De La Cruz v Ock Wee Leong, 16 AD3d 199 [1st Dept. 2005]). In multiple-car, chain-reaction accidents, the courts have recognized that the operator of a vehicle that has come to a complete stop and is propelled into the vehicle in front of it, as a result of being struck from behind, is not negligent inasmuch as the operator's actions cannot be said to be the proximate cause of the injuries resulting from the collision (see Mohamed v Town of Niskayuna, 267 AD2d 909 [3d Dept. 1999]). Thus, movant satisfied his prima facie burden of establishing his entitlement to judgment as a matter of law by demonstrating that his vehicle was stopped in heavy traffic when it was struck in the rear by the vehicle operated by co-defendant Mr. Manrique (see Robayo v Aghaabdul, 109 AD3d 892 [2d Dept. 2013]; Sayyed v Murray, 109 AD3d 464 [2d Dept. 2013]; Prosen v Mabella, 107 AD3d 870 [2d Dept. 2013]; Xian Hong Pan v Buglione, 101 AD3d 706 [2d Dept. 2012]).

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 movant was also negligent, and if so, whether that negligence contributed to the happening of the accident (see Goemans v County of Suffolk, 57 AD3d 478 [2d Dept. 2007]). Mr. Manrique's testimony fails to provide evidence of a non-negligent explanation for the accident sufficient to raise a triable question of fact. Mr. Manrique testified that he saw movant apply his brakes and stop in traffic, but he could not stop his vehicle in time to avoid the impact (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]). Co defendants' allegation that movant's vehicle abruptly stopped is insufficient to raise a triable issue of fact (see Johnson v Spoto, 47 AD3d 888 [2d Dept. 2008]; Shamah v Richmond County Ambulance Serv., 279 AD2d 564, 565 [2d Dept. 2001] ["vehicle stops which are foreseeable under the prevailing traffic conditions, even if sudden and frequent, must be anticipated by the driver who follows, since he or she is under a duty to maintain a safe distance between his or her car and the car ahead"]).

Accordingly, as the evidence in the record demonstrates that the non-moving parties failed to provide a non-negligent explanation for the collision, it is hereby,

ORDERED, that defendant RONALD MCKEOWN's motion for summary judgment is granted, the complaint and any and all cross-claims are dismissed as against defendant RONALD MCKEOWN, only, and the Clerk of Court is authorized to enter judgment accordingly.

Dated: February 16, 2017
Long Island City, N.Y.

ROBERT J. MCDONALD
J.S.C.