

Del La Rosa v Santana
2017 NY Slip Op 31724(U)
July 5, 2017
Supreme Court, Bronx County
Docket Number: 350189/15
Judge: Elizabeth A. Taylor
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: I.A.S. PART 2

ASHANTI DEL LA ROSA, an infant by her father
 and natural guardian, HUASCAR DE LA ROSA and
 HUASCAR DE LA ROSA, Individually,

Plaintiff,

Index No. 350189/15

DECISION/ORDER

- against -

Present:

HON. ELIZABETH A. TAYLOR

MICHELLE SANTANA, JOSE X. PAULINO,
 NUNEZ M.F. MORALES, EDWARD E. CASTRO,
 OM AFONSO-ANTICETO, MARIA SANCHEZ,
 VILMA MONTANO, CC PENTICOSTH and
 MARIA GONZALEZ,

Defendants.

The following papers numbered 1 to ____ read on this motion, _____

No. On Calendar of _____	PAPERS NUMBERED
Notice of Motion-Order to Show Cause - Exhibits and Affidavits Annexed-----	1-2, 6-7
Answering Affidavit and Exhibits-----	3, 8
Replying Affidavit and Exhibits-----	4-5
Affidavit-----	
Pleadings -- Exhibit-----	
Stipulation -- Referee's Report --Minutes-----	
Filed papers-----	

Upon the foregoing papers and due deliberation thereof, the Decision/Order on this motion is as follows:

Motion pursuant to CPLR 3212 for an order granting summary judgment
 dismissing the complaint and cross-claims against defendant Nunez M.F. Morales; and
 motion pursuant to CPLR 3212 for an order granting summary judgment dismissing the
 complaint and cross-claims against defendant Edward Castro, are consolidated herein
 for decision.

Plaintiff commenced this personal injury action seeking damages for injuries
 allegedly sustained, as a result of a motor vehicle accident that occurred on July 4,
 2013. It is undisputed that this action arises from a six-car, chain-reaction, motor
 vehicle accident. Defendant Nunez M.F. Morales operated the second vehicle and
 defendant Edward Castro operated the third vehicle (movants). Movants seek summary

judgment dismissing the complaint and cross-claims alleging that at the time of the accident, their vehicles were stopped when their vehicles were struck from behind.

It is noted defendant Castro commenced another action under index number 300592/14, involving the same accident. In that action, this court granted summary judgment on the issue of liability in favor of Mr. Castro and Mr. Nunez. However, the plaintiffs in this action were not parties to the action under index number 300592/14 and did not have the opportunity to be heard on the summary judgment motions in that action.

It is well settled that "[i]n a chain collision accident, the operator of the middle vehicle [] establish[es] prima facie entitlement to judgment as a matter of law by demonstrating that the middle vehicle was properly stopped behind the lead vehicle when it was struck from behind by the rear vehicle and propelled into the lead vehicle" (*Chuk Hwa Shin v Correale*, 142 AD3d 518, 519 [2d Dept 2016] see *Santos v Booth*, 126 AD3d 506 [1st Dept 2015]; *Arbizu v REM Transp., Inc.*, 20 AD3d 375 [2d Dept 2005]). To rebut the inference of negligence, the operator of the rear vehicle must provide a "nonnegligent" explanation for the accident (*Volpe v Limoncelli*, 74 AD3d 795 [2d Dept 2010]).

In support of the current motions, movants submit the deposition transcript of defendant Castro and the affidavit of defendant Nunez. Mr. Castro avers that after leaving the toll plaza at Sunken Meadow Parkway, he came to a stop in traffic for about five to ten seconds when his vehicle was struck from in the rear causing it to be propelled into the vehicle that was in front of it. He avers that he saw the vehicle driven by defendant Maria Gonzalez leave the toll plaza and pick up speed. He further

attested that defendant Gonzalez hit a vehicle causing a “chain reaction” accident involving five other cars. Mr. Nunez avers that after leaving the toll plaza, he came to a stop in traffic when his vehicle was struck in the rear causing it to be propelled into the vehicle that was in front of it.

This court finds the foregoing submissions sufficient to establish a presumption of negligence of the operator of the rear vehicle (see *Santos*, 126 AD3d 506; *Arbizu*, 20 AD3d). Therefore, movants have established entitlement to summary judgment dismissing the complaint and cross-claims against them.

As such, the burden shifts to plaintiff and co-defendants to raise an issue of fact.

The only party to submit opposition papers are defendants CC Penticosth and Gonzalez. However, they fail to submit an affidavit from someone with personal knowledge of the facts either denying movants allegations or offering a “nonnegligent” explanation for the collision (see *Santos*, 126 AD3d 506). Further, the argument that the summary judgment motions are premature as additional discovery is necessary is without merit. The mere hope that evidence sufficient to defeat a motion for summary judgment may be uncovered during the discovery process is insufficient to deny the motion (see *Flores v City of New York*, 66 AD3d 599, 600 [1st Dept 2009]). Additionally, the parties have had the opportunity to submit facts “essential to justify opposition to the motion” and have failed to do so (*Jeffrey v DeJesus*, 116 AD3d 574, 575 [1st Dept 2014] [citations omitted]).

The Clerk is directed to dismiss the complaint and cross-claims against defendants Nunez M.F. Morales and Edward Castro and to amend the caption as follows:

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OM AFONSO-ANTICETO, MARIA SANCHEZ,
VILMA MONTANO, CC PENTICOSTH and
MARIA GONZALEZ,

Defendants.

The foregoing shall constitute the decision and order of this court.

Dated: JUL 05 2017



A.J.S.C.