

Lewis v Cabrera

2018 NY Slip Op 32833(U)

November 5, 2018

Supreme Court, New York County

Docket Number: 158822/2017

Judge: Adam Silvera

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART IAS MOTION 22

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JOSEPH LEWIS,

Plaintiff,

- v -

ERNESTO CABRERA, GOYA ENTERPRISES CORP., GOYA
FOODS, INC., GOYA MARKETING INC., PAUL DONAGHY,
EASTERN FREIGHT WAYS, INC., MELISSA WALKER

Defendant.

INDEX NO. 158822/2017

MOTION DATE 10/31/2018

MOTION SEQ. NO. 001

DECISION AND ORDER

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HON. ADAM SILVERA:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 58, 59, 62 were read on this motion to/for PARTIAL SUMMARY JUDGMENT

Upon the foregoing documents, it is for ORDERED that plaintiff, Joseph Lewis’s motion for summary judgment, pursuant to CPLR 3212, is granted on the issue of liability against defendant, Ernesto Cabrera and defendant, Goya Foods, Inc. Further, it is ORDERED that defendant, Paul Donaghy and defendant, Eastern Freightways, Inc.’s Cross-Motion for summary judgment to dismiss plaintiff’s complaint and all cross claims, as against defendant, Paul Donaghy and defendant, Eastern Freightways, Inc., is granted.

This action stems from an accident which occurred on December 27, 2016, when plaintiff was a passenger in a stopped vehicle operated by deceased defendant, Henry Walker, in heavy traffic on the Cross-Bronx Expressway at or near its intersection with Carter Avenue in Bronx County, City and State of New York, when a tractor trailer operated by defendant, Ernesto Cabrera, and leased by defendant, Goya Food Inc., rear-ended the vehicle plaintiff was passenger of and allegedly seriously injured plaintiff and led to the death of defendant, Henry Walker.

Summary Judgment (Liability)

Plaintiff's motion for summary judgment on the issue of liability is granted. The motion, which alleges that plaintiff's vehicle was stopped when it was rear-ended by plaintiff's vehicle, has made a prima facie case of negligence, and the burden shifts to defendant to raise a triable issue of fact (*See Winegrad v New York University Medical Center*, 64 NY2d 851, 853 [1985]; *see also Zuckerman v City of New York*, 49 NY2d 557, 560 [1980]). "[A] rear-end collision with a stopped ... vehicle establishes a prima facie case of negligence on the part of the driver of the rear vehicle, ... [and] shift[s] the burden to defendant to come forward with an adequate nonnegligent explanation for the accident" (*Cruz v Lise*, 123 AD3d 514 [1st Dep't 2014] [internal quotations omitted]).

Summary Judgment in favor of the plaintiff is warranted where the defendant's own conduct inculpates him (*Uragrizza v Schmieder*, 46 NY2d 471 [1979]). "It is well settled that the right of an innocent passenger to summary judgment is not in any way restricted by potential issues of comparative negligence as between the drivers of the two vehicles" (*Garcia v Tri-County Ambulette Serv.*, 282 AD2d 206, 207 [1st Dept 2001] citing *Johnson v Phillips*, 261 AD2d 269, 272 [1st Dept 1990]).

Here, in support of his motion, plaintiff submits an affidavit in which he testifies that he was a passenger in a vehicle that was stopped for more than 5 seconds prior to being struck in the rear and that he did not contribute to the accident at issue. Defendants oppose the motion and allege that plaintiff's motion is premature as depositions have not yet been held in this matter and that there is an issue of comparative negligence. Defendant's opposition is misguided as the Court of Appeals has held that a plaintiff is entitled to partial summary judgment on the issue of a defendant's liability even if a defendant raises an issue of fact regarding plaintiff's comparative

negligence (*Rodriguez v City of New York*, —NE3d —, 2018 NY Slip Op 02287 [2018]). The issue of a plaintiff's comparative negligence is addressed and determined only when considering the damages that a defendant owes to a plaintiff (*id.* at 3).

Further, it is well settled law that the mere hope that evidence may be uncovered during the discovery process is not sufficient to defeat a motion for summary judgment (*Steinberg v Abdul*, 230 AD2d 633 [1st Dept 1996]). Defendants have failed to raise a triable issue of fact. Thus, plaintiff's motion for summary judgment is granted.

Cross-Motion

Here, defendant, Paul Donaghy and defendant, Eastern Freightways, Inc.'s ("Co-Defendants") Cross-Motion for summary judgment to dismiss plaintiff's complaint and all cross claims, as against Co-Defendants who allege that they did not cause or contribute to the happening of the incident at issue. Defendants Cabrera and Goya oppose Co-Defendants' motion and plaintiff submits no opposition.

Co-Defendants cite to plaintiff's above motion for summary judgment on liability which seeks judgment solely against defendants Carbrera and Goya. Co-Defendants site plaintiff's counsel's affirmation which states that "there is clearly no issue of culpable conduct on the part of any other party to this action as the defendants, Ernesto Cabrera and Goya Foods, Inc. where the sole proximate cause of the tragic accident (Cross-Mot, Exh E). Thus, defendants demonstrate that plaintiff has conceded that defendants Cabrera and Goya were the "sole proximate cause" of the accident at issue.

The driver of Co-Defendants' vehicle testified that he was at a complete stop when his vehicle was struck in the rear and that the accident at issue occurred behind Co-Defendants' vehicle (*id.*, Exh F). Defendant Donaghy's testimony demonstrates that his vehicle was rear-

ended and that he did not come to a sudden stop or contribute to the incident. It is well settled law that in a rear-end accident, there is a prima-facie case of negligence against the driver of the rear vehicle and not that of the rear-ended vehicle (*Supra Cruz*, 123 AD3d 514). Defendant's Cabrera and Goya have failed to rebut the finding of negligence and Co-Defendants motion is thus granted.

Accordingly, it is

ORDERED that plaintiff's motion for summary judgment is granted on the issue of liability as against defendant, Ernesto Cabrera and defendant, Goya Foods, Inc.; and it is further

ORDERED that Co-Defendants' motion for summary judgment to dismiss the complaint herein and all cross claims, as against defendant, Paul Donaghy and defendant, Eastern Freightways, Inc., is granted and the complaint is dismissed in its entirety as against said defendants, with costs and disbursements to said defendants as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of said defendants; and it is further

ORDERED that the action is severed and continued against the remaining defendants; and it is further

ORDERED that the caption be amended to reflect the dismissal and that all future papers filed with the court bear the amended caption; and it is further

ORDERED that counsel for defendant, Paul Donaghy and defendant, Eastern Freightways, Inc. serve a copy of this order with notice of entry upon the County Clerk (Room 141B) and the Clerk of the Trial Support Office (Room 158), who are directed to mark the court's records to reflect the change in the caption herein; and it is further

ORDERED that all remaining parties appear for a compliance conference in room 103 of 80 Centre Street on December 24, 2018, at 9:30AM; and it is further

ORDERED that within 30 days of entry, plaintiff shall serve a copy of this decision/order upon all parties with notice of entry.

This constitutes the Decision/Order of the Court.

11/5/2018
DATE

ADAM SILVERA, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION		
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER		
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE