

Gutierrez-Ortega v Fresneda
2018 NY Slip Op 34162(U)
March 15, 2018
Supreme Court, Westchester County
Docket Number: Index No. 58653/17
Judge: Gerald E. Loehr
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To commence the statutory time period of appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
QUIRINA GUTIERREZ-ORTEGA,

Plaintiff,

DECISION AND ORDER

Index No.: 58653/17

-against-

CARLOS ARMANDO FRESNEDA, CECILLIA
LANCHEROS AND JUAN P. ZELAYA,

Defendants.

-----X

CARLOS ARMANDO FRESNEDA, CECILIA
LANCHEROS,

Third-Party Plaintiffs,

-against-

JUAN P. ZELAYA,

Third-Party Defendant.

-----X

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X

JUAN ZELAYA,

Plaintiff,

-against-

Index No. 66789/2017

CARLOS ARMANDO FRESNEDA and
CECILIA LANCHEROS,

Defendants.

-----X

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
EDILIEVINA ZELAYA,

Plaintiff,

-against-

Index No. 66839/2017

CARLO ARMANDO FRESNEDA and
CECILIA LANCHEROS,

Defendants.
-----X

LOEHR, J.

The following papers numbered 1 to 2 were read on the motion of Fresneda and Lancheros to consolidate these actions and the motion of Zelaya for summary judgment on the issue of liability.

Papers Numbered

Notice of Motion - Affirmation - Exhibits	1
Notice of Motion - Affirmation - Exhibits	2

Upon the foregoing papers, it appears that on November 6, 2015, a vehicle owned by Victor Blanco and being operated by Maurico Gutierrez, and in which Quirina Gutierrez was a passenger, was stopped at a light in Yonkers. A vehicle owned and being operated by Juan Zelaya, and in which Edilievina Zelaya was a passenger, was stopped behind the Blanco vehicle when a vehicle owned by Cecilia Lancheros and being operated by Carlos Armando Fresneda struck the Zelaya vehicle from the rear forcing it into to Blanco vehicle. Zelaya now moves for summary judgment on the issue of liability.

A rear-end collision with a stopped or stopping vehicle creates a prima facie case of negligence with respect to the operator of the rearmost vehicle, imposing a duty of explanation on the operator to rebut the inference of negligence by providing a non-negligent explanation for the collision (*Raimondo v Plunkitt*, 102 AD3d 851, 852 [2d Dept 2013]; *Strickland v Tirino*, 99 AD3d 888, 889 [2d Dept 2012]; *Cortes v Whelan*, 83 AD3d 763, 763-64 [2d Dept 2011]). Based

on the evidence,¹ Zalaya has established his prima facie entitlement to summary judgment on the issue of the negligence of Defendants Fresneda and Lancheros and his freedom from comparative fault (*Harriott v Pender*, 4 AD3d 395 [2d Dept 2004]). Defendant Fresneda's explanation that the light had turned green does not excuse his colliding with these vehicles which had been stopped at the light. Accordingly, the Plaintiffs (as consolidated) are granted summary judgment against the Defendants (as consolidated) on the issue of liability and the Plaintiffs' freedom of comparative fault (CPLR 3212[b]). All of these actions were commenced in 2017. As all involve the same accident, all are consolidated under the following caption:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
QUIRINA GUTIERREZ-ORTEGA, JUAN ZELAYA,
and EDILIEVINA ZELAYA,

Plaintiffs,

Index No. 58653/2017

-against-

CARLOS ARMANDO FRESNEDA and
CECILIA LANCHEROS,

Defendants.

-----X
The parties shall appear before the Settlement Conference Part, courtroom 1600, on March 27, 2018 at 9:15 am.

This constitutes the decision and order of this Court.

¹ The Report is admissible to the extent that it reports Defendant Fresneda's admission to the reporting Officer that he had struck the Zelaya vehicle from behind (*Benedict v Certified Lumber Corp.*, 60 AD3d 798 [2d Dept 2009]; *Rosenblatt v Venizelos*, 49 AD3d 519 [2d Dept 2008]; *Sanchez v Manhattan & Bronx Surface Tr. Operating Auth.*, 170 AD2d 404, 404 [1st Dept 1999]; cf *Johnson v Lutz*, 253 NY 124 [1930]).

Dated: White Plains, New York
March 15, 2018



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J.S.C.

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