

Johnson v Shippers Choice Transp., LLC
2018 NY Slip Op 34204(U)
March 29, 2018
Supreme Court, Westchester County
Docket Number: Index No. 66796/2016
Judge: Sam D. Walker
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To commence the statutory time for 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
WESTCHESTER COUNTY
PRESENT: HON. SAM D. WALKER , J.S.C.**

-----X
ANTHONY JOHNSON,
ELAINE PELAEZ,

Plaintiff,

-against-

DECISION & ORDER
Index No. 66796/2016
Motion Sequences 2

SHIPPERS CHOICE TRANSPORTATION, LLC,
DONNIE DAVIS,

Defendants.
-----X

The following papers were read and considered in deciding the present motion:

Notice of Motion/Affirmation/Affidavit/Exhibits 1-2	1-4
Affirmation in Opposition/Affidavit/Exhibits A-E	5-11

The plaintiffs commenced this action on November 8, 2016, to recover monetary damages for injuries they allegedly sustained as a result of a motor vehicle accident which they allege occurred on July 26, 2016.

The plaintiffs, now file the instant motion for an order granting summary judgment against the defendants, Shippers Choice Transportation, LLC and Donnie Davis, on the issue of liability. The plaintiff, Elaine Pelaez ("Pelaez"), avers that on July 26, 2016 at approximately 12:36 p.m., she was a passenger in a vehicle driven by the plaintiff, Anthony Johnson ("Johnson"), when that vehicle was struck in the rear while stopped on the Alexander Hamilton Bridge in New York, New York, by a truck operated by Donnie Davis ("Davis") and owned by Shippers Choice Transportation.

Davis opposes the motion and asserts that on July 26, 2016 at approximately 11:30

a.m., he was operating a tractor, driving southbound on the I-95 on the Alexander Hamilton Bridge, in the second lane in heavy stop and go traffic, when he allowed a box truck to merge from the right into the lane he was in. Davis states that just before the box truck merged into the lane, he noticed a small Mercedes-Benz in the right lane and once the box truck moved into his lane in front of his vehicle, he observed the Mercedes-Benz in front of his vehicle and behind the box truck. Davis asserts that his tractor remained completely stopped at all times and there was no contact between his tractor and the Mercedes-Benz.

Davis states that the operator of the Mercedes-Benz then exited his vehicle, approached Davis' vehicle and accused him of striking his vehicle. Davis states that he exited his vehicle and observed that the two vehicles were several feet apart and observed no damage to either vehicle. He observed a woman in the right passenger seat, but she remained in the vehicle.

In support of the motion, the plaintiffs submit Pelaez's affidavit, an attorney's affirmation, and copies of the pleadings. Davis submits his own affidavit and an attorney's affirmation in opposition.

Discussion

A party moving for summary judgment bears the initial burden of affirmatively demonstrating its entitlement to summary judgment as a matter of law (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]; (*see Alvarez v Prospect Hospital*, 68 NY2d 320, 324 [1986])). To demonstrate its entitlement to relief, the moving party must come forward with evidentiary proof that establishes the absence of any material issues of fact, (*see McDonald v Mauss*, 38 AD3d 727, 728 [2d Dept 2007])). Once the moving party has established its prima facie entitlement to summary judgment, the burden shifts

to the opposing party to submit evidentiary proof in admissible form to establish material issues of fact (see *Alvarez*, 68 NY2d at 324; *Winegrad*, 64 NY2d at 853).

Generally, 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 (see *Ahmad v Grimaldi*, 40 AD3d 786, 786 [2d Dept 2007]). The burden then shifts to the parties opposing the motion to come forward with an adequate non-negligent explanation for the accident. *Vavoulis v Adler*, 43 AD3d 1154 [2d Dept 2007]; CPLR 3212[b]; see also *GTF Marketing, Inc. v Colonial Aluminum Sales, Inc.*, 66 NY2d 965 [1985]; *Zuckerman v City of New York*, 49 NY2d 557 [1980]). The non-moving party must lay bare all of the facts at its disposal regarding the issues raised in the motion (*Mgriditchian v Donato*, 141 AD2d 513 [2d Dept 1988]).

Based on the affidavits submitted, there are issues of fact as to how the accident occurred or even if the accident occurred. Since discovery has not yet been completed, there is no police report and the party affidavits offer different accounts of what occurred, the Court now denies the plaintiffs' motion for summary judgment.

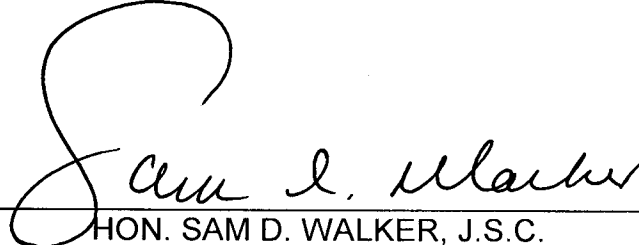
Accordingly, it is

ORDERED that the motion is DENIED.

The parties are directed to appear before the Preliminary Conference Part on April 30, 2018 at 9:30 a.m. in Courtroom 811. To the extent any relief requested in motion sequence 2 was not addressed by the Court, it is hereby deemed denied.

The foregoing constitutes the Opinion, Decision and Order of the Court.

Dated: White Plains, New York
March 29, 2018



HON. SAM D. WALKER, J.S.C.