

Santamaria v Wdowiak
2018 NY Slip Op 34235(U)
December 31, 2018
Supreme Court, Westchester County
Docket Number: Index No. 56758/2017
Judge: Sam D. Walker
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

To commence the statutory time period 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**

P R E S E N T: HON. SAM D. WALKER, J.S.C.

-----X
DANILO SANTAMARIA and EDUARDO ROMERO,

Plaintiffs,

-against-

DECISION & ORDER

Index No.56758/2017

Seq. 1

OSCAR WDOWIAK and BADIH A. MCQUEEN,

Defendants.

-----X
The following papers were read on a motion for summary judgment seeking dismissal of the action:

Notice of Motion/Affirmation/Exhibits A-L	1-14
Affirmation in Opposition/Exhibit 1-4	15-19
Reply Affirmation	20

Upon the foregoing papers it is ordered that the motion is GRANTED.

FACTUAL AND PROCEDURAL BACKGROUND

The plaintiffs, Danilo Santamaria ("Santamaria") and Eduardo Romero ("Romero") commenced this action to recover damages for injuries allegedly sustained when the vehicle in which they were traveling was struck by a vehicle operated by the defendant, Oscar Wdowiak ("Wdowiak"), whose vehicle was also struck by the vehicle operated by the defendant, Badih a. McQueen ("McQueen").

Wdowiak now files the instant motion seeking dismissal of the complaint against him, arguing that the accident occurred only because of the admitted negligence of the

defendant, McQueen, in that, McQueen admits that he struck Wdowiak's vehicle in the rear, pushing his vehicle into the plaintiffs' vehicle.

In support of the motion Wdowiak relies upon, among other things, party deposition transcripts, pictures, an attorney's affirmation, a police report and copies of the pleadings. McQueen opposes the motion, arguing that there are triable issues of fact requiring denial of the motion. The plaintiffs do not oppose the motion.

DISCUSSION

A party on a motion for summary judgment must assemble affirmative proof to establish his entitlement to judgment as a matter of law, (see *Zuckerman v City of N. Y.*, 49 NY2d 557 [1980]). "[T]he proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact" (see *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). Only when such a showing has been made must the opposing party set forth evidentiary proof establishing the existence of a material issue of fact, *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]).

A rear-end collision creates a presumption that the operator of the second vehicle was negligent, thus entitling the injured occupants of the front vehicle to summary judgment on liability unless the driver of the second vehicle can proffer a non-negligent explanation for the collision, (see *Agramonte v City of New York*, 288 AD2d 75, 76 [2001]); *Johnson v Phillips*, 261 AD2d 269, 271 [1999]; *Danza v Longioliere*, 256 AD2d 434, 435 [1998], lv dismissed 93 NY2d 957 [1999]). "In chain collision accidents, the operator of the middle vehicle may establish prima facie entitlement to judgment as a matter of law by demonstrating that the middle vehicle was struck from behind by the rear vehicle and

propelled into the lead vehicle (*see Kuris v El Sol Contr. & Constr. Corp.*, 116 AD3d 675 [2d Dept 2014]).

The evidence submitted by Wdowiak establishes entitlement to summary judgment as a matter of law, thereby shifting the burden to the opposition to demonstrate the existence of a factual issue requiring a trial. In opposition, McQueen argues that Wdowiak made no effort to change the direction of his vehicle or to avoid the impact by hitting his brake hard. McQueen also argues that there is an issue of fact as to Wdowiak's liability and whether his vehicle was too close to the plaintiffs' vehicle.

However, the issues raised by McQueen's counsel do not create any issues of fact, since the testimony proffered establishes that Wdowiak's vehicle was stopped when his vehicle was struck in the rear by McQueen's vehicle and pushed into the plaintiff's vehicle. McQueen does not dispute this and the plaintiffs do not oppose the motion. McQueen has failed to rebut Wdowiak's prima facie showing of entitlement to judgment as a matter of law. Therefore, Wdowiak is entitled to summary judgment.

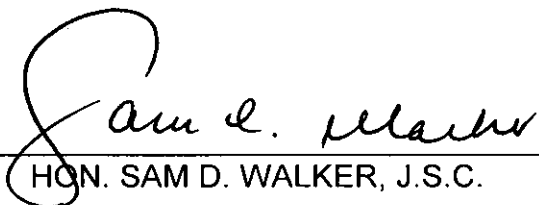
Accordingly, it is

ORDERED that Oscar Wdowiak's motion for summary judgment, is granted and the complaint is dismissed as against him.

The remaining parties are directed to appear before the Settlement Conference Part in Courtroom 1600 on February 5, 2019 at 9:15 a.m.

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

Dated: White Plains, New York
December 31, 2018


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