

**Carey v Almonte**

2018 NY Slip Op 34321(U)

May 11, 2018

Supreme Court, Rockland County

Docket Number: Index No. 035627/2016

Judge: Thomas E. Walsh II

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ROCKLAND

-----X  
JILLIAN CAREY,

Plaintiff(s),

-against-

**DECISION & ORDER**

Index No. 035627/2016

Motion #2 - MD

DC - Y

Adj:

CARLOS M. ALMONTE, EASTERN STATE TIRE CORP.,  
and JASON HERNANDEZ

Defendant(s).  
-----X

**Hon. Thomas E. Walsh, II, J.S.C.**

The following papers numbered 1 read on this motion by Defendant JASON HERNANDEZ seeking an Order, pursuant to Civil Practice Law and Rules § 3212, thereby granting summary judgment and dismissing Plaintiff's Complaint and all claims, on the grounds that the facts clearly establish as a matter of law that the Defendant, JASON HERNANDEZ, is not liable in this action and for such other, further and different relief as this Court may deem just and proper:

**PAPERS**

**NUMBERED**

Notice of Motion/Affirmation of James A. Rogers, Esq./Exhibits (A-H)

1

This action arises from a three (3) car accident on March 25, 2015 on Haverstraw Road near the intersection with Lime Kiln Road in Wesley Hills. Plaintiff filed and served the Summons and Complaint on December 20, 2016. Issued was joined by co-Defendant ALMONTE and EASTERN STATE TIRE CORP., with the filing of an Answer. Defendant HERNANDEZ joined issue upon filing of an answer on February 17, 2017. Defendant HERNANDEZ filed a motion for summary judgment as to liability on May 1, 2017, which was denied by the undersigned by Decision and Order dated September 25, 2017. Specifically, Defendant HERNANDEZ's previous motion was denied as premature since none of the parties to the action had been deposed before the motion was filed. Defendant HERNANDEZ submitted the instant motion for summary judgment as to liability on his behalf after all parties depositions were completed.

In the instant action Plaintiff was turning left and states that she was at a complete stop when her vehicle was struck by a vehicle driven by Defendant JASON HERNANDEZ.

According to Defendant HERNANDEZ his vehicle was struck in the rear by a van driven by Defendant CARLOS ALMONTE (vehicle owned by Defendant EASTERN STATE TIRE CORP.).

Defendant HERNANDEZ filed the instant motion for summary judgment arguing that in the instant circumstance of a rear end collision with a stopped vehicle creates a prima facie case of negligence with respect to the driver of the moving vehicle unless a non-negligent reason for the accident is opined. In his Affidavit Defendant HERNANDEZ states that he observed Plaintiff's vehicle in front of him traveling on Haverstraw Road, apply the brakes and place a left turn signal one indicating an intent to turn left into Lime Kiln Road. Further, Defendant HERNANDEZ states that after observing the aforementioned actions he placed his right foot on the brake and brought his car to a slow gradual stop which resulted in his vehicle coming to a complete stop two (2) car lengths behind Plaintiff's vehicle. According to Defendant HERNANDEZ's Affidavit after stopping for approximately 30-40 seconds he felt in an impact in the rear of his vehicle which pushed his vehicle forward into the rear of Plaintiff's vehicle. Defendant HERNANDEZ asserts that his vehicle was at a complete stop at the time of the accident and therefore co-Defendant CARLOS ALMONTE owes a duty of explanation to him. Further, Defendant HERNANDEZ submits that

According to Defendant HERNANDEZ, the Plaintiff testified in her Examination Before Trial (hereinafter EBT) that she was stopped at the intersection of Route 202 and Spook Rock Road and intended to make a left turn onto Spook Rock Road. Plaintiff testified that at the time she was stopped, she looked at her rearview mirror and observed the vehicle behind her slowing down and eventually come to a complete stop. Further, Plaintiff testified that after four (4) or five (5) seconds elapsed the rear of her vehicle was struck by the vehicle she observed behind hers. Additionally, Plaintiff testified that she saw the police speaking with Defendant HERNANDEZ and ALMONTE and that she overheard Defendant ALMONTE (who was driving the third vehicle involved in the accident) apologize and state that his brakes failed.

Defendant CARLOS ALMONTE testified in his EBT that he noted that the van he was driving on the date of the accident had a problem with the brakes about one week before the accident. ALMONTE testified that he was operating the same van on the date of the accident and was on his way to New Jersey from the warehouse located in Stony Point, New York. Defendant ALMONTE further stated that he when he was driving on 202, observed two (2) stopped vehicles on Route 202 and attempted to apply the brakes, but the van did not stop and he struck the vehicles that were stopped on Route 202.

The proponent of a summary judgment motion must establish his or her claim or defense sufficient to warrant a court directing judgment in its favor as a matter of law, tendering sufficient evidence to demonstrate the lack of material issues of fact. [*Giuffrida v.*

*Citibank Corp., et al.*, 100 N.Y.2d 72 (2003), citing *Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320 (1986)]. The failure to do so requires a denial of the motion without regard to the sufficiency of the opposing papers. [*Lacagnino v. Gonzalez*, 306 A.D.2d 250 (2d Dept. 2003)]. However, once such a showing has been made, the burden shifts to the party opposing the motion to produce evidentiary proof in admissible form demonstrating material questions of fact requiring trial. [*Gonzalez v. 98 Mag Leasing Corp.*, 95 N.Y.2d 124 (2000), citing *Alvarez, supra*, and *Winegrad v. New York Univ. Med. Center*, 64 N.Y.2d 851 (1985)]. Mere conclusions or unsubstantiated allegations unsupported by competent evidence are insufficient to raise a triable issue. [*Gilbert Frank Corp. v. Federal Ins. Co.*, 70 N.Y.2d 966 (1988); *Zuckerman v. City of New York*, 49 N.Y.2d 557 (1980)].

It is well-settled that a rear-end collision with a stopped vehicle creates a prima facie case of liability with respect to the operator of the moving vehicle, unless the operator of the moving vehicle can come forward with an adequate, non-negligent explanation for the accident. [*Smith v. Seskin*, 49 A.D.3d 628 (2d Dept. 2008); *Harris v. Ryder*, 292 A.D.2d 499 (2d Dept. 2002)]. Further, when the driver of an automobile approaches another from the rear, he or she is bound to maintain a reasonably safe rate of speed and control over his or her vehicle, and to exercise reasonable care to avoid colliding with the other vehicle. [VTL § 1129(a) ("The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon the condition of the highway."); *Taing v. Drewery*, 100 A.D.3d 740 (2d Dept. 2012)].

As noted previously, despite the fact that the instant motion was served upon Plaintiff and co-Defendants' counsel, no opposition was received.<sup>1</sup>

The Court finds that based on the fact that Defendant HERNANDEZ's vehicle was the middle vehicle in a chain reaction accident and that it struck the lead vehicle in the rear, there are no genuine/material issues of fact as to Defendant HERNANDEZ's negligence precluding summary judgment in his favor or that require a trial for resolution. Therefore Defendant HERNANDEZ's summary judgment motion is granted in its entirety.

In arriving at this decision the Court has reviewed, evaluated and considered all of the issues framed by these motion papers and the failure of the Court to specifically mention any particular issue in this Decision and Order does not mean that it has not been

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<sup>1</sup> The Court notes that the parties were directed by the undersigned to file the Note of Issue by March 7, 2018 and all dispositive motions by April 6, 2018. Defendant HERNANDEZ filed the instant motion two (2) days prior to the date directed by the Court. However, the Note of Issue was not filed until April 27, 2018. Further, Plaintiff and Defendants ALMONTE and EASTERN STATE TIRE CORP, filed motions for summary judgment (Motions # 3 and #4) on April 11, 2018 and April 30, 2018, respectively, which are not returnable until May 25, 2018.

considered by the Court in light of the appropriate legal authority.

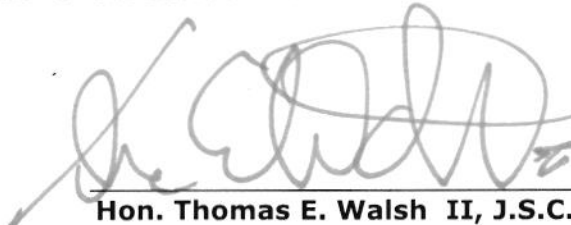
Accordingly, it is hereby

**ORDERED** that Defendant JASON HERNANDEZ's Notice of Motion (Motion #2) is granted in its entirety; and it is further

**ORDERED** that the instant action is dismissed as to Defendant JASON HERNANDEZ and the Clerk is directed to mark the file accordingly.

The foregoing is the Decision and Order of the Court on Motion #2.

Dated: New City, New York  
May 14, 2018



**Hon. Thomas E. Walsh II, J.S.C.**

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