

Williams v Looby

2018 NY Slip Op 34472(U)

November 1, 2018

Supreme Court, Kings County

Docket Number: Index No. 504230/2018

Judge: Carl J. Landicino

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At an IAS Term, Part 81 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 1st day of November, 2018.

P R E S E N T:

HON. CARL J. LANDICINO,

Justice.

-----X

BRIANA WILLIAMS and CARL WILLIAMS,

Plaintiffs,

Index No.: 504230/2018

DECISION AND ORDER

- against -

KAREN R. LOOBY, DAMONI L. LOOBY and
GUIRLANDE SENAT,

Defendants.

Motions Sequence #1, #2

-----X

Recitation, as required by CPLR §2219(a), of the papers considered in the review of this motion:

	<u>Papers Numbered</u>
Notice of Motion/Cross Motion and	
Affidavits (Affirmations) Annexed.....	<u>1/2, 3/4</u>
Opposing Affidavits (Affirmations).....	<u>5, 6,</u>
Reply Affidavits (Affirmations).....	<u>7, 8</u>

After a review of the papers and after oral argument the Court determines as follows:

This action concerns a motor vehicle accident that occurred on December 31, 2016. On that day, the Plaintiffs, Briana Williams and Carl Williams (hereinafter the "Plaintiffs") were passengers in a vehicle owned and operated by Defendant Guirlande Senat (hereinafter "Defendant Senat"). The Plaintiffs allege that the vehicle that they were passengers in, while stopped for a red light on Crown Street at or near its intersection with Troy Avenue, was struck in the rear by a vehicle operated by Defendant Karen Looby and owned by Defendant Damoni Looby (hereinafter the "Looby Defendants").

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Plaintiffs move for summary judgment (motion sequence #1) on the issue of liability. Plaintiffs contend that they were passengers in the vehicle of Defendant Senat. The Plaintiffs represent, by means of affidavits, that the Senat vehicle "...was totally stopped in excess of thirty (30) minutes when rear ended by the..." Looby Defendants' vehicle. The Plaintiffs also state that they did not contribute to or cause the accident.

Defendant Senat cross-moves (motion sequence #2) for an order pursuant to CPLR §3212, granting summary judgment to Defendant Senat and dismissing the summons and complaint and any and all cross-claims against her. Defendant Senat, by affidavit (Defendant Senat's cross-motion, Exhibit "D"), states that "[w]hile I waited for the red light to turn green for approximately 30 seconds, my vehicle was struck in the rear. At the time of the collision with my vehicle, I had been at a complete stop for at least half a minute waiting for the traffic signal to allow me to move forward." Defendant Senat confirms that the Plaintiffs were in her vehicle at the time of the accident.

The Looby Defendants oppose both motions. As to those motions, the Looby Defendants contend that the motions are premature because discovery, including depositions, has not been completed. The Looby Defendants also indicate that the police report, upon which the movants rely in support of their respective motions, is inadmissible. The Looby Defendants also argue that the moving parties' affidavits alone are insufficient to establish the burden carried by the movants to make a *prima facie* showing. In addition, the Looby Defendants do acknowledge that the Plaintiffs are innocent passengers free from liability but argue that they still must prove negligence on the part of the Looby Defendants. The Looby Defendants contend that the Plaintiffs have not established negligence on the part of the Looby Defendants.

Moreover, the Looby Defendants contend that even if the moving parties had established a *prima facie* showing of negligence and sole proximate cause on their part, the Looby Defendants, by affidavit of Defendant Karen Looby, raise a material issue of fact as to liability.

Karen Looby, by her affidavit (Looby Defendants Affirmation in Opposition, Exhibit "A") states that she was driving behind Defendant Senat's vehicle just prior to the accident. She states that she maintained a speed of less than 25 miles per hour and "...was more than a care length behind co-defendant's vehicle." She further states that, "[a]s we approached the intersection with Troy Avenue we had a green light in favor of our direction of travel. Suddenly and unexpectedly, and for reasons unknown to me, co-defendant suddenly slammed on her brakes. I immediately and aggressively applied my brakes to try to avoid contact with co-defendant's vehicle. However, due to co-defendant's unexpected and abrupt deceleration I was unable to avoid contact."

It has long been established that "[s]ummary judgment is a drastic remedy that deprives a litigant of his or her day in court, and it 'should only be employed when there is no doubt as to the absence of triable issues of material fact.'" *Kolivas v. Kirchoff*, 14 AD3d 493 [2nd Dept, 2005], citing *Andre v. Pomeroy*, 35 N.Y.2d 361, 364, 362 N.Y.S.2d 131, 320 N.E.2d 853 [1974]. The proponent for the summary judgment must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate absence of any material issues of fact. See *Sheppard-Mobley v. King*, 10 AD3d 70, 74 [2nd Dept, 2004], citing *Alvarez v. Prospect Hospital*, 68 N.Y.2d 320, 324, 508 N.Y.S.2d 923, 501 N.E.2d 572 [1986]; *Winegrad v. New York Univ. Med. Ctr.*, 64 N.Y.2d 851, 853, 487 N.Y.S.2d 316, 476 N.E.2d 642 [1985].

Once a moving party has made a *prima facie* showing of its entitlement to summary judgment, "the burden shifts to the opposing party to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action" *Garnham & Han Real Estate Brokers v Oppenheimer*, 148 AD2d 493 [2nd Dept, 1989]. Failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers. See *Demshick v. Cmty. Hous. Mgmt. Corp.*, 34 A.D.3d 518, 520, 824 N.Y.S.2d 166, 168 [2nd Dept, 2006]; see *Menzel v. Plotnick*, 202 A.D.2d 558, 558-559, 610 N.Y.S.2d 50 [2nd Dept, 1994].

In general, motions for summary judgment have been denied as premature ““where facts essential to justify opposition to a motion for summary judgment are exclusively within the knowledge and control of the movant, summary judgment may be denied.... This is especially so where the opposing party has not had a reasonable opportunity for disclosure prior to the making of the motion.”” *Juseinoski v. New York Hosp. Med. Ctr. of Queens*, 29 A.D.3d 636, 637, 815 N.Y.S.2d 183, 184-85 [2nd Dept, 2006], citing *Baron v. Incorporated Vil. of Freeport*, 143 A.D.2d 792, 792-793, 533 N.Y.S.2d 143 [2nd Dept, 1988]. However, affidavits submitted in support of summary judgment may be sufficient to establish a movant’s *prima facie* burden and prematurity is only applicable if it would lead to information not in the possession of the opponent of the motion. See *Cajas-Romero v. Ward*, 106 A.D.3d 850, 852, 965 N.Y.S.2d 559, 561 [2nd Dept, 2013]; *Boorstein v. 1261 48th St. Condo.*, 96 A.D.3d 703, 704, 946 N.Y.S.2d 200, 202 [2nd Dept, 2012].

Turning to the merits of the motion (motion sequence #1) by the Plaintiffs and the cross motion (motion sequence #2) by Defendant Senat, the Court finds that each movant has provided sufficient evidence to meet their respective *prima facie* burdens. The Court finds that the affidavits presented in support of each motion are sufficient to establish each movant’s *prima facie* burden and the Looby Defendants “failed to demonstrate that discovery may lead to relevant evidence or that the facts essential to justify opposition to the motion were exclusively within the knowledge and control of the defendant.” *Boorstein v. 1261 48th St. Condo.*, 96 A.D.3d 703, 704, 946 N.Y.S.2d 200, 202 [2nd Dept, 2012].

As to the motion made by Defendant Senat, “[a] rear-end collision with a stopped or stopping vehicle creates a *prima facie* case of negligence against the operator of the rear vehicle, thereby requiring that operator to rebut the inference of negligence by providing a non-negligent explanation for the collision.” *Klopchin v. Masri*, 45 A.D.3d 737, 737, 846 N.Y.S.2d 311, 311

[2nd Dept, 2007]. Even assuming, *arguendo*, that the Police Accident Report attached to the Plaintiffs' motion is not admissible, given that the Police Officer did not witness the alleged incident (*see Adobea v. Junel*, 114 A.D.3d 818, 980 N.Y.S.2d 564 {2nd Dept, 2014}), the affidavits of the Plaintiffs and Defendant Senat are sufficient for Defendant Senat to meet her *prima facie* burden. *See Martinez v. Allen*, 163 A.D.3d 951, 82 N.Y.S.3d 130 [2nd Dept, 2018].

In opposition to the motions, the Looby Defendants point to the affidavit of Defendant Karen Looby who states that Defendant Senat's vehicle was not stopped, but that both vehicles were moving toward a green traffic light when Senat made a sudden stop. This, without more, is insufficient to raise an issue of fact that would prevent this Court from granting summary judgment. *See Hakakian v. McCabe*, 38 A.D.3d 493, 494, 833 N.Y.S.2d 106, 107 [2nd Dept, 2007]. The affidavit by Defendant Karen Looby fails to provide a reason why the alleged sudden stop by Defendant Senat was unexpected. *See Etingof v. Metro. Laundry Mach. Sales, Inc.*, 134 A.D.3d 667, 668, 20 N.Y.S.3d 589, 590 [2nd Dept, 2015].

In both *Martinez* and *Etingof*, the drivers of the rear vehicles expressed why the alleged sudden stop was unexpected, thereby creating a material issue of fact in relation to comparative negligence. In *Etingof* the rear driver stated, *inter alia*, that there was no traffic ahead of the front vehicle. In *Martinez* the rear driver stated that the driver ahead failed to give proper signals, constituting a violation of VTL §1163. Defendant Karen Looby merely stating that the reason for the sudden stop was "unknown" to her, is insufficient to rebut the inference that the Looby Defendants were negligent. "Thus, the defendant's contention, made in opposition to the plaintiffs' motion, that the plaintiff proceeded once the traffic light turned green but then suddenly stopped, did not rebut the inference of negligence by providing a non-negligent explanation for the collision." *Ramirez v. Konstanzer*, 61 A.D.3d 837, 837, 878 N.Y.S.2d 381,

382 [2nd Dept, 2009]. As a result Karen Looby failed to provide a non-negligent explanation for the collision and Defendant Senat's motion for summary judgment is granted.

Further, although the parties present different versions of what occurred neither version if accepted as true would change the determination of the Court. See *Tumminello v. City of New York*, 148 A.D.3d 1084, 1085, 49 N.Y.S.3d 739, 741 [2nd Dept, 2017].

As stated above, the Plaintiffs are, in any event, innocent passengers free from liability. A determination as to recovery of partial summary judgment on the issue of liability would only flow from a determination of sole proximate cause against the Looby Defendants. Given that summary judgment has been granted in favor of Defendant Senat, there is no issue of comparative negligence in relation to the Looby Defendants. Therefore, the Plaintiffs are granted partial summary judgment on the issue of liability as against the Looby Defendants. See *Rodriguez v. Farrell*, 115 A.D.3d 929, 930, 983 N.Y.S.2d 68, 70 [2nd Dept, 2014]; *Medina v. Rodriguez*, 92 A.D.3d 850, 850, 939 N.Y.S.2d 514, 515 [2nd Dept, 2012].

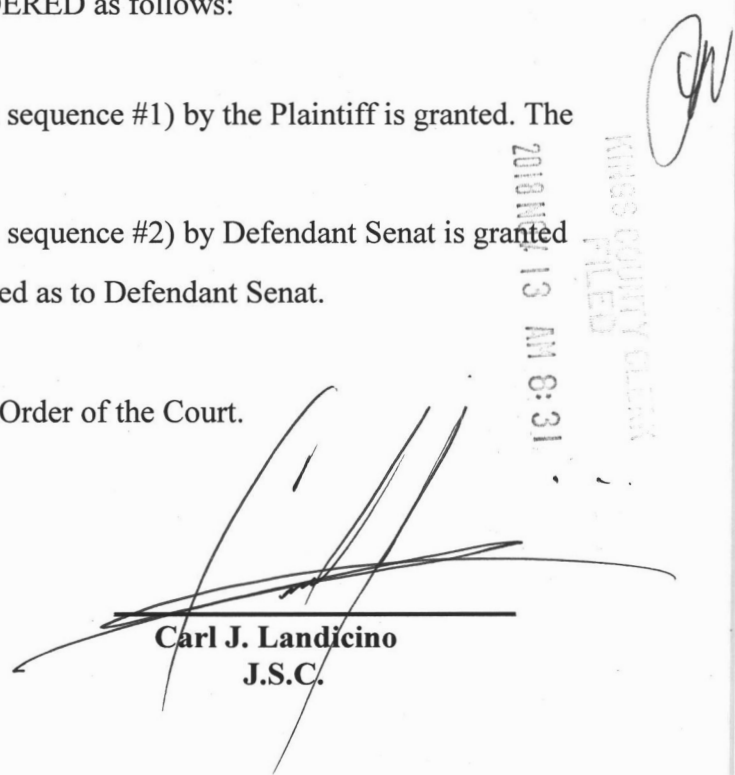
Based upon the foregoing, it is hereby ORDERED as follows:

The motion for summary judgment (motion sequence #1) by the Plaintiff is granted. The matter shall proceed to a trial on damages only.

The motion for summary judgment (motion sequence #2) by Defendant Senat is granted and the complaint and any cross claims are dismissed as to Defendant Senat.

The foregoing constitutes the Decision and Order of the Court.

ENTER:


Carl J. Landicino
J.S.C.

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