

Roy v Chen Hong

2019 NY Slip Op 30777(U)

March 25, 2019

Supreme Court, New York County

Docket Number: 153984/2016

Judge: Adam Silvera

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ADAM SILVERA PART IAS MOTION 22

Justice

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SATARUPA GHOSH ROY,

Plaintiff,

- v -

CHEN HONG, ZT GROUP INDUSTRIAL, INC., D/B/A ZT
SYSTEMS, ZT GROUP INC., ADALBERTO ROSARIO-ULLOA,
UBER TECHNOLOGIES, INC., RASIER, L.L.C.

Defendant.

INDEX NO. 153984/2016

**MOTION DATE 12/07/2018,
12/07/2018**

MOTION SEQ. NO. 004 005

DECISION AND ORDER

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The following e-filed documents, listed by NYSCEF document number (Motion 004) 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 118, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 159, 175, 177, 178

were read on this motion to/for JUDGMENT - SUMMARY

The following e-filed documents, listed by NYSCEF document number (Motion 005) 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 179

were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER

Upon the foregoing documents, it is ordered that defendant Adalberto Rosario-Ulloa’s motion for summary judgment of dismissal (mot. seq. no. 004) and defendant Uber Technologies, Inc. and Rasier, LLC’s motion for summary judgment of dismissal (mot. seq. no. 005) are decided below.

Summary judgment is a drastic remedy, only to be granted if the moving party sufficiently established that it is warranted as a matter of law. *See Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 (1986). “The 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 eliminate any material issues of fact from the case”. *Winegrad v New York University Medical Center*, 64 NY2d 851, 853 (1985). “In determining whether summary judgment is appropriate, the motion court should draw all reasonable inferences in favor of the nonmoving party and should not pass

on issues of credibility.” *Garcia v J.C. Duggan, Inc.*, 180 AD2d 579, 580 (1st Dep’t 1992), citing *Dauman Displays, Inc. v Masturzo*, 168 AD2d 204 (1st Dep’t 1990). As such, summary judgment is rarely granted in negligence actions unless there is no conflict at all in the evidence. *See Ugarriza v Schmieder*, 46 NY2d 471, 475-476 (1979).

Here, Defendant Rosario-Ulloa argues that he did not breach any duty to plaintiff and is not liable for her injuries. In support of the motion, defendant Rosario-Ulloa proffers, *inter alia*, portions of his own deposition transcript, as well as portions of the deposition transcripts of plaintiff, and defendant Chen Hong. Here, it is undisputed that plaintiff was a passenger in the vehicle owned and operated by defendant Rosario-Ulloa when such vehicle was involved in an accident with the vehicle operated by defendant Hong and owned by defendant ZT Group International, Inc. D/B/A ZT Systems (hereinafter referred to as “defendant ZT Systems”). At the time of the accident, defendant Rosario-Ulloa’s vehicle was traveling straight in the left lane of traffic and defendant Hong’s vehicle was traveling in the opposite direction in the adjacent lane of traffic on the other side of the double yellow lines. According to defendant Rosario-Ulloa, defendant Hong unexpectedly crossed over the double yellow lines into his lane of traffic and is solely liable for causing the accident and plaintiff’s injuries. Defendants Uber and Rasier support defendant Rosario-Ulloa’s motion and adopt his arguments therein.

In opposition, defendants Hong and ZT Systems argue that issues of fact exist as to whether defendant Rosario-Ulloa caused, or contributed to causing, the accident. In support of their argument, defendants Hong and ZT Systems rely on the Secaucus Police Crash Investigation Report, which opines that defendant Rosario-Ulloa would have been able to avoid the collision if he was traveling at the speed limit. *See Yapchanyk Aff., Exh. C, New Jersey Police Crash Investigation Report*, p. 13. In reply, defendant Rosario-Ulloa contends that the

opposition fails to raise an issue of fact, arguing that the rate of speed in which defendant Rosario-Ulloa's vehicle was traveling was recorded five (5) seconds before the accident, and that there is no evidence that he was traveling at 39 miles an hour at the time of the accident.

The Court notes that a review of the deposition transcripts reveals that defendant Rosario-Ulloa's own testimony contradicts his attorney's argument in reply. While the reply papers argue that there is no evidence that defendant Rosario-Ulloa was speeding at the time of the accident, and that he was faced with an emergency situation with less than two (2) seconds to react, defendant Rosario-Ulloa testified that, at the time of the accident, he "was going at about thirty...[b]etween thirty and forty." Lanni Aff. in Opp., Exh. 5, Rosario-Ulloa Dep. Tr., p. 120, ln. 15-22. Here, it is undisputed that the speed limit was 25 miles per hour. Thus, issues of fact have been sufficiently raised to preclude summary judgment. Specifically, although it is undisputed that the vehicle owned by defendant ZT Systems, and operated by defendant Hong, crossed over the double yellow line, an issue of fact exists as to whether defendant Rosario-Ulloa was also negligent, and whether such negligence was a contributing factor to the accident and plaintiff's injuries. "The existence of an emergency and reasonableness of a party's response to the situation ordinarily presents questions of fact". *Weston v Castro*, 138 AD3d 517, 518 (1st Dep't 2016). As issues of fact exist as to whether defendant Rosario-Ulloa was speeding at the time of the accident, and whether the collision could have been avoided absent such speeding, "the court cannot conclude as a matter of law that there was an emergency that absolves a finding of liability against defendant at this point in the litigation". *Id.* at 519. Thus, defendant Rosario-Ulloa's motion for summary judgment is denied.

As to defendants Uber and Rasier's motion for summary judgment, similar to defendant Rosario-Ulloa's motion, they argue that the instant accident was caused solely by defendant

Hong's negligence in crossing over the double yellow lines such that, as the purported employers of defendant Rosario-Ulloa, defendant Uber and/or defendant Rasier are not responsible for the accident and plaintiff's injuries. However, as it has already been determined that there are issues of fact regarding the cause, or causes, of the accident, summary judgment is precluded. As stated above, in determining whether summary judgment is appropriate, the motion court should draw all reasonable inferences in favor of the nonmoving party and should not pass on issues of credibility." *Garcia v J.C. Duggan, Inc.*, 180 AD2d 579, 580 (1st Dep't 1992), citing *Dauman Displays, Inc. v Masturzo*, 168 AD2d 204 (1st Dep't 1990). As such, summary judgment is rarely granted in negligence actions unless there is no conflict at all in the evidence. *See Ugarriza v Schmieder*, 46 NY2d 471, 475-476 (1979). Here, there are clearly conflicts in the evidence. Thus, defendants Uber and Rasier's motion for summary judgment is denied.

Accordingly, it is

ORDERED that defendant Adalberto Rosario-Ulloa's motion for summary judgment of dismissal (mot. seq. no. 004) is denied in its entirety; and it is further

ORDERED that defendants Uber Technologies, Inc. and Rasier, LLC's motion for summary judgment of dismissal (mot. seq. no. 005) is denied in its entirety; and it is further

ORDERED that, within thirty days of entry, plaintiff shall serve a copy of this order upon all parties, together with notice of entry; and it is further

This constitutes the Decision/Order of the Court.



3/25/2019
DATE

ADAM SILVERA, J.S.C.

CHECK ONE: CASE DISPOSED DENIED NON-FINAL DISPOSITION

APPLICATION: GRANTED GRANTED IN PART OTHER

CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER

INCLUDES TRANSFER/REASSIGN FIDUCIARY APPOINTMENT REFERENCE