

Demieri v Delta Auto. Servs., Inc.

2019 NY Slip Op 34340(U)

January 3, 2019

Supreme Court, Suffolk County

Docket Number: Index No. 603444/2017

Judge: John H. Rouse

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This opinion is uncorrected and not selected for official publication.

INDEX NO. 603444/2017

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 12 - SUFFOLK COUNTY

PRESENT:

Hon. John H. Rouse
Acting Supreme Court Justice

MOTION DATE: 10/11/2018
ADJ. DATE: 11/14/2018
Mot. Seq. 001-MG

MOTION DATE: 10/11/2018
ADJ. DATE: 11/14/2018
Mot. Seq. 002-MG
e-filed full participation

Dominick Demieri,

Plaintiff

-against-

DECISION & ORDER

Delta Automotive Services, Inc, Luis A. Guzman, Ds Mobile
Sounds & Security, Dirk Blanke,

Defendants

TO:

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Upon the reading and filing of the following papers in this matter: (1) Notice of Motion by Plaintiff for an Order granting partial summary judgment on the issue of liability in favor of plaintiff and against the defendants Delta Automotive Services, Inc. and Luis A. Guzman, dismissing defendants' first affirmative defense that plaintiff was comparatively at fault, and for such other and further relief as to this Court may seem just and proper; (2) e-filed documents numbered 20-28 and 36-43; (3) Notice of Cross Motion an Order pursuant to CPLR 3212 granting summary judgment on the issue of liability in favor of defendants DS Mobile Sounds &

Security and Dirk Blanke, and dismissing the Complaint of the plaintiff and all cross claims of co-defendants, and b) granting such other and further relief as this Court deems just and proper; and (4) e-filed documents numbered 29-35 and 44; it is:

ORDERED that the motion (Seq. #001) by Plaintiff for summary judgment against Defendants on the issue of liability of Delta Automotive Services, Inc, Luis A. Guzman, and upon the issue of the Plaintiff's own comparative fault is granted and the Defendants Delta Automotive Services, Inc, Luis A. Guzman are one hundred percent responsible for the injuries sustained by the Plaintiff should he prove a threshold injury as required by N.Y. Ins. Law § 5102(d); and it is further

ORDERED that the cross motion (Seq. #002) by Defendants Dirk Blanke and DS Mobile Sounds & Security for summary judgment on the grounds that they are not liable for the collision with the Plaintiff's vehicle is granted and the caption is amended as follows:

Dominick Demieri,

Plaintiff

-against-

Delta Automotive Services, Inc, Luis A. Guzman,

Defendants

and it is further

ORDERED that Plaintiff is directed to serve upon the Defendants a copy of this decision and order with notice of entry as soon as practicable. *See Protocol for Electronic Filing in Suffolk County Supreme Court at II (M) page 6 for rules on serving notice of entry.*

<https://www.nycourts.gov/courts/10jd/suffolk/EFiling/>

and it is further

ORDERED that the parties, if they have not done so already, are directed to review the rules of this part found at: https://www.nycourts.gov/courts/10jd/suffolk/SC_Part_Rules/Rouse.pdf

DECISION

Plaintiff commenced this action on February 23, 2017. Defendants Delta Automotive Services, Inc. and Luis A. Guzman filed their combined answer on May 4, 2017 with cross claims against

DS Mobile Sounds & Security Work and Dirk Blanke. Defendants DS Mobile Sounds & Security Work and Dirk Blanke filed their combined answer on June 5, 2017. A Preliminary Conference was held on August 30, 2017 and an end date for discovery was set for July 1, 2018. No note of issue has been filed at this time.

Plaintiff Dominick Demieri moves for summary judgment on the issue of liability of Defendant Delta Automotive Services, Inc. and Luis A. Guzman and upon the issue of his own fault of which he contends there was none. *See Carlos Rodriguez, Appellant, v City of New York, Respondent., 31 N.Y.3d 312 (2018)*. Plaintiff submits his own affidavit in which he alleges that on September 12, 2016 at 4:38 p.m. he was sitting in his vehicle in the center westbound lane of the Long Island Expressway and his vehicle had been completely stopped in traffic for no less than five seconds, and that the stop lights of his vehicle were properly functioning when his vehicle was struck in the rear by a vehicle. Plaintiff alleges this was the result of a single impact caused by Luis A. Guzman who failed to stop the truck he was operating that was owned by Delta Automotive Services, Inc. Plaintiff alleges the Guzman tractor trailer truck carrying cars struck a van operated by Dirk Blanke and owned by DS Mobile Sounds & Security and caused that van to be propelled into the Plaintiff's vehicle causing him serious injury. Plaintiff has made a *prima facie* case that Defendant Guzman was negligent and also that Plaintiff was not comparatively at fault.

Defendants Dirk Blanke and DS Mobile Sounds & Security cross move for summary for dismissal of all claims by Plaintiff and all cross claims asserted against them by Defendants Luis A. Guzman and Delta Automotive Services, Inc. Cross moving Defendants rely upon the Plaintiff's affidavit.

Defendants Luis A. Guzman and Delta Automotive Services, Inc. in opposition to the Plaintiff's motion for summary judgment and against the cross motion of the other Defendants offer the affidavit of Luis A. Guzman. In Guzman's affidavit he contends that he driving a truck and was traveling at the rate of thirty-five miles per hour and was maintaining a distance of between fifty and sixty feet from the van in front of him. Guzman alleges that the vehicle in front of him began stopping abruptly, that the van had not completely stopped and he was unable to stop and drove his truck into the rear of the vehicle operated by Dirk Blanke.

A rear-end collision with a stopped or stopping vehicle establishes a *prima facie* case of negligence on the operator of the rear vehicle, requiring that operator to come forward with evidence of a non-negligent explanation for the collision in order to rebut the inference of negligence. *Conroy v New York City Tr. Auth., 2018 N.Y. App. Div. LEXIS 8878 (December 26, 2018) citing Cruz v Finney, 148 AD3d 772, 773, 49 N.Y.S.3d 153; Lampkin v Chan, 68 AD3d 727, 727, 891 N.Y.S.2d 113; Emil Norsic & Son, Inc. v L.P. Transp., Inc., 30 AD3d 368, 368, 815 N.Y.S.2d 736; and Niyazov v Bradford, 13 AD3d 501, 501-502, 786 N.Y.S.2d 582*. Here, Defendant does not offer any facts that give rise to the inference that either the Plaintiff or Dirk Blainer had done anything other than stop for traffic, nor did either vehicle abruptly change lanes.

Further, the Guzman affidavit confirms the Plaintiff's contention that Plaintiff's vehicle was rear ended in a single impact propelled by the truck driven by Guzman.

Upon the Defendant's failure to raise a material issue of fact in opposition to both the Plaintiff's motion for summary judgment and the cross motion for summary judgment by Defendants Dirk Blanke and DS Mobile Sounds & Security those motions are granted as provided in the orders above.

Dated: January 3, 2019



JOHN H. ROUSE, Acting J.S.C.

NON-FINAL DISPOSITION