Corradengo v Garcia
2019 NY Slip Op 34516(U)
March 13, 2019
Supreme Court, Suffolk County
Docket Number: Index No. 613699/2018
Judge: Joseph A. Santorelli
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ORIGINAL

SHORT FORM ORDER

INDEX No. 613699/2018
CAL No. _____

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 10 - SUFFOLK COUNTY

PRESENT:

Hon. JOSEPH A. SANTORELLI
Justice of the Supreme Court

MOTION DATE 9/18/18
SUBMIT DATE 2/7/19
Mot. Seq. # 01 - Mot D
02 - MG

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NICOLE M. CORRADENGO,

Plaintiff,

-against-

MARC ANDREW GARCIA, GLORIA C. VARELA-BAEZ, and LINDA JEAN DALLAND,

Defendants.

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Woodbury, New York 11797

Law Office of Denis J. Kennedy
Attorneys for Defendants Marc Andrew Garcia and Gloria C. Varela-Baez
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Attorneys for Defendant Linda Jean Dalland
115 Broad Hollow Road, Suite 300
Melville, New York 11747

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Upon the following papers numbered 1 to 16 read on this motion for summary judgment; Notice of Motion/ Order to Show Cause and supporting papers 1 - 9 ; ~~Notice of Cross Motion and supporting papers~~ ; Answering Affidavits and supporting papers 10 - 11 ; Replying Affidavits and supporting papers 12 - 16 ; ~~Other~~ ; ~~(and after hearing counsel in support and opposed to the motion)~~ it is,

The plaintiff moves for an order granting summary judgment on the issue of liability, striking the defendants' affirmative defenses of comparative negligence and culpable conduct, and setting the matter down for the assessment of damages. The defendants, Marc Andrew Garcia and Gloria C. Varela-Baez, cross move for an order granting summary judgment and dismissing the complaint of the plaintiff and any cross-claims or counterclaims of the co-defendant, Linda Jean Dalland.

This is an action to recover damages for injuries allegedly sustained by plaintiff Nicole M. Corradengo as a result of a motor vehicle accident which occurred on September 27, 2017, at 7:39 am, on Interstate 495 approximately 200 feet west of exit 49, Town of Huntington, Suffolk County, New York. The accident allegedly happened when a vehicle owned and operated by defendant Dalland struck a vehicle owned by defendant Varela-Baez and operated by defendant Garcia in the rear. As a result of the initial impact, the vehicle operated by defendant Garcia was propelled forward and struck plaintiff's vehicle in the rear. By her complaint, plaintiff alleges that she suffered serious injuries as a result of the accident.

The plaintiff now moves for summary judgment arguing that the defendants' negligence is the sole legal and proximate cause of the accident. The Varela-Baez and Garcia defendants cross move for summary judgment dismissing the complaint and cross-claims or counterclaims as asserted against them, arguing that defendant Dalland's negligence was the sole legal and proximate cause of the accident. In opposition to both motions defendant Dalland submits an affirmation of her attorney.

The proponent of a summary judgment motion must tender evidentiary proof in admissible form eliminating any material issues of fact from the case (*see* ***Alvarez v Prospect Hosp.***, 68 NY2d 320, 508 NYS2d 923 [1986]). Once this showing has been made, the burden shifts to the non-moving party to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact that require a trial for resolution (*see* ***Alvarez v Prospect Hosp.***, *supra*; ***Zuckerman v City of New York***, 49 NY2d 557, 427 NYS2d 595 [1980]).

A defendant moving for summary judgment in a negligence action has the burden of establishing, prima facie, that he or she was not at fault in the happening of the subject accident (*see* ***Estate of Cook v Gomez***, 138 AD3d 675, 30 NYS3d 148 [2d Dept 2016]; ***Boulos v Lerner-Harrington***, 124 AD3d 709, 709, 2 NYS3d 526 [2d Dept 2015]; ***Rungoo v Leary***, 110 AD3d 781, 782, 972 NYS2d 672 [2d Dept 2013]). While there can be more than one proximate cause of an accident and it is generally for the trier of fact to determine, the issue of proximate cause may be decided as a matter of law where only one conclusion may be drawn from the established facts (*see* ***Estate of Cook v Gomez***, *supra*; ***Jones v Vialva-Duke***, 106 AD3d 1052, 966 NYS2d 187 [2d Dept 2013]; ***Kalland v Hungry Harbor Assoc., LLC***, 84 AD3d 889, 922 NYS2d 550 [2d Dept 2011].

When the driver of an automobile approaches another automobile 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 (*see* Vehicle and Traffic Law § 1129[a]; ***Melendez v McCrowell***, 139 AD3d 1018, 32 NYS3d 604 [2d Dept 2016]; ***Singh v Avis Rent A Car Sys., Inc.***, 119 AD3d 768, 989 NYS2d 302 [2d Dept 2014]; ***Martinez v Martinez***, 93 AD3d 767, 941 NYS2d 189 [2d Dept 2012]). Accordingly, a rear-end collision establishes a prima facie case of negligence on the part of 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 (*see* ***Strickland v Tirino***, 99 AD3d 888, 952 NYS2d 599 [2d Dept 2012]; ***Martinez v Martinez***, *supra*; ***Giangrasso v Callahan***, 87 AD3d 521, 928 NYS2d 68 [2d Dept 2011]). Evidence that a vehicle was struck in the rear and propelled into the vehicle in front of it may provide a sufficient non-negligent explanation (*see* ***Hartfield v Seenarraine***, 138 AD3d 1060, 30 NYS3d 316 [2d Dept 2016]; ***Kuris v El Sol Contr. & Constr. Corp.***, 116 AD3d 675, 983 NYS2d 580 [2d Dept 2014]; ***Strickland v Tirino***, *supra*). Thus, in a chain collision accident, the operator of the middle vehicle may establish prima facie entitlement to judgment as a matter of law by demonstrating that it was struck from behind by the rear vehicle and propelled into the lead vehicle (*see* ***Chuk Hwa Shin v Correale***, 142 AD3d 518, 36 NYS3d 213 [2d Dept 2016]; ***Niosi v Jones***, 133 AD3d 578, 19 NYS3d 550 [2d Dept 2015]; ***Kuris v El Sol Contr. & Constr. Corp.***, *supra*).

Here, the Varela-Baez and Garcia defendants' submissions establish, prima facie, that both plaintiff and defendants Varela-Beaz and Garcia were not at fault for the happening of the accident, and that defendant Linda Jean Dalland's negligence was the sole proximate cause of the accident (*see* ***Estate of Cook v Gomez***, *supra*; ***Boulos v Lerner-Harrington***, *supra*; ***Jones v Vialva-Duke***, *supra*). The affidavit of Marc Andrew Garcia demonstrates that his vehicle was struck from behind by the Dalland vehicle and propelled into plaintiff's vehicle, providing a non-negligent explanation for the collision between the Varela-Beaz and Garcia defendants' vehicle and plaintiff's vehicle (*see* ***Chuk Hwa Shin v Correale***, *supra*; ***Hartfield v Seenarraine***, *supra*; ***Strickland v Tirino***, *supra*). Marc Garcia states that "I came to a complete stop when the car in front of me stopped... I was stopped seven to ten feet behind the vehicle ahead of me for approximately five seconds when I was suddenly struck from behind by another vehicle."

Here, the Varela-Beaz and Garcia defendants established a prima facie entitlement to judgment as a matter of law. The Dalland defendant and plaintiff were then required to proffer evidence in admissible form to show facts sufficient to require a trial of any issue of fact. The Dalland defendant submits an affirmation of her attorney alleging that discovery has not been completed and therefore the motions should be denied. The affirmation from an attorney having no personal knowledge of the facts is without evidentiary value and, thus, is insufficient to raise a triable issue of fact (*see* ***Zuckerman v City of New York***, *supra*). The Dalland defendant failed to rebut the prima facie showing and did not submit an affidavit in opposition from defendant, Linda Jean Dalland, or a witness with personal knowledge of the events giving rise to the cause of action or defense. Furthermore, in view of the fact that defendant, Linda Jean Dalland, had personal knowledge of the relevant facts underlying the accident, the defendant's purported need to conduct discovery does not warrant denial of the motions (*see* ***Emil Norsic & Son, Inc. v L.P. Transp., Inc.,*** 30 AD3d 368, 815 NYS2d 736 [2d Dept 2006]).

In addition, as plaintiff submits no papers in opposition to the Varela-Beaz and Garcia defendants' motion, she too fails to raise any triable issues of fact (*see see* ***Alvarez v Prospect Hosp.***, *supra*; ***Zuckerman v City of New York***, *supra*). As the opposing parties fail to submit admissible evidence that the Varela-Beaz and Garcia defendants were contributorily negligent, they fail to rebut the Varela-Beaz and Garcia defendants' prima facie showing that defendant Linda Jean Dalland's negligence was the sole proximate cause of the accident (*see* ***Estate of Cook v Gomez***, *supra*; ***Boulos v Lerner-Harrington***, *supra*; ***Jones v Vialva-Duke***, *supra*).

In light of the foregoing, the Varela-Beaz and Garcia defendants' cross motion for summary judgment dismissing the complaint against them and any cross claims by defendant Dalland is granted.

The plaintiff's motion for summary judgment on the issue of liability against defendant Dalland and to strike her affirmative defenses of comparative negligence and culpable conduct are similarly granted; and it is further

ORDERED that the attorneys for the parties shall proceed to discovery on the issue of damages; and it is further

ORDERED that counsel for plaintiff shall serve a copy of this order upon opposing counsel and upon the Calendar Clerk of this court within twenty (20) days from the date of this order; and it is further

ORDERED that upon the completion of discovery and the filing of a Note of Issue, this action shall proceed to trial on the issue of damages; and it is further

ORDERED that a compliance conference is presently scheduled for May 2, 2019; and it is further

ORDERED, that all unrepresented parties and attorneys shall appear on **May 2, 2019 at 9:30 a.m.** in Courtroom A361 of the Hon. Alan D. Oshrin Supreme Court Building, 1 Court Street, Riverhead, New York, as part of the above-referenced action. Attorneys appearing must have knowledge of the case and be authorized to discuss details regarding this action. A failure to appear may result in the matter being dismissed or a default being granted.

The foregoing constitutes the decision and Order of this Court.

Dated: March 13, 2019

HON. JOSEPH A. SANTORELLI
J.S.C.