

Serafin v Morocho

2019 NY Slip Op 34580(U)

June 12, 2019

Supreme Court, Westchester County

Docket Number: Index No. 53387/2017

Judge: Sam D. Walker

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This opinion is uncorrected and not selected for official publication.

To commence the statutory time period for appeals as of right (CPLR 5513 [a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
WESTCHESTER COUNTY
P R E S E N T: HON. SAM D. WALKER, J.S.C.

-----X
SERGIO SERAFIN,
Plaintiffs,

DECISION & ORDER
Index No.53387/2017
Seq. 2

-against-

SEGUNDO MOROCHO, OUR TERMS FABRICATORS,
INC., ROBIN M. CASERTA and VICTORIA J.
CASERTA ,

Defendants.
-----X

The following papers were read on a motion for summary judgment seeking dismissal of the action:

Notice of Motion/Affirmation/Exhibits A-J	1-12
Affirmation in Opposition	13
Affirmation in Opposition/Exhibit 1	14-15
Reply Affirmation	16

Upon the foregoing papers it is ordered that the motion is GRANTED.

FACTUAL AND PROCEDURAL BACKGROUND

The plaintiff, Sergio Serafin ("Serafin"), commenced this action to recover damages for injuries allegedly sustained in a motor vehicle accident which occurred on October 18, 2016.

The defendants, Segundo Morocho ("Morocho") and Our Terms Fabricators, Inc. ("OTF") now file the instant motion seeking dismissal of the complaint against them,

arguing that the accident occurred because the defendant, Victoria Caserta ("Caserta") struck Monrocho's vehicle in the rear, pushing his vehicle into the plaintiffs' vehicle.

In support of the motion the Monrocho and OTF rely upon party deposition transcripts, an attorney's affirmation, and copies of the pleadings. Caserta and Serafin oppose the motion, arguing that there are triable issues of fact requiring denial of the motion.

DISCUSSION

A party on a motion for summary judgment must assemble affirmative proof to establish his entitlement to judgment as a matter of law, (see *Zuckerman v City of N.Y.*, 49 NY2d 557 [1980]). "[T]he 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 demonstrate the absence of any material issues of fact" (see *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). Only when such a showing has been made must the opposing party set forth evidentiary proof establishing the existence of a material issue of fact, *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]).

New York Vehicle and Traffic Law § 1129 states in pertinent part that:

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 and the condition of the highway. NY VTL § 1129 (a)

A rear-end collision creates a presumption that the operator of the second vehicle was negligent, thus entitling the injured occupants of the front vehicle to summary judgment on liability unless the driver of the second vehicle can proffer a non-

negligent explanation for the collision, (*see Agramonte v City of New York*, 288 AD2d 75, 76 [2001]); *Johnson v Phillips*, 261 AD2d 269, 271 [1999]; *Danza v Longieliere*, 256 AD2d 434, 435 [1998], lv dismissed 93 NY2d 957 [1999]). "In chain collision accidents, the operator of the middle vehicle may establish prima facie entitlement to judgment as a matter of law by demonstrating that the middle vehicle was struck from behind by the rear vehicle and propelled into the lead vehicle (*see Kuris v El Sol Contr. & Constr. Corp.*, 116 AD3d 675 [2d Dept 2014]; *see also Niosi v Jones*, 133 AD3d 578 [2d Dept 2015]).

The deposition testimony submitted by Morocho establishes that he was able to safely bring his vehicle to a stop behind Serafin's vehicle before being struck in the rear by Caserta's vehicle and entitles him to summary judgment as a matter of law, thereby shifting the burden to the opposition to demonstrate the existence of a factual issue requiring a trial.

In opposition, the plaintiff argues that it is suspect that there is no mention of Caserta's vehicle in the police report as being involved in the accident with Serafin's vehicle. The plaintiff also argues that Serafin testified to seeing Caserta's vehicle , but stated that he did not know if it was involved in the accident and Caserta did not acknowledge fault for the accident and further stated that the two cars in front of her were stopped before the impact and as a result of the impact she did not see the vehicle in front of Morocho's vehicle move in any direction. The plaintiff contends that there is an issue of fact as to if Morocho's vehicle was struck by Caserta and then propelled into Serafin's vehicle or if Morocho's vehicle struck Serafin's vehicle first, was stopped and

then struck by Caserta's vehicle. The Caserta defendants also oppose summary judgment, arguing that it is a drastic remedy and should not be granted where there is any doubt as to the existence of a triable issue. whether his vehicle was too close to the plaintiffs' vehicle.

Upon review of the testimony, the Court finds that the issues raised in opposition to the motion, do no create any issues of fact, since the deposition testimony proffered establishes that Morocho's vehicle was stopped when his vehicle was struck in the rear by Caserta's vehicle and pushed into the plaintiff's vehicle. The plaintiff and the Casertas have failed to rebut Morocho's prima facie showing of entitlement to judgment as a matter of law. Therefore, Morocho is entitled to summary judgment.

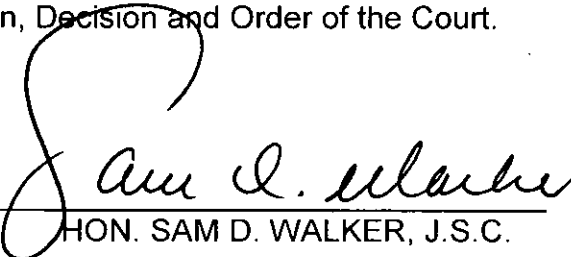
Accordingly, it is

ORDERED that Segundo Morocho's motion for summary judgment, is granted and the complaint is dismissed as against him.

The remaining parties are directed to appear before the Settlement Conference Part in Courtroom 1600 on July 16, 2019 at 9:15 a.m.

The foregoing constitutes the Opinion, Decision and Order of the Court.

Dated: White Plains, New York
June 12, 2019



HON. SAM D. WALKER, J.S.C.