

Okagbue v Chaparro
2019 NY Slip Op 34616(U)
January 8, 2019
Supreme Court, Suffolk County
Docket Number: Index No. 17-610429
Judge: Denise F. Molia
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NYSCEF DOC. NO. 29

PUBLISH

RECEIVED NYSCEF: 01/11/2019

SHORT FORM ORDER

INDEX No. 17-610429

CAL. No. 18-006747MV

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 39 - SUFFOLK COUNTY

PRESENT:

Hon. DENISE F. MOLIA
Acting Justice Supreme Court

MOTION DATE 7-6-18
ADJ. DATE 7-6-18
Mot. Seq. # 001 - MG; CASEDISP

-----X
ROWLAND OKAGBUE,

Plaintiff,

- against -

RICHARD CHAPARRO and ZAIDA VIANA,

Defendants.
-----X

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Upon the following papers read on this motion for summary judgment ; Notice of Motion and supporting papers by the defendants dated May 18, 2018 ; Answering Affidavits and supporting papers by the plaintiff dated June 25, 2018 ; Replying Affidavits and supporting papers by the defendants dated July 2, 2018 ; ~~(and after hearing counsel in support and opposed to the motion)~~ it is,

ORDERED that the motion by defendants Richard Chaparro and Zaida Viana for summary judgment dismissing the complaint against them is granted.

This action was commenced by plaintiff Rowland Okagbue to recover damages for injuries he allegedly sustained on September 17, 2016, when an unknown motor vehicle collided with a motor vehicle owned by defendant Zaida Viana and operated by defendant Richard Chaparro which then struck plaintiff's vehicle.

Richard Chaparro and Viana Zaida now move for summary judgment in their favor, arguing that their actions were not a proximate cause of plaintiff's alleged injuries, and that they are absolved from liability pursuant to the emergency doctrine. In support of their motion, defendants submit copies of the pleadings, transcripts of the parties' deposition testimony, an affidavit of nonparty David Santiago, and an uncertified copy of an MV-104A police accident report. In opposition, plaintiff submits copies of the pleadings, transcripts of the parties' deposition testimony, and an uncertified copy of an MV-104A police accident report. The Court notes that it did not consider such accident report as it is uncertified (*see Ganchrow v Kremer*, 157 AD3d 771, 69 NYS3d 352 [2d Dept 2018]). Even assuming, arguendo, the report had been certified, the portion entitled "Accident Description/Officer's notes" is inadmissible

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hearsay (see *Shehab v Powers*, 150 AD3d 918, 54 NYS3d 104 [2d Dept 2017]; *Wynn v Motor Veh. Acc. Indem. Corp.*, 137 AD3d 779, 26 NYS3d 558 [2d Dept 2016]); *Memenza v Cole*, 131 AD3d 1020, 16 NYS3d 287 [2d Dept 2015]).

Plaintiff testified that at approximately 11:30 p.m. on the date in question he was operating his motor vehicle on Suffolk Avenue, “just past” Fulton Street, heading towards Fifth Avenue, in Brentwood, New York. He indicated that Suffolk Avenue is a two-way street with one lane in each direction, separated by painted lines. Plaintiff stated that the weather was “perfect,” the street was level, and the traffic was “[v]ery light.” He testified that there were no vehicles in front of him or behind him, but that there were vehicles approaching him on the other side of Suffolk Avenue. Plaintiff indicated that immediately prior to his accident, he had stopped at the intersection of Suffolk Avenue and Fulton Street, then began moving forward at approximately 25 miles per hour. He stated that he traveled on Suffolk Avenue for “about a block” when he saw headlights “in front of [him],” then “bang, that was it.” Upon questioning, plaintiff explained that he was looking “[s]traight ahead,” but saw the approaching headlights for “[n]ot even a second” before impact. He testified that the front of his vehicle was severely damaged, and that he “passed out” when his car’s airbags deployed. Plaintiff indicated that he did not awaken until he was being extricated from his vehicle by two men, at which time he observed that his vehicle was stopped “across the street” in the opposite lane of traffic. Shown a purported copy of the police accident report, plaintiff testified that he became aware, later, that someone involved in the accident left the scene. He stated that he does not know which of the four vehicles supposedly involved in the accident left the scene, because he does not know how the accident occurred and is relying solely upon police accounts.

Richard Chaparro testified that he was operating his motor vehicle eastbound on Suffolk Avenue and that his cousin, David Santiago, was a passenger therein. He stated that his vehicle was involved in two separate impacts on the date in question. Mr. Chaparro indicated that his vehicle was first struck in the rear by an unknown vehicle, which then caused the “driver’s side corner” of his vehicle to then impact the “driver corner front” of the vehicle in the oncoming lane. He further testified that there were a total of four vehicles involved in the accident: the unknown vehicle that struck him in the rear, his own, the vehicle that he hit head-on, and a parked car that was struck by the unknown vehicle. Upon questioning, Mr. Chaparro stated that he believes the unknown vehicle struck the parked car at the same time it struck his vehicle, but did not see that occur. Asked to describe status of the unknown vehicle subsequent to the accident, he testified that it “just kept going.” Mr. Chaparro stated that he did not try to avoid colliding with plaintiff’s vehicle because the accident “just happened so fast,” and that the collision with the rear of his vehicle caused him to lose control of his vehicle.

In his affidavit, nonparty David Santiago states that at the time in question he was a passenger in Richard Chaparro’s vehicle. He indicates they were traveling eastbound on Suffolk Avenue at “about 25-30” miles per hour when a vehicle “came speeding from behind [them].” He states that the vehicle “tried to squeeze in between our vehicle and another parked vehicle,” but that it “ended up side swipping (sic) us through the whole right side of the vehicle, causing us to lose control and striking (sic) a vehicle between the drivers (sic) side and rear left door.” Mr. Santiago states that the vehicle that struck Mr. Chaparro’s vehicle in the rear “did not stop and left the scene.”

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A party moving for summary judgment “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” (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324, 508 NYS2d 923 [1986]). Failure to make such showing requires denial of the motion, regardless of the sufficiency of the opposing papers (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853, 487 NYS2d 316 [1985]). If the moving party produces the requisite evidence, the burden then shifts to the nonmoving party to establish the existence of material issues of fact which require a trial of the action (*see Vega v Restani Constr. Corp.*, 18 NY3d 499, 942 NYS2d 13 [2012]; *Zuckerman v City of New York*, 49 NY2d 557, 427 NYS2d 595 [1980]). Mere conclusions or unsubstantiated allegations are insufficient to raise a triable issue (*see O’Brien v Port Auth. of N.Y. & N.J.*, 29 NY3d 27, 52 NYS3d 68 [2017]). In deciding the motion, the Court must view all evidence in the light most favorable to the nonmoving party (*see Ortiz v Varsity Holdings, LLC*, 18 NY3d 335, 339, 937 NYS2d 157 [2011]).

“A rear-end collision with a stopped or stopping vehicle establishes a prima facie case of negligence on the part of the operator of the rear vehicle, requiring that operator to come forward with evidence of a nonnegligent explanation for the collision in order to rebut the inference of negligence” (*Cortese v Pobejimov*, 136 AD3d 635, 636, 24 NYS3d 405, 406 [2d Dept 2016]; *see Tutrani v County of Suffolk*, 10 NY3d 906, 861 NYS2d 610 [2008]). It is well settled that when a driver of a motor vehicle approaches another automobile from the rear, he or she is bound to maintain a safe rate of speed and has the duty to keep control over his or her vehicle, and to exercise reasonable care to avoid colliding with the other vehicle (*Carhuayano v J & R Hacking*, 28 AD3d 413, 813 NYS2d 162 [2d Dept 2006]; *Gaeta v Carter*, 6 AD3d 576, 775 NYS2d 86 [2d Dept 2004]; *see also* Vehicle and Traffic Law § 1129 [a]). Courts have long held that in instances of so-called “chain collisions,” the “middle” vehicle “may establish prima facie entitlement to judgment as a matter of law by demonstrating that the middle vehicle was properly stopped behind the lead vehicle when it was struck from behind by the rear vehicle and propelled into the lead vehicle” (*Chuk Hwa Shin v Correale*, 142 AD3d 518, 519, 36 NYS3d 213 [2d Dept 2016]).

The “emergency doctrine” holds that “those faced with a sudden and unexpected circumstance, not of their own making, that leaves them with little or no time for reflection or reasonably causes them to be so disturbed that they are compelled to make a quick decision without weighing alternative courses of conduct, may not be negligent if their actions are reasonable and prudent in the context of the emergency” (*Bello v Tr. Auth.*, 12 AD3d 58, 60, 783 NYS2d 648 [2d Dept 2004]). “Under appropriate circumstances, the existence of an emergency, as well as the reasonableness of the actor’s response to it, may be determined as a matter of law” (*Ming v Grossman*, 133 AD3d 742, 742, 19 NYS3d 334 [2d Dept 2015]).

Here, defendants have established a prima facie case of entitlement to summary judgment in their favor (*see generally Alvarez v Prospect Hosp.*, *supra*). Through the admissible evidence adduced, defendants demonstrated, prima facie, that Mr. Chaparro was operating his vehicle in the usual manner when it was struck from behind without warning, sending his vehicle into oncoming traffic and striking plaintiff’s vehicle, before he had any time to react (*see Wade v Knight Transp., Inc.*, 151 AD3d 1107, 58 NYS3d 458 [2d Dept 2017]). Thus, the burden shifted to plaintiff to raise a triable issue of fact (*see generally Vega v Restani Constr. Corp.*, *supra*).

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Plaintiff fails to raise a triable issue. In opposition to defendants' motion, plaintiff argues defendant driver's actions were unreasonable because he "did not take any measures to avoid either the collision with the vehicle that struck him in the rear or plaintiff's vehicle that he struck head on [sic]." Plaintiff's argument is speculative absent any evidence contradicting defendant driver's testimony that he had insufficient time to take any such measures (see *Jones v New York City Tr. Auth.*, 162 AD3d 476, 78 NYS3d 347 [1st Dept 2018]). Plaintiff submits no evidence setting forth an alternate theory of how the accident occurred or how defendant driver could have avoided a collision (see *Ming v Grossman, supra*; cf. *Welch v Suffolk Coach, Inc.*, 162 AD3d 1097, 80 NYS3d 114 [2d Dept 2018]).

Accordingly, defendants' motion for summary judgment dismissing the complaint against them is granted.

Dated: JAN. 8, 2019


A.J.S.C.

FINAL DISPOSITION NON-FINAL DISPOSITION