

Carbuccia v Orellana
2019 NY Slip Op 34736(U)
September 25, 2019
Supreme Court, Nassau County
Docket Number: Index No. 609751/2016
Judge: Leonard D. Steinman
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

0

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

-----X
ROBERT CARBUCCIA,

IAS Part 15

**Action No. 1
Index No. 609751/2016**

Plaintiff,

-against-

GERSON ORELLANA,

Defendant.

-----X
HENRY VILLEDA,

**Action No. 2
Index No. 603200/2018**

Plaintiff,

-against-

GERSON ORELLANA,

Defendant.

-----X
SYLVIA VALERIE STEELE,

**Action No. 3
Index No. 616798/2018**

DECISION AND ORDER

Plaintiff,

Mot. Seq. No. 001

-against-

MD

GERSON ORELLANA AND ROBERT CARBUCCIA,

Defendants.

-----X

LEONARD D. STEINMAN, J.

The following papers, in addition to any memoranda of law, were reviewed in preparing this Decision and Order:

Carbuccia’s Notice of Motion, Affirmation, Affidavit & Exhibits.....	1
Steele’s Affirmation in Opposition & Exhibits	2
Orellana’s Affirmation in Opposition.....	3
Carbuccia’s Reply Affirmation.....	4

These three actions, joined for purposes of discovery and trial, arise from a three-car accident that occurred on September 18, 2016 on the Nassau Expressway near the intersection with South Conduit Avenue in Queens, New York. Robert Carbuccia (Vehicle 2) alleges that Orellana (Vehicle 1) struck his vehicle from behind. Sylvia Valerie Steele was a passenger in the front-most vehicle (Vehicle 3). Carbuccia now moves for an order granting summary judgment on the issue of liability, pursuant to CPLR 3212, and dismissing Steele’s complaint against him and all cross-claims on the grounds of collateral estoppel and res judicata pursuant to CPLR 3211(a)(5).

Steele testified at her deposition that her vehicle was stopped in traffic when the car behind her (Carbuccia’s vehicle -Vehicle 2) struck her vehicle in the rear. Then Orellana’s vehicle (Vehicle 1) struck the rear of Carbuccia’s vehicle. This caused Steele’s vehicle to be struck a second time and pushed into a preceding car. Steele testified that the force of the first impact was more intense than the second impact.

Steele’s testimony is substantiated by Paul Steele (non-party), who was driving Vehicle 3 at the time of the accident. Paul Steele avers that the rear of his vehicle was struck twice by Carbuccia’s vehicle.

Carbuccia testified that his vehicle was struck in the rear by Orellana’s vehicle and that he then lost consciousness for approximately 15 minutes.

It is the movant who has the burden to establish an entitlement to summary judgment as a matter of law. *Ferrante v. American Lung Assn.*, 90 N.Y.2d 623 (1997). “CPLR 3212(b) requires the proponent of a motion for summary judgment to demonstrate the absence of genuine issues of material facts on every relevant issue raised by the pleadings, including any affirmative defenses.” *Stone v. Continental Ins. Co.*, 234 A.D.2d 282, 284 (2d Dept. 1996). Where the movant fails to meet its initial burden, the motion for summary judgment should be denied. *U.S. Bank N.A. v. Weinman*, 123 A.D.3d 1108 (2d Dept. 2014). The drastic remedy of summary judgment should be granted only if there are no material issues of fact. *Andre v. Pomeroy*, 35 N.Y.2d 361, 364 (1974).

“A driver of a vehicle approaching another vehicle from the rear is required to maintain a reasonably safe distance and rate of speed under the prevailing conditions to avoid colliding with the other vehicle.” *Scheker v. Brown*, 85 A.D.3d 1007 (2d Dept. 2011). “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.” *Gleason v. Villegas*, 81 A.D.3d 889 (2d Dept. 2011).

Here, an issue of fact clearly remains as to whether Carbuccia’s vehicle had already struck Steele’s vehicle prior to being struck by Orellana’s vehicle. Carbuccia’s contention that he was first struck by Orellana and pushed into Steele’s vehicle is an issue for the fact-finder to resolve. *Algarin v. Reich*, 291 A.D.2d 308 (1st Dept. 2002). The conflicting testimony of the parties precludes summary judgment in Carbuccia’s favor on the issue of liability in Action No. 3.

This court rejects Carbuccia’s contention that he is entitled to summary judgment under the principles of *res judicata* and/or collateral estoppel based on this court’s prior order, dated September 17, 2018, in Action No. 1, in which Carbuccia is a plaintiff. In that decision, this court examined liability with respect to the impact between Orellana and

Carbuccia, only, and did not have before it any issues to resolve with respect to the Steele Vehicle. Moreover, because Steele is not a party to that action, she did not have a full and fair opportunity to litigate the issue of Carbuccia's liability at the time of the prior decision. *Continental Cas. Co. v. Rapid-American Corp.*, 80 N.Y.2d 640 (1993).

For the foregoing reasons, Carbuccia's application for summary judgment, pursuant to CPLR §3212, on the issue of liability in Action No. 3 is denied.

Any relief not specifically addressed herein is denied.

This constitutes the Decision and Order of this court.

Dated: September 25, 2019
Mineola, New York

ENTER:


LEONARD D. STEINMAN, J.S.C.

ENTERED

SEP 30 2019

NASSAU COUNTY
COUNTY CLERK'S OFFICE