

Parker v Johns

2019 NY Slip Op 34759(U)

July 22, 2019

Supreme Court, Nassau County

Docket Number: Index No. 607679/16

Judge: Jeffrey S. Brown

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SHORT FORM ORDER

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

**P R E S E N T : HON. JEFFREY S. BROWN
JUSTICE**

-----X
CLIVE A. PARKER and CLOVER GHANY,

Plaintiff(s),

-against-

**JOSEPH JOHNS, LEE C. JOHNS, RACHEL K. WARREN
and RICHARD J. WARREN,**

Defendant(s).
-----X

TRIAL/IAS PART 11

**INDEX # 607679/16
Motion Seq. 3
Motion Date 5.30.19
Submit Date 6.27.19**

The following papers were read on this motion:	Documents Numbered
Notice of Motion, Affidavits (Affirmations), Exhibits Annexed.....	42
Answering Affidavit	54, 56
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Defendants Joseph Johns and Lee C. Johns move pursuant to CPLR 3212 for summary judgment dismissing the complaint as against them.

Before this court is a personal injury action involving a four-car accident. Leave was given to the moving defendants by an order of this court (Brown, J. May 1, 2017) to renew their application for summary judgment upon the completion of discovery.

In support of this motion, the moving defendants submit three deposition transcripts: plaintiff Clive A. Parker, defendant Rachel Warren¹ and defendant Joseph Johns.

¹ Plaintiff objects to movants' use of Ms. Warrens's unsigned deposition in support of this motion in the absence of an appropriate foundation under CPLR 3116 (a). However, Ms. Warren's own counsel relies on her deposition transcript, thereby tacitly adopting her testimony. In addition, for the reasons set forth herein, her testimony neither supports nor defeats this application.

Plaintiff Clive A. Parker (car #1) testified that on February 13, 2015, he was traveling southbound in the right lane of the Cross Island Parkway. From the time he entered the Cross Island Parkway until the time of the accident he did not move his automobile out of the right lane. His highest rate of speed was 50 miles per hour. Traffic was not that busy, rather it was flowing. His vehicle was moving when it was struck in the rear by a BMW automobile. There was only one heavy impact.

Defendant Joseph Johns (car #2) testified that at the time of the accident his vehicle was stopped. He was on the off ramp of the Cross Island Parkway for about five to ten seconds. There were other vehicles stopped in front of his vehicle. He was struck in the rear by another motor vehicle. There was at least one impact to the rear of his vehicle. The impact caused his vehicle to strike the vehicle in front of his vehicle.

Defendant Rachel K. Warren (car #3) testified that she was traveling in the right lane of the Cross Island Parkway approaching the exit for the Long Island Expressway. She was traveling at the speed of traffic. Defendant testified that she was on her brake and the next thing that happened was that her air bags deployed. She was trying to come to a full stop but did not believe that the vehicle ahead of hers came to stop prior to the accident. Then she felt an impact with the automobile in front of her vehicle. She testified that when she first saw the vehicle in front of her vehicle, that vehicle significantly slowed down as compared to the rest of the traffic on the road. There was also a second impact when the vehicle behind her struck her vehicle. She did not know how the impact occurred or what event came first: her car striking the car in front of her or the car in front of her first striking the first car.

It is well established that ‘the 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.’ (*Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324 [1986]; see also *William J. Jenack Estate Appraisers & Auctioneers, Inc. v. Rabizadeh*, 22 N.Y.3d 470, 475-476 [2013]; CPLR 3212[b]). Once the movant makes the proper showing, ‘the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action’ (*Alvarez*, 68 N.Y.2d at 324). The ‘facts must be viewed in the light most favorable to the non-moving party’ (*Vega v. Restani Constr. Corp.*, 18 N.Y.3d 499, 503 [2012] [internal quotation marks omitted]). However, bald, conclusory assertions or speculation and ‘[a] shadowy semblance of an issue’ are insufficient to defeat summary judgment (*S.J. Capelin Assoc. v. Globe Mfg. Corp.*, 34 N.Y.2d 338, 341 [1974]), as are merely conclusory claims (*Putrino v. Buffalo Athletic Club*, 82 N.Y.2d 779, 781 [1993]).”

(*Stonehill Capital Management, LLC v. Bank of the West*, 28 N.Y.3d 439 [2016]; see also *Fairlane Financial Corp. v. Longspaugh*, 144 A.D.3d 858 [2d Dept 2016]; *Phillip v. D&D Carting Co., Inc.*, 136 A.D.3d 18 [2d Dept 2015]).

It is also settled that “[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.” (*Ortiz v. Hub Truck Rental Corp.*, 82 AD3d 725, 726 [2d Dept 2011], quoting *Nsiah–Ababio v. Hunter*, 78 AD3d 672, 672 [2d Dept 2010]). Thus, “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 nonnegligent explanation for the collision.” (*Ortiz v. Hub Truck Rental Corp.*, 82 AD3d at 726; see also *Fajardo v City of New York*, 95 AD3d 820 [2d Dept 2012]; *Romero v. Greve*, 100 AD3d 617, 618–19 [2d Dept 2012]).

In this case, the operator of the Johns vehicle (car #2) established a prima facie entitlement to judgment as a matter of law by tendering evidence in admissible form demonstrating that his vehicle was stopped or stopping in traffic when it was struck from behind by the following vehicle, propelling him forward into the plaintiff’s vehicle (car #1). “In a multi-vehicle, chain reaction accident, when the operator of a vehicle that was propelled into another vehicle by a following vehicle presents evidence that he or she was able to safely bring his or her vehicle to a stop behind the lead vehicle before being struck in the rear by a following vehicle, that operator has established his or her prima facie entitlement to judgment as a matter of law.” (*Niosi v. Jones*, 133 AD3d 578, 579 [2d Dept 2015]; see also *Williams v. Sala*, 152 AD3d 729, 729 [2d Dept 2017] [“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.”]; *Chuk Hwa Shin v. Correale*, 142 AD3d 518 [2d Dept 2016]; *Romero*, 100 AD3d at 618-619).

Neither the plaintiff nor the co-defendant has raised an issue of fact that would preclude summary judgment. In particular, Ms. Warren did not recall the sequence of the material events and regardless of whether plaintiff’s vehicle was moving or stopped prior to the accident, no party countered movant’s testimony that his vehicle was struck in the rear and propelled into plaintiff’s vehicle.

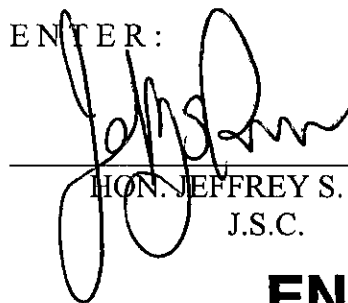
For these reasons, it is hereby

ORDERED, that the motion is **granted**, and the action and any cross-claims submitted against defendants Joseph Johns and Lee C. Johns are dismissed.

This constitutes the decision and order of this Court. All applications not specifically addressed herein are denied.

Dated: Mineola, New York
July 22, 2019

ENTER:



HON. JEFFREY S. BROWN
J.S.C.

ENTERED

'JUL 23 2019

**NASSAU COUNTY
COUNTY CLERK'S OFFICE**

Attorneys for Plaintiffs
Dell & Dean, PLLC
1225 Franklin Avenue, Ste. 450
Garden City, NY 11530
516-880-9700
5168809707@fax.nycourts.gov

Attorneys for Defendants Johns
Martyn Toher Martyn & Rossi, Esqs.
330 Old Country Road, Ste. 211
Mineola, NY 11501
516-739-0000
5167390329@fax.nycourts.gov

Attorneys for Defendants Warren
Perez & Cariello, Esqs.
333 Earle Ovington Boulevard
Uniondale NY 11553-3644
516-745-8310
5167458259@fax.nycourts.gov