

Wilk v Lin Yingsheng

2019 NY Slip Op 34942(U)

September 18, 2019

Supreme Court, Kings County

Docket Number: Index No. 502464/18

Judge: Carolyn E. Wade

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At Part 84 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at Civic Center, Brooklyn, New York on the 18th day of September 2019

PRESENT:

HON. CAROLYN E. WADE,

Justice

-----X
HALINA WILK,

Plaintiff,

Index No.
502464/18

-against-

LIN YINGSHENG and RED BOWL SOUTHERN PINES
INC.

Defendants.
-----X

DECISION/ORDER

Seq 2

2019 SEP 25 AM 8:09

KINGS COUNTY CLERK
FILED

Recitation, as required by CPLR §2219(a), of the papers considered in the review of Plaintiff's Motion:

<u>Papers</u>	<u>Numbered</u>
Order to Show Cause/Notice of Motion and Affidavits/Affirmations Annexed.....	1 _____
Cross-Motion and Affidavits/Affirmations.....	_____
Answering Affidavits/Affirmations.....	2 _____
Reply Affidavits/Affirmations.....	_____
Memorandum of Law.....	_____

Upon the foregoing cited papers, and after oral argument, plaintiff HALINA WILK moves for an Order granting her summary judgment on the issue of liability against defendants LIN YINGSHENG and RED BOWL SOUTHERN PINES INC.

The underlying action was commenced by plaintiff HALINA WILK ("Plaintiff") as a result of personal injuries that she allegedly sustained as a passenger in an Uber vehicle driven by Boubocar Barry, and owned by Rigo Limo-Auto Corp. Plaintiff alleges that on December 11, 2017, the car that she occupied was stopped at a red light when it was rear-ended by a vehicle driven by defendant LIN YINGSHENG ("Yingsheng"), and owned by co-defendant RED BOWL SOUTHERN PINES INC. ("Red Bowl") (collectively, "Defendants").

A party moving for summary judgment meets its prima facie showing of entitlement to judgment as a matter of law "by tendering sufficient evidence to eliminate any material issues of fact from the case. (*St. Claire v. Empire Gen. Const. & Painting Corp.*, 33 AD3d 611 [2d Dept 2006]) [citations omitted]. Once the movant makes its prima facie case, the burden shifts to the opposing party "to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action." *Id.* (see *Zuckerman v. City of New York*, 49 NY2d 557 [1980]).

In support of her application, Plaintiff submits, *inter alia*, the following: 1) a certified copy of a police report, which list Yingsheng as the driver of the alleged offending vehicle, and Red Bowl's name in the registration section; 2) a copy of a sales invoice for a 2017 Infiniti, dated November 22, 2016, which identifies Red Bowl and Yua Lin as the buyers of the vehicle; (Exhibit "5" of Plaintiff's Motion); and 3) insurance documents for the 2017 Infiniti, including

an amended declaration, which lists Red Bowl as an insured of Piedmont Insurance and Business Group, for the policy period of June 23, 2016 - June 23, 2017 (Exhibits "3"- "5" of Plaintiff's motion). Thus, Plaintiff argues that liability should be imposed on Red Bowl, as the owner of the offending vehicle. She further asserts that Yingsheng is unable to assert a non-negligent explanation for the accident.

Defendants, in opposition, submit an affidavit from Yingsheng, who concedes that he "tapped" Plaintiff's car when his foot slipped off the brake. Notably, Yingsheng's affidavit is silent regarding his ownership of the subject vehicle. However, the affirmation of Defendants' attorney represents that Red Bowl sold its vehicle to Yingsheng on June 20, 2017- five months before the subject occurrence. To buttress his averment, he submits a copy of Red Bowl and Hua Lin's Certificate of Title. In a section of the document entitled, "First Re-Assignment of Title by Registered Owner," Yingsheng is listed as the buyer; and Hua Lin signed as the seller, on behalf of Red Bowl. A "Motor Vehicle Bill of Sale," was also appended to their submission (Exhibit "A" of Defendants' opposition).

It is well-settled that a rear-end collision with a stopped vehicle "creates a prima facie case of liability with respect to the operator of the rearmost vehicle, thereby requiring that operator to rebut the inference of negligence by providing a non[-]negligent explanation for the collision" (*Chepel v. Meyers*, 306 AD2d 235, 237 [2d Dept 2003]). When the driver of a vehicle approaches another car 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" *Id.* at 236.

In the instant case, defendant Yingsheng concedes that his foot slipped off of the brake, and

that his car rear-ended the vehicle occupied by Plaintiff. Interestingly, Yingsheng's affidavit is silent as to whether he owned the vehicle that he operated. He does not dispute that the car registration that he presented at the scene of the accident had Red Bowl's name. Moreover, Defendants produce a copy of the Certificate of Title, which documents that Red Bowl is the car owner. The "First Re-Assignment of Title by Registered Owner" section of the document lists Yingsheng's name as the buyer; however, his signature and address are missing. The date that the vehicle was allegedly delivered to him, as well as the notary public's seal are also omitted. Moreover, the Bill of Sale for the vehicle lists the make of the car as an "Infinity" rather than an "Infiniti." Consequently, this Court determines that Red Bowl's alleged transfer of the title to Yingsheng is defective.

Accordingly, based upon the above, Plaintiff's Motion for Summary Judgment on the issue of liability against Defendants is **GRANTED**. All remaining contentions are hereby rendered meritless and/or moot.

This constitutes the Decision and Order of the court.



**HON. CAROLYN E. WADE
ACTING SUPREME COURT JUSTICE**

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ACTING SUPREME COURT JUSTICE**

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