Hyatt-Reid v Raimnov

2019 NY Slip Op 34996(U)

October 8, 2019

Supreme Court, Queens County

Docket Number: Index No. 717614/2018

Judge: Robert J. McDonald

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SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK
CIVIL TERM - IAS PART 34 - QUEENS COUNTY
25-10 COURT SQUARE, LONG ISLAND CITY, N.Y. 11101

P R E S E N T : **HON. ROBERT J. MCDONALD**
Justice

- x

AVIANNE A. HYATT-REID,

Plaintiff,

- against -

NODIRJON RAIMNOV, YCL CORP., UBER USA LLC, KEVIN MIN KO, WANYING CHENG, and GREGORY WILSON,

Defendants.

- x

Index No.: 717614/2018

Motion Date: 10/3/19

Motion No.: 16

Motion Seq.: 1

The following electronically filed documents read on this motion by defendant GREGORY WILSON for an Order pursuant to CPLR 3212, granting summary judgment in favor of GREGORY WILSON, dismissing the complaint and all cross-claims against him; and on this cross-motion by plaintiff AVIANNE A. HYATT-REID for an Order pursuant to CPLR 3212, granting plaintiff partial summary judgment on the issue of liability, dismissing the third, fifth, and seventh affirmative defenses alleged by defendants Raimnov and YCL Corp., dismissing the first and second affirmative defenses alleged by defendant Wilson, dismissing the first, fourth, sixth, eight, and ninth affirmative defenses alleged by defendants Ko and Cheng, and limiting all further discovery to the issue of damages:

	Papers Numbered
Notice of Motion-Affirmation-Exhibits.................	EF 14 - 22
Raimnov's Affirmation in Opposition...................	EF 36 - 37
Ko and Cheng's Affirmation in Partial Opp.-Exhibits....	EF 59 - 61
Notice of Cross-Motion-Affirmation-Exhibits...........	EF 25 - 35
Ko and Cheng's Affirmation in Partial Opp.-Exhibits....	EF 56 - 58
Wilson's Amended Aff. in Opposition & Reply...........	EF 62
Plaintiff's Affirmation in Reply......................	EF 41 - 42

This is an action to recover damages for personal injuries allegedly sustained by plaintiff as a result of a four car accident that occurred on April 18, 2018 on the Brooklyn Queens Expressway near the Kosciuszko Bridge.

Plaintiff commenced this action by filing a summons and complaint on October 3, 2018. Defendant Wilson joined issue by service of a verified answer on January 7, 2019. Co-defendants Raimnov and YCL Corp. joined issue by service of a verified answer with cross-claim on January 31, 2019. Co-defendants Ko and Cheng joined issue by service of a verified answer on May 21, 2019. Defendant Wilson now moves for summary judgment on the grounds that his vehicle was the first car in the four-car chain accident that was struck in the rear by co-defendant Ko's vehicle. Plaintiff cross-moves for summary judgment on the issue of liability on the grounds that her vehicle was rear-ended by Raimnov's vehicle, causing her vehicle to be propelled into Ko's vehicle.

In support of the motion, defendant Wilson submits an affidavit dated May 6, 2019. He affirms that he was involved in the subject accident. He was driving his vehicle on the Brooklyn Queens Expressway heading westbound towards Manhattan. Traffic was stop and go. At some point right before the Kosciuszko Bridge, while proceeding very slowly because of stop and go traffic ahead of him, approximately five miles per hour, he felt an impact to the rear of his vehicle. He was in the far left lane at the time of impact. His vehicle was struck in the rear by Ko's vehicle, which had been struck in the rear by plaintiff's vehicle, which had been struck in the rear by Raimnov's vehicle. He did nothing to cause or contribute to the accident.

In support of the cross-motion, plaintiff submits an affidavit dated July 3, 2019. She affirms that she was involved in the subject accident. At the time of the accident, she was driving on the Brooklyn Queens Expressway, heading toward the Kosciuszko Bridge. Traffic became congested in that area, so she reduced her speed to maintain a safe distance between her vehicle and the vehicle in front of her. In the seconds before the accident, she gradually reduced her speed, given the nature of traffic conditions then existing. While gradually slowing, she felt a heavy impact to the rear of her vehicle. The impact caused her vehicle to be propelled forward and strike the vehicle in front of her. After the accident, she learned that she was rear ended by the vehicle operated by Raimnov and owned by YCL Corp. She did not hear or see any warning signs that her vehicle was about to be rear-ended. She could not have done anything to avoid being involved in the collision. She did not contribute to the collision.

In the accident description portion of the Police Accident Report (MV-104AN), the responding officer notes, in relevant part, "VEHICLE 4 (Raimnov) REAR ENDED VEHICLE 3 (plaintiff) CAUSING VEHICLE 3 TO REAR END VEHICLE 2 (Ko), WHICH CAUSED VEHICLE 2 TO REAR END VEHICLE 1 (Wilson)."

Ko and Cheng submit partial opposition to both the motion and cross-motion, contending that the motions should be denied only in the event that their motion for summary judgment, which has not yet been fully submitted, is denied. Although Ko and Cheng point out that plaintiff's cross-motion is procedurally defective, the Court, in its discretion, will consider the cross-motion.

Raimnov opposes the motion on the grounds that it is premature as discovery is incomplete.

The proponent of a summary judgment motion must tender evidentiary proof in admissible form eliminating any material issues of fact from the case. If the proponent succeeds, the burden shifts to the party opposing the motion, who then must show the existence of material issues of fact by producing evidentiary proof in admissible form in support of his or her position (see Zuckerman v City of New York, 49 NY2d 557[1980]).

"When the driver of an automobile approaches another automobile 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" (Macauley v ELRAC, Inc., 6 AD3d 584 [2d Dept. 2003]). It is well established law that a rear-end collision with a stopped or stopping vehicle creates a prima facie case of negligence on the part of the driver of the rearmost vehicle, requiring the operator of that vehicle to proffer an adequate, non-negligent explanation for the accident (see Klopchin v Masri, 45 AD3d 737 [2d Dept. 2007]; Hakakian v McCabe, 38 AD3d 493 2d Dept. 2007]; Reed v New York City Transit Auth., 299 AD2 330 [2d Dept. 2002]; Velazquez v Denton Limo, Inc., 7 AD3d787 [2d Dept. 2004].

Here, both Wilson and plaintiff submitted sufficient evidence to demonstrate that their vehicles were rear ended in stop and go traffic at the time of the accident. Thus, movants satisfied their prima facie burden of establishing their entitlement to judgment as a matter of law on the issue of liability by demonstrating that their vehicle was stopped when it was struck in the rear (see Volpe v Limoncelli,74 AD3d 795 [2d Dept. 2010]; Vavoulis v Adler, 43 AD3D 1154 [2d Dept. 2007]; Levine v Taylor, 268 AD2d 566 [2d Dept. 2000]).

Having made the requisite prima facie showing of entitlement to summary judgment, the burden then shifted to the non-moving parties to raise a triable issue of fact as to whether movants were also negligent, and if so, whether that negligence contributed to the happening of the accident (see Goemans v County of Suffolk,57 AD3d 478 [2d Dept. 2007]).

It is undisputed that Raimnov's vehicle rear ended plaintiff's vehicle which was propelled into the rear end of Ko's vehicle which rear ended Wilson's vehicle. This Court finds, therefore, that non-movants failed to provide evidence of a non-negligent explanation for the accident sufficient to raise a triable question of fact (see Bernier v Torres, 79 AD3d 776 [2d Dept. 2010]; Lampkin v Chan, 68 AD3d 727 [2d Dept. 2009]; Cavitch v Mateo, 58 AD3d 592 [2d Dept. 2009]; Garner v Chevalier Transp. Corp, 58 AD3d 802 [2d Dept. 2009]; Kimyagarov v Nixon Taxi Corp, 45 AD3d 736 [2d Dept. 2007]; Gomez v Sammy's Transp., Inc., 19 AD3d 544 [2d Dept. 2005]).

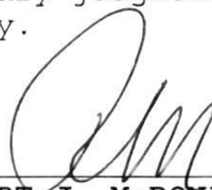
Additionally, Raimnov and YCL Corp.'s counsel's contention that this motion for summary judgment is premature is without merit as counsel failed to offer any evidentiary basis to suggest that discovery may lead to relevant evidence necessary to defend the summary judgment motion. The mere hope and speculation that evidence sufficient to defeat the motion might be uncovered during discovery is an insufficient basis upon which to deny the motion (see CPLR 3212[f]; Medina v Rodriguez, 92 AD3d 850[2d Dept. 2012]; Hanover Ins. Co. v Prakin,81 AD3d 778 [2d Dept. 2011]; Essex Ins. Co. v Michael Cunningham Carpentry, 74 AD3d 733 [2d Dept. 2010]; Peerless Ins. Co. v Micro Fibertek, Inc., 67 AD3d 978 [2d Dept. 2009]; Gross v Marc, 2 AD3d 681 [2d Dept. 2003]). Moreover, defendant Raimnov, who does have relevant personal knowledge of the accident, failed to submit an affidavit in opposition. Raimnov only submits an attorney's affirmation which is insufficient to defeat a summary judgment motion (see Zuckerman, 49 NY2d at 563).

Accordingly, and for the reasons stated above, it is hereby

ORDERED, that the summary judgment motion by defendant GREGORY WILSON is granted; and it is further

ORDERED, that the partial summary judgment motion by plaintiff is granted in its entirety.

Dated: October 8, 2019
Long Island City, N.Y.



ROBERT J. McDONALD
J.S.C.