

R.M. v Jarvis

2020 NY Slip Op 30340(U)

February 6, 2020

Supreme Court, New York County

Docket Number: 154383/2018

Judge: Adam Silvera

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. ADAM SILVERA PART IAS MOTION 22

Justice

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INDEX NO. 154383/2018

R. M., CLAIRE CHICO,

10/17/2019,

Plaintiff,

MOTION DATE 10/25/2019

- v -

MOTION SEQ. NO. 002 003

DAVID JARVIS, ROMULO FERNANDEZ, AKI TRANSIT
INC.,IMRAN BHIMJI

**DECISION + ORDER ON
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 34, 35, 36, 37, 38, 39, 40, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63

were read on this motion to/for JUDGMENT - SUMMARY.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 41, 42, 43, 44, 45, 46, 47, 49, 51, 52

were read on this motion to/for JUDGMENT - SUMMARY.

Before the Court is motion sequence 002 and 003. In motion sequence 002, defendants AKI Transit Inc. and Imran Bhimji move for summary judgment on the issue of liability in favor of said defendants and plaintiffs cross-move for an order granting summary judgment against defendant David Jarvis on the issue of liability. In motion sequence 003, defendant Romulo Fernandez moves for summary judgment on the issue of liability in favor of said defendant.

The case at bar stems from a three car chain collision which occurred on May 25, 2017, at the intersection of York Avenue and 73rd Street in the County, City, and State of New York, when a vehicle operated by defendant David Jarvis struck a vehicle operated by defendant Imran Ali Bhimji in the rear which then was propelled forward and struck a vehicle operated by defendant Romulo Fernandez and transporting plaintiffs R.M. and Claire Chico.

“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 eliminate any material issues of fact from the case” (Winegrad v New York University Medical Center, 64 NY2d 851, 853 [1985]). Once such entitlement has been demonstrated by the moving party, the burden shifts to the party opposing the motion to “demonstrate by admissible evidence the existence of a factual issue requiring a trial of the action or tender an acceptable excuse for his failure ... to do [so]” (Zuckerman v City of New York, 49 NY2d 557, 560 [1980]).

“A rear-end collision with a stopped vehicle, or a vehicle slowing down, establishes a prima facie case of negligence on the part of the operator of the rear-ending vehicle, which may be rebutted if that driver can provide a non-negligent explanation for the accident” (Baez v MM Truck and Body Repair, Inc., 151 AD3d 473, 476 [1st Dep’t 2017]).

Being propelled forward in a chain reaction collision is a non-negligent explanation for a rear-end motor vehicle accident (Arrastia v Sbordone, 225 AD2d 375 [1st Dept 1996] finding that “Inasmuch as there is no dispute that defendant brought her vehicle to a complete stop prior to the accident and was thereafter unexpectedly forced into plaintiff’s car by a third, unrelated vehicle, plaintiff has raised no basis for an inference that defendant was negligent or the proximate cause of plaintiff’s purported injuries in this matter”).

In motion sequence 002, defendants AKI Transit Inc. and Imran Bhimji successfully argue that defendant David Jarvis caused a chain collision when the Jarvis vehicle struck defendant Bhimji’s vehicle which then struck defendant Fernandez’s vehicle. Defendants attach the police report and affidavit of defendant Imran Bhimji in support of their motion (Mot 002, Exh A & D). The police report contains defendant Jarvis’ statement against interest that “vehicle 2 stopped and he tried to stop but hit vehicle 2 causing vehicle 2 to hit vehicle 1 who was

stopped in traffic” (Mot 002, Exh A). Thus, defendants have demonstrated freedom from any liability for the accident at issue. Absent any opposition, defendants’ motion to dismiss the Complaint and any and all Cross-Claims against the defendants in the above action as no basis for liability exists against said defendants is granted. Further, plaintiffs’ cross-motion for an order granting summary judgment against defendant Jarvis is granted.

In motion sequence 003 defendant Romulo Fernandez successfully argues that defendant David Jarvis caused a chain collision when the Jarvis vehicle struck defendant Bhimji’s vehicle which then struck defendant Fernandez’s vehicle. Defendant attaches the police report and affidavit of defendant Fernandez in support of their motion (Mot 003, Exh A & D). The police report contains defendant Jarvis’ statement against interest that “vehicle 2 stopped and he tried to stop but hit vehicle 2 causing vehicle 2 to hit vehicle 1 who was stopped in traffic” (Mot, Exh A). Thus, defendant has demonstrated freedom from any liability for the accident at issue. Absent any opposition, defendant’s motion to dismiss the Complaint and any and all Cross-Claims against the defendant in the above action as no basis for liability exists against said defendant is granted.

Accordingly, it is

ORDERED that defendants AKI Transit Inc. and Imran Bhimji’s motion for summary judgment for an Order to dismiss plaintiffs’ Complaint, the Third-Party Complaint and any and all Cross-Claims against said defendants in the above action as no basis for liability exists against said defendants is granted; and it is further

ORDERED that plaintiffs’ cross-motion for an Order on granting summary judgment in favor of plaintiffs as against defendant Jarvis on the issue of liability is granted; and it is further

ORDERED that defendant Fernandez’s motion for summary judgment for an Order to dismiss the Complaint and any and all Cross-Claims against the defendant in the above action as no basis for liability exists against said defendant is granted; and it is further

ORDERED that the complaint is dismissed in its entirety as against defendants AKI Transit Inc., Imran Bhimji, Romulo Ferndandez with costs and disbursements to said defendants as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of said defendants; and it is further

ORDERED that the action is severed and continued against the remaining defendant David Jarvis; and it is further

ORDERED that the caption be amended to reflect the dismissal and that all future papers filed with the court bear the amended caption; and it is further

ORDERED that counsel for defendants AKI Transit Inc., Imran Bhimji, and Romulo Fernandez serve a copy of this order with notice of entry upon the County Clerk (Room 141B) and the Clerk of the Trial Support Office (Room 158), who are directed to mark the court’s records to reflect the change in the caption herein; and it is further

ORDERED that within 20 days of entry, counsel for defendants AKI Transit Inc., Imran Bhimji, and Romulo Fernandez shall serve a copy of this Decision/Order upon all parties with notice of entry.

This constitutes the Decision/Order of the Court.

2/6/2020
DATE


ADAM SILVERA, J.S.C.

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
<input checked="" type="checkbox"/>	GRANTED			<input type="checkbox"/>	GRANTED IN PART		
	SETTLE ORDER			<input type="checkbox"/>	SUBMIT ORDER		
	INCLUDES TRANSFER/REASSIGN			<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: