

Wells v Guzman

2020 NY Slip Op 30999(U)

April 21, 2020

Supreme Court, New York County

Docket Number: 154962/2019

Judge: Laurence L. Love

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(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.

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

PRESENT: HON. LAURENCE L. LOVE **PART** **IAS MOTION 62**

Justice

-----X

DEREK WELLS,

Plaintiff,

- v -

LUIS GUZMAN, NEW YORK CITY TRANSIT AUTHORITY,
CITY OF NEW YORK

Defendant.

-----X

INDEX NO. 154962/2019

MOTION DATE 03/05/2020

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 6, 7, 8, 9, 10, 11, 12, 13, 21, 22, 23, 24, 25, 26, 27, 28, 29, 31, 32, 34, 35

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

Upon the foregoing documents, plaintiff's motion and defendants New York City Transit Authority and the City of New York's cross-motion for summary judgment are decided as follows:

The instant action arises out of a motor vehicle accident which occurred on November 19, 2018. In support of the motions, plaintiffs submits the affidavit of plaintiff, together with the police accident report, which establish as follows: At approximately 12:20 p.m., plaintiff was the operator of a 2005 Cadillac, stopped at a red light on West 126th Street at its intersection with 7th Avenue in New York County. Plaintiff alleges that while fully stopped, in his lane, for approximately ten seconds, he was struck in the rear by a vehicle operated by defendant, Luis A. Guzman and owned by the municipal defendants. In opposition, on the issue of liability, defendants submit the affidavit of Luis A. Guzman, which establishes as follows: Immediately prior to the accident, defendant's vehicle was stopped behind two vehicles at the red light. When the light turned green, all the vehicles began to move on 126th Street and plaintiff caused the accident by suddenly applying his brakes.

Summary judgment is a drastic remedy and will not be granted if there is any doubt as to the existence of a triable issue. (*Andre v. Pomeroy*, 32 NY2d 361 [1974]; *Kwong On Bank, Ltd. v. Montrose Knitwear Corp.*, 74 AD2d 768 [2d Dept 1980]; *Crowley Milk Co. v. Klein*, 24 AD2d 920 [3d Dept 1965]). Even the color of a triable issue forecloses the remedy (*Newin Corp. v. Hartford Acc & Indem. Co.*, 62 NY2d 916 [1984]). The evidence will be construed in a light most favorable to the one moved against. (*Bennicasa v. Garrubo*, 141 AD2d 636 [2d Dept 1988]; *Weiss v. Gaifield*, 21 AD2d 156 [3d Dept 1964]). The proponent of a motion for summary judgment carries the initial burden of presenting sufficient evidence to demonstrate as a matter of law the absence of a material issue of fact (*Alvarez v. Prospect Hospital*, 68 NY2d 320 [1986]). Once the proponent has met its burden, the opponent must now produce competent evidence in admissible form to establish the existence of a triable issue of fact (see, *Zuckerman v. City of New York*, 49 NY2d 557 [1980]).

While a rear-end collision generally establishes a prima facie case of negligence on the part of the operator of the rear vehicle and imposes a duty on the operator of the rear vehicle to explain how the accident occurred. (See, *Leal v Wolff*, 224 AD2d 392; *Gambino v City of New York*, 205 AD2d 583), here while plaintiff's affidavit provides the bare minimum to establish a prima facie entitlement to summary judgment, defendant driver has submitted an affidavit which establishes a non-negligent explanation for the accident and which refutes plaintiff's description of how said accident happened. As such, plaintiff's motion must be denied.

The municipal defendants seek dismissal of this action pursuant to the Transportation Equity Act, also known as the Graves Amendment. As discussed in *Bravo v. Vargas*, 113 A.D.3d 579, 580 (2d Dept. 2014) "Under the Graves Amendment (49 USC § 30106), the owner of a leased or rented motor vehicle cannot be held liable for personal injuries resulting from the use of such

vehicle if the owner (i) is engaged in the trade or business of renting or leasing motor vehicles, and (ii) engaged in no negligence or criminal wrongdoing (see 49 USC § 30106 [a]; *Ballatore v HUB Truck Rental Corp.*, 83 AD3d 978, 979 [2011]).

In support of its motion, defendants submit the affidavits of Utilda Ramsay, a claims specialist employed by MTA/New York City Transit Authority and Joseph Cappellino, a computer administrator employed by the NYC DOT Fleet Services, which establish the following: The New York City Transit Authority is in the business of providing public transportation and regularly leases busses and vehicles to private carriers. The Transit Authority is the owner of a 2015 Toyota Sedan, New York License Number BA 9841, VIN Number 4T1BF1FK7FU114628. Said Toyota was leased to MV Public Transportation, Inc. who, as lessee, was solely responsible for operating and maintaining the vehicle throughout the term of the lease. The Transit Authority did not operate or perform maintenance or repair on the Sedan, or employ defendant Luis Guzman, at any point prior to plaintiff's accident. Mr. Guzman's affidavit establishes that at the time of the accident, he was employed by Metropolitan Transportation and driving an MV Transportation vehicle. Plaintiff's sole opposition is that the municipal defendants failed to establish entitlement to summary judgment based upon their failure to attach and authenticate the lease in their motion papers. The municipal defendants attempt to remedy this deficiency in their reply papers, however the submitted lease agreement does not mention the lease of the specific Toyota sedan at issue and evidence submitted in reply cannot be considered in support of defendants' cross-motion. As such, defendants have failed to establish a *prima facie* entitlement to summary judgment.

Plaintiff's motion is hereby denied in its entirety and defendants' cross-motion is denied with leave to renew upon proper papers. This constitutes the decision and order of the Court.

4/21/2020

DATE



LAURENCE L. LOVE, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE