

**Saito v Delia**

2020 NY Slip Op 31067(U)

April 27, 2020

Supreme Court, New York County

Docket Number: 155475/18

Judge: Adam Silvera

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ADAM SILVERA PART IAS MOTION 22

Justice

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BRIAN SAITO,

Plaintiff,

- v -

GIOVANNA DELIA, RUPON TALUKDAR, AW CAB CORP.,
and NYIMOI ALING,

Defendants.

-----X

Table with 2 columns: INDEX NO., MOTION DATE, MOTION SEQ. NO. and a large text box containing 'DECISION + ORDER ON MOTION'.

The following e-filed documents, listed by NYSCEF document number (Motion 001) 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 29, 30, 31, 32, 36, 37

were read on this motion to/for DISMISS.

Upon the foregoing documents, it is ordered that defendants Giovanna Delia and Rupon Talukdar's motion for summary judgment to dismiss this action and any and all cross-claims, pursuant to CPLR 3212, is granted. Moving defendants' motion, which contends that plaintiff was a passenger in the vehicle operated by co-defendant Nyimoi Aling and owned by co-defendant AW Cab Corp. when such vehicle struck the rear of the vehicle operated by defendant Talukdar and owned by defendant Delia, has made out a prima facie case, and the burden shifts to the other parties to raise a triable issue of fact. See Winegrad v New York University Medical Center, 64 NY2d 851, 853 (1985). "[A] rear-end collision...establishes a prima facie case of negligence on the part of the driver of the rear vehicle, ...[and] shift[s] the burden to defendant to come forward with an adequate nonnegligent explanation for the accident". Cruz v Lise, 123 AD3d 514 (1st Dep't 2014)(internal quotations omitted).

Here, plaintiff opposes the motion, arguing that moving defendants failed to comply with the Court's Part Rules regarding the format of the moving papers, that the deposition transcripts

are unsigned and thus inadmissible, and alternatively argues that based upon the deposition transcripts, an issue of fact exists to preclude summary judgment. Co-defendants AW Cab Corp. and Nyimoi Aling oppose the motion arguing that an issue of fact exists in that defendant Talukdar stopped short, thus causing the accident. Movants reply.

Preliminarily, the Court notes that co-defendants AW Cab Corp. and Nyimoi Aling's argument that movant stopped short is unavailing. It is well settled that the argument that the "vehicle stopped abruptly in front of [defendant] before [defendant] rear-ended [the vehicle immediately in front] is insufficient to raise an issue of fact as to whether [the front vehicle] was negligently operat[ed]...prior to the collision." *Chame v Kronen*, 150 AD3d 622, 622 (1<sup>st</sup> Dep't 2017). Moreover, "even if [movant's] vehicle did stop short, [co-defendants] failed to provide evidence that he maintained a safe distance between his vehicle and [movant's] vehicle." *Id.* As such, co-defendants AW Cab Corp and Nyimoi Aling have failed to raise an issue of fact.

As to plaintiff's opposition, the Court notes that while the formatting issues raised by plaintiff were previously in the Court's Part Rules, such Part Rules were recently updated by the Court to remove such antiquated and strict formatting rules. Thus, movant's failure to comply with the Court's Part Rules, which are no longer a part of the Part Rules, is insufficient to deny the instant motion. Moreover, it is well settled that New York Courts prefer to resolve a matter on the merits. Thus, all the papers were considered herein and the instant motion is decided on the merits.

With regards to plaintiff's argument that movants failed to submit deposition transcripts in admissible form, as such transcripts are unsigned and there is no proof that they were sent to the parties for review, the Appellate Division, First Department has explicitly held that "unsigned deposition transcripts submitted by defendants in support of their motion were

admissible...[as such transcripts were] certified by the reporter and plaintiff does not challenge its accuracy”. *Franco v Rolling Frito-Lay Sales, Ltd.*, 103 AD3d 543, 543 (1<sup>st</sup> Dep’t 2013). Here, plaintiff does not challenge the accuracy of the deposition transcripts submitted by defendants Delia and Talukdar. Plaintiff, rather, merely objects to the deposition transcripts on the sole basis that they are unsigned and that there is no proof that they were sent to the parties for review. It is undisputed that the deposition transcripts, proffered by movants in support, are certified by the reporter. Additionally, although plaintiff argues that such transcripts are inadmissible, noticeably absent from the opposition is any argument that such transcripts are inaccurate. Moreover, plaintiff’s opposition relies on the unsigned deposition transcripts in an attempt to raise an issue of fact. Thus, plaintiff’s argument regarding the use of the deposition transcripts fail, and the Court finds that such transcripts are admissible and are considered herein.

Lastly, plaintiff argues that an issue of fact exists to preclude summary judgment. Specifically, plaintiff alleges that, based upon the deposition testimony, there is an issue of fact as to whether movants were stopped for 15 seconds prior to being hit in the rear or whether movants stopped suddenly prior to being hit in the rear. As detailed above, plaintiff and co-defendants must demonstrate a nonnegligent explanation for the accident. *See Cruz v Lise, supra*. Here, whether movants’ vehicle was stopped for 15 seconds or stopped suddenly prior to being hit in the rear, is not a genuine issue of fact sufficient to preclude summary judgment. In either scenario, it is undisputed that movants’ vehicle was stopped or stopping when co-defendants’ vehicle hit movants in the rear. The amount of time which elapsed prior to the happening of the rear-end accident does not establish a nonnegligent excuse for the accident. Furthermore, even if movants made a sudden stop, such excuse fails to raise an issue of fact. *See Chame v Kronen, supra*. Thus, co-defendants and plaintiff have failed to raise any triable issues of fact, to provide

a nonnegligent explanation for the accident, and to establish that moving defendants were negligent in the operation of their vehicle. As such, defendants Delia and Talukdar’s motion for summary judgment of dismissal is granted.

Accordingly, it is

ORDERED that the motion for summary judgment of defendants Giovanna Delia and Rupon Talukdar’s is granted and the complaint is dismissed as against them only; and it is further

ORDERED that any and all cross-claims against said defendants by any and all co-defendants are dismissed; and it is further

ORDERED that the said claims against the remaining defendants are severed and the balance of the action shall continue; and it is further

ORDERED that the Clerk of the Court shall enter judgment in favor of defendants Giovanna Delia and Rupon Talukdar dismissing the claims and cross-claims made against them in this action, together with costs and disbursements to be taxed by the Clerk upon submission of an appropriate bill of costs; and it is further

ORDERED that within 45 days of entry, movants shall serve a copy of this decision/order upon all parties with notice of entry.

This constitutes the Decision/Order of the Court.

4/27/2020

DATE

ADAM SILVERA, J.S.C.

CHECK ONE:

CASE DISPOSED  
GRANTED  DENIED  
SETTLE ORDER  
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION  
GRANTED IN PART  
SUBMIT ORDER  
FIDUCIARY APPOINTMENT

OTHER  
REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: