

Usoiani v Dumbo Moving & Storage, Inc.
2020 NY Slip Op 31216(U)
May 6, 2020
Supreme Court, Kings County
Docket Number: 507010/2017
Judge: Devin P. Cohen
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**Supreme Court of the State of New York
County of Kings**

Index Number 507010/2017

Part 91

DECISION/ORDER

PAATA USOIANI AND VITALI KASOEV,

Plaintiff,

against

DUMBO MOVING AND STORAGE, INC., SHALVA
KUNELAURI, RONALD MATOYAN,

Defendants.

Recitation, as required by CPLR §2219 (a), of the papers considered in the review of this Motion

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	1, 2
Order to Show Cause and Affidavits Annexed...	_____
Answering Affidavits.....	2, 3
Replying Affidavits.....	3
Exhibits.....	_____
Other	_____

RONALD MATOYAN,

Plaintiff,

against

DUMBO MOVING AND STORAGE, INC., AND SHALVA
KUNELAURI,

Defendants.

Upon review of the foregoing documents, defendant Ronald Matoyan's motion for summary judgment as to liability (seq #005) and plaintiffs' cross-motion for summary judgment as to liability (seq #006), are decided as follows:

Factual Background

Plaintiffs commenced this action against defendants for injuries they claim to have sustained as a result of a motor vehicle accident that occurred on August 12, 2016. Plaintiff Paata Usoiani testified at his deposition that, on the date of the accident, he was in the front passenger seat of defendant Ronald Matoyan's vehicle. Plaintiff Vitali Kasoev testified at his deposition

that he was a passenger in the back seat of the same vehicle.

Plaintiff Usoiani testified that Mr. Matoyan's vehicle (hereinafter "the car") was parked on Brighton Beach Avenue, between Brighton 5th and Brighton 6th. Specifically, Mr. Usoiani testified that the car was parked in a parking spot parallel to the curb and that the car did not move before the accident occurred. Mr. Usoiani further testified that a truck owned by Dumbo Moving and Storage Inc. (hereinafter "the truck") backed up into the parked car, causing the car to be pushed backwards.

Plaintiff Kasoev also testified to the same essential facts, and added that when the truck backed up it hit the front of the car pushing it backwards. He testified that there was an empty parking spot in front of the car.

Defendant Ronald Matoyan testified at his deposition that, on the day of the accident, his car was parked parallel to the curb, with the sidewalk on his right and a lane for moving traffic on his left. He testified that when the accident occurred the car remained in park. He also testified that he never changed gears out of the parked position before the accident occurred. Defendant Matoyan testified that the back of the truck struck the front of his car, pushing it backwards.

Defendant Shalva Kunelauri testified at his deposition that, at the time of accident, he was working "off the books" for Dumbo Moving and Storage Inc. ("Dumbo"). Mr. Kunelauri testified that he was operating defendant Dumbo's truck on the day of the accident. He testified that he was parking the truck on Brighton Beach Avenue when the accident occurred. He testified that he pulled forward into the parking spot and then backed up into the car. Mr. Kunelauri testified that before backing up, he checked his right and left side mirrors. He testified that he did not have a rearview mirror because the truck was a box truck and the box is behind

the truck cab, blocking any rear view. He also testified that he did not see the car at any time prior to accident nor did he know whether that car was moving or stopped at the time of the accident.

Defendant Matoyan also submits a copy of the police accident report. Statements by a party contained in police accident reports are admissible if the statement qualifies under an exception to the rule against hearsay, such as an admission (*Harrinarain v Sisters of St. Joseph*, 173 AD3d 983, 983 [2d Dept 2019]). The police accident report contains statements from both defendant Matoyan and defendant Kunelauri. Specifically, the police accident report contains defendant Kunelauri's statement that, at the time of the accident, he was attempting to park when he accidentally backed into the front of the car. Mr. Kunelauri's statement constitutes a party admission (*Batashvili v Veliz-Palacios*, 170 AD3d 791 [2d Dept 2019]).

Analysis

On a motion for summary judgment, the moving party bears the initial burden of making a prima facie showing that there are not triable issues of material fact (*Giuffrida v Citibank*, 100 NY2d 72, 81 [2003]). Once a prima facie showing has been established, the burden shifts to the non-moving party to rebut the movant's showing such that a trial of the action is required (*Alvarez v Prospect Hospital*, 68 NY2d 320, 324 [1986]).

Defendant Matoyan's Motion

A driver's failure to take proper precautions before backing up into a stopped vehicle establishes that driver's fault, and the other driver's and the plaintiffs' entitlement to judgment as matter of law on the issue of liability (*Portalatin v City of New York*, 165 AD3d 1302, 1303 [2d Dept 2018]; VTL §1211(a) ["The driver of a vehicle shall not back the same unless such movement can be made with safety without interfering with other traffic."]; and see *People v*

Taylor, 104 AD3d 961, 962 [2d Dept 2013]). Furthermore, “[e]very motor vehicle, when driven or operated upon a public highway, shall be equipped with a mirror or other reflecting device so adjusted that the operator of such vehicle shall have a clear and full view of the road and conditions of traffic behind such vehicle” (VTL §375[10][a]).

Here, defendant Matoyan has made a prima facie showing that his co-defendants Kunelaury and Dumbo Moving and Storage Inc. failed to take proper precautions when defendant Kunelaury reversed the truck and struck the front of the car stopped behind him.

In opposition, co-defendants Dumbo Moving and Storage, Inc. and Shalva Kunelaury contend that the car was moving into the parking spot behind the truck at the time of the accident. However, given Mr. Kunelaury’s admission that he could not see behind his truck as he backed up, and that he did not see the Matoyan vehicle prior to the collision, that assertion is mere speculation (*Lilaj v Ferentinos*, 126 AD3d 947, 948 [2d Dept 2015]). Such speculation is insufficient to raise a triable issue of fact (*Strocchia v City of New York*, 70 AD3d 926, 927 [2d Dept 2010]). Accordingly, defendant Matoyan is entitled to judgment as a matter of law (*Portalatin*, 165 AD3d at 1303).

Plaintiff’s Cross-Motion

Plaintiffs cross-move for summary judgment on the issue of liability against defendants Dumbo Moving and Storage Inc. and Shalva Kunelaury. As passengers who took no part in the operation of their host vehicle, the plaintiffs are free from fault in this occurrence. Furthermore, their testimony concerning liability in this accident is consistent with that of defendant Matoyan. Since I have found that defendants Kunelaury and Dumbo bear full responsibility for causing the subject occurrence, plaintiffs are similarly entitled to judgment as a matter of law against those defendants. Consistent with this finding, plaintiffs’ claims against defendant Mr. Matoyan are

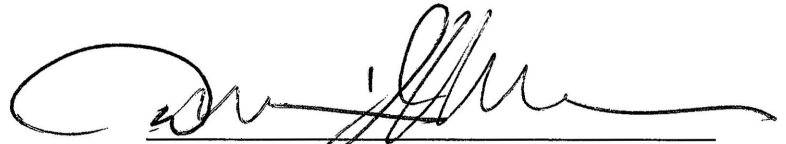
hereby dismissed.

Conclusion

For the forgoing reasons, defendant Matoyan's motion for summary judgment is granted and plaintiffs' cross-motion for summary judgment is granted as against defendants Dumbo Moving and Storage and Shalva Kunelauri on the issue of liability. Defendants Dumbo and Kunelauri are fully liable for this occurrence, and accordingly, all claims and cross-claims against Mr. Matoyan are dismissed. The matter shall proceed on damages only at the time of trial.

May 6, 2020

DATE



DEVIN P. COHEN

Justice of the Supreme Court