Rose v Jackson
2020 NY Slip Op 34239(U)
December 21, 2020
Supreme Court, Kings County
Docket Number: 507803/2017
Judge: Peter P. Sweeney
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS, PART 73

Index No.: 507803/2017
Motion Date: 11-23-20
Mot. Seq. No.: 15

---X
LAWRENCE ROSE,

Plaintiff,

-against-

DECISION/ORDER

HYACINTH E. JACKSON, GERALDINE E. PADRO
and AILEEN C. ROCK,

Defendants.
---X

The following papers were read on this motion:

Papers:	**NYSEF Nos:**
Notice of Motion/Order to Show Cause Affidavits/Affirmations/Exhibits/Memo of Law	181-194
Answering Affirmations/Affidavits/Exhibits/Memo of Law	196-197, 199-200, 202-203
Reply Affirmations/Affidavits/Exhibits/Memo of Law	201
Other	

Upon the foregoing papers, the motion is decided as follows:

In this action to recover damages for personal injuries, the defendant, GERALDINE E. PADRO, moves for an order pursuant to CPLR 3212 granting her summary judgment dismissing the Complaint and all cross-claims against her.

This action arises out of a multi-vehicle accident that occurred on January 7, 2015, at Schenectady Avenue and Avenue D, Brooklyn New York. The plaintiff was a passenger in the vehicle operated by WAYNE GELLEY when it was rear-ended by a vehicle operated by defendant AILEEN ROCK, which was rear-ended by the vehicle operated by defendant Pardo. Defendant Pardo maintains that while her vehicle was stopped, it was rear ended by a motor vehicle operated by defendant, HYACINTH JACKSON, and propelled into the Gelly vehicle.

The evidentiary material submitted by defendant Pardo in support of the motion included her own deposition testimony. At her deposition, she testified as follows

> Q. So you're not sure if the contact between the front of your vehicle and the car in front of yours came first or the impacts to the rear of your vehicle came first?
>
> A. **I'm not positive**. I feel like the two hits came very close together, but I don't recall feeling what you're asking me about, going into the car in front of me." (Emphasis Supplied)

It is axiomatic that to succeed on a motion for summary judgment, the moving party must first "make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact" (*Alvarez v. Prospect Hosp*., 68 N.Y.2d 320, 324, 508 N.Y.S.2d 923, 501 N.E.2d 572, citing *Winegrad v. New York Univ. Med. Ctr.,* 64 N.Y.2d 851, 853, 487 N.Y.S.2d 316, 476 N.E.2d 642; *see also* CPLR 3212[b]). If the movant makes such a showing, in order to defeat the motion "the burden shift[s] to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action" (*Alvarez*, 68 N.Y.2d at 324, 508 N.Y.S.2d 923, 501 N.E.2d 572). If the movant fails to make such a showing, the motion must be denied regardless of the sufficiency of the opposing papers" (*Vega*, 18 N.Y.3d at 503, 942 N.Y.S.2d 13, 965 N.E.2d 240 [internal quotation marks and alterations omitted]). In deciding a motion for summary judgment, the evidence must be viewed in the light most favorable to the party opposing the motion and all reasonable inferences must be drawn in that party's favor (*see McNulty v. City of New York,* 100 N.Y.2d 227, 230, 762 N.Y.S.2d 12, 792 N.E.2d 162; *Boyd v. Rome Realty Leasing Ltd.*

Partnership, 21 A.D.3d 920, 921, 801 N.Y.S.2d 340; *Erikson v. J.I.B. Realty Corp.,* 12 A.D.3d 344, 783 N.Y.S.2d 661).

A rear-end collision with a stopped or stopping vehicle creates a prima facie case of liability with respect to the operator of the moving vehicle and imposes a duty on that operator to provide a non-negligent explanation for the collision (*see Edgerton v. City of New York,* 160 A.D.3d 809, 810, 74 N.Y.S.3d 617; *Lewis v. City of New York,* 157 A.D.3d 879, 879–880, 66 N.Y.S.3d 916; *Figueroa v. MTLR Corp.,* 157 A.D.3d 861, 862, 69 N.Y.S.3d 359). While it is true that “[i]n chain collision accidents, the operator of the middle vehicle may establish prima facie entitlement to judgment as a matter of law by demonstrating that the middle vehicle was struck from behind by the rear vehicle and propelled into the lead vehicle” (*Kuris v. El Sol Contr. & Constr. Corp.,* 116 A.D.3d 675, 676, 983 N.Y.S.2d 580; *see Skura v. Wojtlowski*, 165 A.D.3d 1196, 1198–99, 87 N.Y.S.3d 100, 102–03; *Morales v. Amar,* 145 A.D.3d 1000, 1002, 44 N.Y.S.3d 184; *Chuk Hwa Shin v. Correale,* 142 A.D.3d 518, 519, 36 N.Y.S.3d 213), it is not clear in this case whether the impact to the rear of defendant Pardo’ vehicle propel her vehicle into the Rock Vehicle. At her deposition, defendant Pardo was not positive if her vehicle collided into the lead vehicle before it was struck from behind. Thus, her deposition testimony creates triable issue of fact as to whether her negligence contributed to the happening of the accident. Since defendant Pardo did not establish her prima facie entitlement to summary judgment, her motion must be denied regardless of the papers submitted in opposition *(Vega*, 18 N.Y.3d at 503).

Accordingly, it is hereby

ORDRED that the motion is **DENIED**.

This constitutes the decision and order of the Court.

Dated: December 21, 2020

PETER P. SWEENEY, J.S.C.

Note: This signature was generated electronically pursuant to Administrative Order 86/20 dated April 20, 2020