

Reeves v Wilson
2020 NY Slip Op 34448(U)
August 5, 2020
Supreme Court, Kings County
Docket Number: 500114/2019
Judge: Lara J. Genovesi
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MOA

At an IAS Term, Part 34 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse thereof at 360 Adams St., Brooklyn, New York on the 5th day of August 2020.

P R E S E N T:

HON. LARA J. GENOVESI,
J.S.C.

-----X

KAREEM REEVES,

Index No.: 500114/2019

Plaintiff,

DECISION & ORDER

-against-

JALONI WILSON, DELORIS WILSON-DAVIS
and IRIS LOPEZ,

Defendants.

-----X

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

	<u>NYSCEF Doc. No.:</u>
Notice of Motion/Cross Motion/Order to Show Cause and Affidavits (Affirmations) Annexed _____	_____ 27-33 _____
Opposing Affidavits (Affirmations) _____	_____ 35-37, 40-43 _____
Reply Affidavits (Affirmations) _____	_____ 44 _____

Introduction

Defendant, Iris Lopez, moves by notice of motion, sequence number two, pursuant to CPLR § 3212 for summary judgment on the issue of liability. Plaintiff, Kareem Reeves, and defendants, Jaloni Wilson and Deloris Wilson-Davis, opposes this application.

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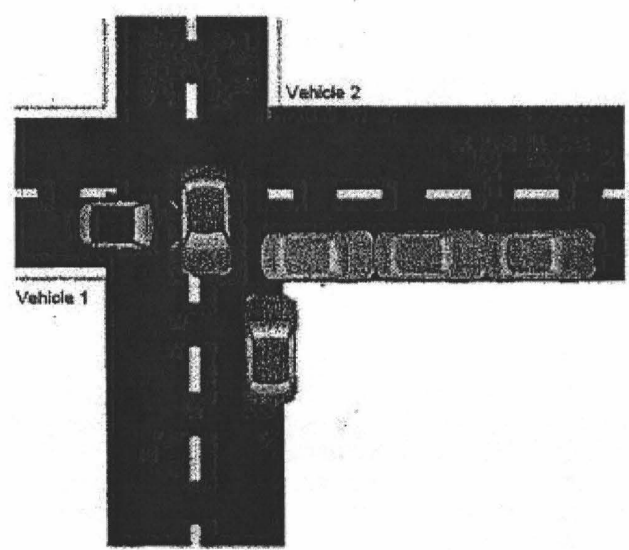
INDEX NO. 500114/2019

RECEIVED NYSCEF: 08/11/2020

Background

Plaintiff allegedly sustained personal injuries on September 2, 2018, as a result of a motor vehicle accident, which took place on 110th Avenue, near the intersection with Guy R. Brewer Boulevard, in Queens New York. Plaintiff contends that the accident occurred when his vehicle was struck by the Wilson vehicle, causing it to impact three parked cars (*see* NYSCEF Doc. # 42, Plaintiff Affidavit of Merit at ¶ 4, p 1). According to the police report, both plaintiff and defendant Wilson alleged that the other disobeyed the red light at the intersection. As such, Wilson (Vehicle 1) collided with a parked vehicle on 110th Avenue (Vehicle 3) and caused plaintiff (Vehicle 2) to collide with the Lopez vehicle, parked on Brewer Boulevard (Vehicle 4) as well as two other parked vehicles behind it (Vehicles 5 and 6) (*see* NYSCEF Doc. # 41, Certified Police Report).

Right Angle : MV-2018-113-002857
Reporting Officer : POM STEPHEN INTRABARTOLA
Reviewing Officer : SGT STEVEN A GANSROW Reviewed Date : 09/03/2018 05:42



(NYSCEF Doc. # 43, Police Report Diagram).

FILED: KINGS COUNTY CLERK 08/07/2020

NYSCEF DOC. NO. 47

INDEX NO. 500114/2019

RECEIVED NYSCEF: 08/11/2020

It is undisputed that defendant Lopez, the movant herein, was not present in her vehicle at the time of the accident. According to her affidavit,

3. In the early morning hours of September 2, 2018, my car was legally parked along the curb near the intersection of 110 Avenue and Brewer Boulevard in Queens, New York. As I later learned, an accident occurred at the intersection which caused one of the vehicles involved to collide with my parked car.

4. I was asleep at the time this accident occurred. I only learned that my car had been involved in an accident when officers from NYPD came to my door and told me what had happened.

5. My car was legally parked and unattended when it was impacted. I did nothing to cause this accident nor was I negligent in any way.

(NYSCEF Doc. # 32, Iris Lopez Affidavit).

Plaintiff contends that defendant Lopez' vehicle was parked illegally when the collision occurred (*see id.* at ¶ 4-5, p 2). "Said vehicle was parked very closely, along the side of a fire hydrant, and far off the curb, which extended the vehicle into the intersection of moving traffic. Had this vehicle not extended in such a way, my vehicle might have avoided striking her vehicle, as well as the other two (2) vehicles that were parked behind her".

Discussion

"[T]he 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 demonstrate absence of any material issues of fact" (*Stonehill Capital Mgmt., LLC v. Bank of the W.*, 28 N.Y.3d 439, 68 N.E.3d 683 [2016], citing *Alvarez v. Prospect*

FILED: KINGS COUNTY CLERK 08/07/2020

NYSCEF DOC. NO. 47

INDEX NO. 500114/2019

RECEIVED NYSCEF: 08/11/2020

Hospital, 68 N.Y.2d 320, 501 N.E.2d 572 [1986]). Failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers (*see Chiara v. Town of New Castle*, 126 A.D.3d 111, 2 N.Y.S.3d 132 [2 Dept., 2015], citing *Vega v. Restani Const. Corp.*, 18 N.Y.3d 499, 965 N.E.2d 240 [2012]; *see also Lee v. Nassau Health Care Corp.*, 162 A.D.3d 628, 78 N.Y.S.3d 239 [2 Dept., 2018]). Once a moving party has made a prima facie showing of its entitlement to summary judgment, the burden shifts to the opposing party to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action (*see Fairlane Fin. Corp. v. Longspaugh*, 144 A.D.3d 858, 41 N.Y.S.3d 284 [2 Dept., 2016], citing *Alvarez v. Prospect Hospital*, 68 N.Y.2d 320, *supra*; *see also Hoover v. New Holland N. Am., Inc.*, 23 N.Y.3d 41, 11 N.E.3d 693 [2014]).

In the instant case, defendant Lopez met her burden and established entitlement to summary judgment. “[S]ince there can be more than one proximate cause of an accident, the proponent of a summary judgment motion has the burden of establishing freedom from comparative fault as a matter of law” (*Nohs v. Diraimondo*, 140 A.D.3d 1132, 35 N.Y.S.3d 209 [2 Dept., 2016]). Here, Lopez provided her affidavit stating that she was not in her car, which was legally parked, when it was involved in the accident.

In opposition, the Wilson defendants failed to establish that the motion was premature.

A party who seeks a finding that a summary judgment motion is premature is required to put forth some evidentiary basis to suggest that discovery might lead to relevant evidence or that the facts essential to justify opposition to the motion were exclusively within the knowledge and control of the movant”

FILED: KINGS COUNTY CLERK 08/07/2020

NYSCEF DOC. NO. 47

INDEX NO. 500114/2019

RECEIVED NYSCEF: 08/11/2020

(*Reale v. Tsoukas*, 146 A.D.3d 833, 835, 45 N.Y.S.3d 148 [internal quotation marks omitted]). “The mere hope or speculation that evidence sufficient to defeat a motion for summary judgment may be uncovered during the discovery process is insufficient to deny the motion” (*HSBC Bank USA, N.A. v. Armijos*, 151 A.D.3d 943, 944, 57 N.Y.S.3d 205 [internal quotation marks omitted]).

(*HSBC Bank USA, Nat'l Ass'n v. Tigani*, -- A.D.3d. --, 2020 NY Slip Op. 03901 [2 Dept., 2020]).

Here, the Wilson defendants failed to provide an affidavit or set forth any evidentiary basis to suggest why the motion is premature.

However, in opposition, plaintiff raised a triable issue of fact. Plaintiff provided an affidavit stating that the defendant’s vehicle was illegally parked at the time of the accident. Defendant Lopez correctly contends that even assuming, arguendo, that her car was illegally parked, she would still be entitled to summary judgment if her vehicle was not a proximate cause of the accident (*see Auletta v. Baxter*, 45 A.D.3d 618, 845 N.Y.S.2d 826 [2 Dept., 2007]). However, Lopez’s affidavit includes no details as to the location and position of her vehicle; it merely states that the car was parked legally. Plaintiff in his affidavit, and relying on the police report diagram, allege that the Lopez vehicle was parked far from the curb, and extended into the intersection. Accordingly, continued discovery is necessary, as depositions of the parties may clarify this issue.

FILED: KINGS COUNTY CLERK 08/07/2020

NYSCEF DOC. NO. 47

INDEX NO. 500114/2019

RECEIVED NYSCEF: 08/11/2020

Conclusion

Accordingly, defendant Lopez's motion for summary judgment is denied, as premature. The foregoing constitutes the decision and order of this Court.

ENTER:



Hon. Lara J. Genovesi
J.S.C.


To:

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Attorney for Defendants
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INDEX NO. 500114/2019

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