

Cabrera v Thomas

2020 NY Slip Op 35315(U)

April 24, 2020

Supreme Court, Bronx County

Docket Number: Index No. 29663/2018E

Judge: Mary Ann Brigantti

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX, PART 15

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EDWARD CABRERA, et al.

Index No. 29663/2018E

-against-

Hon. MARY ANN BRIGANTTI

CHRISTOPHER S. THOMAS, et al.,

Justice Supreme Court

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The following papers numbered 1 to 5 were read on this motion (Seq. No. 002) for SUMMARY JUDGMENT noticed on November 18, 2019.

Table with 3 columns: Document Type, No(s), and Page(s). Rows include Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed (1,2), Answering Affidavit and Exhibits (3,4), and Replying Affidavit and Exhibits (5).

Upon the foregoing papers, the defendant Santiago Delvalle ("Delvalle") moves for summary judgment, dismissing the complaint of the plaintiffs Edward Cabrera ("Cabrera") and Conception Rodriguez ("Rodriguez") (collectively, "Plaintiffs") and any cross-claims asserted against him, pursuant to CPLR 3212. Plaintiffs oppose the motion.

I. Background

According to the complaint, this matter arises out of an alleged three-vehicle collision that occurred on May 20, 2018, on Hunts Point Avenue at or near its intersection with Bruckner Boulevard. The accident occurred between a (1) vehicle operated by a nonparty, with Plaintiffs as passengers, (2) a "middle" vehicle operated by Delvalle, and (3) a third vehicle operated by co-defendant Christopher Thomas ("Thomas"). In support of the motion, Delvalle submits the deposition testimony of himself, both plaintiffs, and co-defendant Thomas.

Rodriguez testified that she was a rear seated passenger in a vehicle operated by a nonparty at the subject intersection (Rodriguez EBT at 15-16). Her husband Cabrera was sitting in the front passenger seat (id. at 17). At the time of the accident her vehicle was stopped at a red light on Bruckner Boulevard (id at 18), and it was the first vehicle at the light (id.). Rodriguez testified that there were two impacts to her vehicle (id. at 19) when "the car behind us was hit by the car behind him, that was the first one, then the second one came" (id. at 19-20). She testified that two vehicles behind her collided, which caused the middle vehicle to strike her vehicle, and then there was a second impact between the middle vehicle and her vehicle (id at

21-22). When asked again directly how many times her vehicle was hit, Rodriguez responded “two times” (id at 23). She also testified that there was no impact to her vehicle before the two vehicles behind her had an accident (id. at 23-24).

Cabrera testified that there were two impacts to his vehicle (Cabrera EBT at 14). While waiting for the red light, heard a noise behind him and then felt an impact to the rear, (id. at 17), then heard a second impact, and his car “went forward and back” (id). He clarified that the first impact was between the rearmost car and the middle car, behind his car (id. at 18). His car was then impacted by the middle car (id.) seconds later, and then as a result of that impact, his vehicle moved forward and back, and he felt the second impact as his vehicle was moving back (id. at 19).

Devalle testified that he was operating a vehicle that was stopped for a red light (Devalle EBT at 16), and was waiting for less than one minute when he was struck from the rear (id. at 19). While waiting at the light there was a vehicle in front of him also stopped for the light (id at 20). Devalle testified that while waiting he felt a heavy blow in the rear (id. at 21), causing his car to move forward and touch the vehicle in front of it (id. at 21-22).

Thomas testified that he was aware that this accident involved only his car and the car in front of it (Thomas EBT at 26). Thomas testified that he collided with the rear of a stopped vehicle (id.), and that vehicle was stopped when he first saw it (id. at 26-28). When he saw the car, Thomas applied his brakes but his car “kept going for a little bit” and “was not giving [him] the stop that [he] pressed for” (id. at 33). Thomas later clarified that the light was green but traffic was not moving, and then when the lead vehicle moved a bit he pressed on his brakes but it did not respond (id. at 33). He did not see the vehicle he hit move at all as a result of the impact (id. at 34-35).

II. Applicable Law and Analysis

“It is well settled that a rear-end collision with a stopped or stopping vehicle establishes a prima facie case of negligence on the part of the driver of the rear vehicle, and imposes a duty on the part of the operator of the moving vehicle to come forward with an adequate non-negligent explanation for the accident” (*Cabrera v Rodriguez*, 72 A.D.3d 553 [1st Dept 2010], citing *Tutrani v County of Suffolk*, 10 N.Y.3d 906, 908 [2008]; see also *Dattilo v Best Transp. Inc* 79 A.D.3d 432 [1st Dept 2010]; *Agramonte v City of New York*, 288 A.D.2d 75, 76 [1st Dept 2001]). Furthermore, “[i]n a chain reaction collision, responsibility presumptively rests with the

rearmost driver” (see *Mustafaj v. Driscoll*, 5 A.D.3d 138 [1st Dept. 2004][internal citations omitted]). The above deposition testimony establishes, prima facie, that Devalle – as the “middle” vehicle in this chain collision – is entitled to summary judgment (see *Chang v. Rodriguez*, 57 A.D.3d 295 [1st Dept. 2008]).

In opposition to the motion, Plaintiffs argue that there are issues of fact as to Devalle’s negligence because each plaintiff testified that their vehicle sustained two separate impacts. However, a close review of the plaintiffs’ testimony indicates that they both confirmed that these impacts only occurred *after* Devalle was struck from the rear by the vehicle behind him, Thomas. Rodriguez testified that there were two impacts, but she clarified that the vehicle behind her was struck by a vehicle behind it first, before that “middle” vehicle struck her car twice. There was no contact between the middle car and her car before the collision between the two cars behind her. Cabrera testified that the first impact was between the rearmost car and the middle car, behind his car. His car was then impacted by the middle car seconds later, and then as a result of that impact, his vehicle moved forward and back, and he felt the second impact as his vehicle was moving back. This testimony fails to raise a non-speculative fact issue as to whether Devalle caused or contributed to this accident. There is no testimony refuting Devalle’s claim that he was stopped behind the plaintiffs’ vehicle before the accident occurred. There is no evidence that Devalle’s conduct in operating his vehicle caused the impacts between his car and plaintiffs’ car, after Devalle’s stopped vehicle was struck in the rear by the Thomas vehicle. Thomas admitted that Devalle’s vehicle was stopped when he rear-ended it, and he also testified that his brakes did not respond when he pressed them. Devalle is therefore entitled to summary judgment as there is no evidentiary basis for a finding that his actions were a proximate cause of this accident.

III. Conclusion

Accordingly, it is hereby

ORDERED, that Delvalle's motion for summary judgment is granted, and Plaintiffs' complaint and any cross-claims asserted against him are dismissed, and the Clerk of this Court is hereby directed to enter judgment accordingly.

This constitutes the Decision and Order of this Court.

Dated: 4/24/20

Hon. Mary Ann Ryan, J.S.C.

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- 1. CHECK ONE..... CASE DISPOSED IN ITS ENTIRETY CASE STILL ACTIVE
 - 2. MOTION IS..... GRANTED DENIED GRANTED IN PART OTHER
 - 3. CHECK IF APPROPRIATE.....
 - SETTLE ORDER SUBMIT ORDER SCHEDULE APPEARANCE
 - FIDUCIARY APPOINTMENT REFEREE APPOINTMENT