Rodriguez v City of New York
2020 NY Slip Op 35496(U)
November 9, 2020
Supreme Court, Bronx County
Docket Number: Index No. 22682/2018E
Judge: Mary Ann Brigantti
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C #004

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX, PART __15___

MICHELLE RODRIGUEZ, et al. Index №. 22682/2018E

-against- **Hon. MARY ANN BRIGANTTI**

THE CITY OF NEW YORK, et al. Justice Supreme Court

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The following papers numbered 1 to ____4____ were read on this motion (Seq. No. ____4_____)
for __ **VACATE** ____ noticed on _____July 17, 2020_____.

Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed	No(s). 1, 2
Answering Affidavit and Exhibits	No(s). 3, 4
Replying Affidavit and Exhibits	No(s).

Motion is Respectfully Referred to Justice: _____
Dated: _____

Upon the foregoing papers, the defendants CDA Legacy and Luistro Mauricio ("Mauricio") (collectively, "Defendants") move for an order pursuant to CPLR 5015 (a) and 2005, vacating two prior orders issued by this Court, and upon vacating such orders, denying plaintiff Michelle Rodriguez and Brunilda Rivers (collectively, "Plaintiffs")' and co-defendants the City of New York, the New York City Transit Authority, MABSTOA, Metropolitan Transit Authority, the MTA Bus Company, MV Public Transportation, Access-A-Ride, and Djeneba Lataillade-Cheeks (collectively, "Co-defendants")' motions for summary judgment. Co-defendants oppose the motion.

I. Vacate Decision and Order Dated August 12, 2019

"CPLR 5015 (a) (1) requires a movant seeking to vacate a default to move within one year of entry of the default and to show a reasonable excuse for the default as well as a meritorious defense" (*Matter of Rivera v New York City Dept. of Sanitation*, 142 A.D.3d 463 [1st Dept 2016] [citations omitted]). In this case, Defendants timely moved to vacate the default Order within one year of its entry and their alleged reasonable excuse of failing to secure a stipulation from their adversary to adjourn the motion to a later date "was sufficiently particularized and there is no evidence of wilful or contumacious conduct on their part" (*id.*, citing *Reyes v New York City Hous. Auth.*, 236 A.D.2d 277, 279 [1st Dept 1997]). Moreover, this State has a "strong public policy of disposing of cases on their merits" (*Matter of Rivera*, 142 A.D.3d at 465). Defendants have also demonstrated the existence of a meritorious defense, discussed in further detail below in Section II. In opposition to the motion, co-defendants did not make any showing of prejudice. Thus, the Court will vacate the prior decision dated August 12, 2019 to the extent indicated herein.

A. Standard of Review for Plaintiffs' Motion

"The 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 eliminate any material issues of fact from the case" (*Winegrad v N.Y. Univ. Med. Ctr.*, 64 N.Y.2d 851 [1985] [citations omitted]). "Once this showing is made, the burden shifts to the opposing party to produce evidentiary proof in admissible form sufficient to establish the existence of triable issues of fact" (*Melendez v Parkchester Med. Servs., P.C.*, 76 A.D.3d 927 [1st Dept 2010], citing *Zuckerman v New York*, 49 N.Y.2d 557, 562 [1980]). "[T]he opposing party must assemble and lay bare its affirmative proof to demonstrate that genuine triable issues of fact exist" and "the issue must be shown to be real, not feigned since a sham or frivolous issue will not preclude summary relief" (*Kornfeld v NRX Technologies, Inc.*, 93 A.D.2d 772 [1st Dept 1983], *affd* 62 N.Y.2d 686 [1984]). The evidence submitted on a motion for summary judgment is construed in the light most favorable to the opponent of the motion (*see Branham v Loews Orpheum Cinemas, Inc.*, 8 N.Y.3d 931, 932 [2007]).

B. Applicable Law and Analysis

1. Plaintiffs Are Not Entitled To Summary Judgment Against Defendants

Even assuming Plaintiffs established their prima facie entitlement to summary judgment, Defendants have raised a triable issue of fact in opposition. "In a chain-reaction collision, responsibility presumptively rests with the rearmost driver" (*Mustafaj v. Driscoll*, 5 A.D.3d 138 [1st Dept 2004]). It is incumbent upon that rearmost driver to provide a "nonnegligent explanation for the accident, or a nonnegligent reason for [their] failure to maintain a safe distance between [their] car and the lead car" (*Woodley v Ramirez*, 25 A.D.3d 451, 452 [1st Dept 2006] [citations omitted]). In support of their opposition, Defendants submitted the affidavit of Mauricio, wherein he stated that he struck Plaintiffs' vehicle only after Plaintiffs' vehicle struck co-defendants' vehicle in front of it. Following Plaintiffs' vehicle "[s]uddenly" striking co-defendants' vehicle in front of it, Mauricio alleges he "immediately pressed [his] brakes to avoid contact with [Plaintiffs'] vehicle... but it was too late."

In *Tutrani v County of Suffolk* (10 N.Y.3d 906 [2008]), a defendant police officer "abruptly decelerated" in the middle lane of the Long Island Expressway (*id.* at 907). The plaintiff, traveling immediately behind the police vehicle, was able to stop "within a half a car length" of the vehicle without striking it (*id.*). "Seconds later," a third car rear-ended the plaintiff's car (*id.*). The jury rendered a verdict apportioning liability 50% against the police officer and 50% against the third car (*id.*). The Appellate Division reversed, and found the rear-most car 100% liable for the accident (*id.*). The Court of Appeals

reversed the Appellate Division, holding that the police officer was not absolved of liability because he "abruptly slowed his vehicle to a near stop in a travel lane of a busy highway where vehicles could reasonably expect that traffic would continue unimpeded" (*id.*). The officer's action "created a foreseeable danger that vehicles would have to brake aggressively in an effort to avoid the lane obstruction created by his vehicle, thereby increasing the risk of rear end collisions. That a negligent driver may be unable to stop his or her vehicle in time to avoid a collision with a stopped vehicle is a normal or foreseeable consequence of the situation created by [the police officer's] actions" (*id.* at 908 [internal citations and quotation marks omitted]).

In accordance with *Tutrani*, the First Department has held that in a chain collision case the middle vehicle's separate collision with the vehicle in front of it "create[s] a foreseeable danger that [the rearmost driver] would also have to brake aggressively, increasing the risk of a second rear end collision" (*Passos v MTA Bus Co.*, 129 A.D.3d 481, 483 [1st Dept 2015], citing *Tutrani*, 10 N.Y.3d at 908). The First Department recently cited favorably to *Passos* in the matter of *Liburd v Lulgjuraj* (156 A.D.3d 532 [1st Dept 2017]), finding that triable issues of fact existed in a chain collision case where the middle vehicle admitted to separately colliding with the lead vehicle prior to being struck in the rear. The *Liburd* court explained that "[i]n a multi vehicle accident, where, as here, there is a question of fact as to the sequence of the collisions, it cannot be said as a matter of law there was only one proximate cause of plaintiffs' injuries" (156 A.D.3d 532, citing *Passos*, 129 A.D.3d at 482).

As applied to the instant matter, Mauricio's allegation in his affidavit that Plaintiffs' vehicle separately struck co-defendants' vehicle ahead of it created a foreseeable danger that Mauricio, as the rearmost driver, would also have to brake aggressively, increasing the risk of a second rear end collision. Thus, in this chain collision accident, there is a question of fact as to the sequence of the collisions, and it cannot be said as a matter of law there was only one proximate cause of plaintiffs' injuries (*Passos*, 129 A.D.3d 481 at 483, citing *Tutrani*, 10 N.Y.3d at 908; *Liburd*, 156 A.D.3d 532, citing *Passos*, 129 A.D.3d at 482; *see also Palma v Douglas*, 156 A.D.3d 561, 562 [1st Dept 2017] [citation omitted]).

2. Plaintiffs Are Not Entitled To Summary Judgment Against Co-defendants

Plaintiffs, however, are not entitled to summary judgment against Co-defendants, as decided in the August 12, 2019, Decision and Order, because Plaintiffs failed to demonstrate how Co-Defendants were negligent in this case.

II. Vacate Decision and Order Dated February 10, 2020

The Court declines to vacate the prior Decision and Order dated February 10, 2020, dismissing Plaintiffs complaint asserted against Co-defendants, because Defendants have failed to demonstrate a meritorious defense against Co-defendants' prior motion. Co-defendants established that their vehiclewas the lead vehicle in this chain collision, and Defendants failed to submit any evidence that Co-defendants caused or contributed to this accident.

III. Conclusion

Accordingly, it is hereby,

ORDERED, that Defendants' motion for leave to vacate is granted to the extent of vacating that portion of the prior Decision and Order dated August 12, 2019, which granted Plaintiffs' motion for summary judgment as against Defendants, and it is further,

ORDERED, that upon vacatur, Plaintiffs' motion for summary judgment against Defendants is denied, and it is further,

ORDERED, that Defendants' motion to vacate this Court's prior Decision and Order dated February 10, 2020, is denied.

This constitutes the Decision and Order of this Court.

Dated: NOVEMBER 9, 2020 **Hon.** Mary Ann Brigantti
MARY ANN BRIGANTTI **J.S.C.**

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			