

Lee v Chekuri

2020 NY Slip Op 35603(U)

January 30, 2020

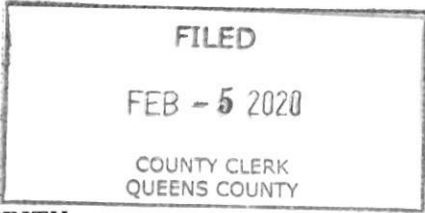
Supreme Court, Queens County

Docket Number: Index No. 706722/2019

Judge: Robert J. McDonald

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.



SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK
CIVIL TERM - IAS PART 34 - QUEENS COUNTY
25-10 COURT SQUARE, LONG ISLAND CITY, N.Y. 11101

P R E S E N T : HON. ROBERT J. MCDONALD
Justice

----- x

DOWAYNE LEE, Index No.: 706722/2019
Plaintiff, Motion Date: 1/30/20
- against - Motion Nos.: 22 & 23
PRUDHVIC CHEKURI, SATISH PALUKURI, Motion Seqs.: 1 & 2
ANTHONY CHANG and CHAO CHIEN CHANG,
Defendants.

----- x

The following electronically filed documents read on this motion by plaintiff DOWAYNE LEE (seq. no. 1) for an Order pursuant to CPLR 3212, granting plaintiff summary judgment on the issue of liability; and on this motion by defendants ANTHONY CHANG and CHAO CHIEN CHANG (seq. no. 2) for an Order pursuant to CPLR 3212, dismissing the complaint as against said defendants:

Table with 2 columns: Document Name and Papers Numbered. Includes entries like 'Notice of Motion (seq. no. 1)-Affirmation-Exhibits' and 'Defendants' Affirmation in Opposition'.

This is an action to recover damages for personal injuries allegedly sustained by plaintiff as a result of a three car accident that occurred on July 19, 2017 on the Long Island Expressway, in Nassau County, New York.

Plaintiff commenced this action by filing a summons and complaint on April 16, 2019. Defendants Prudhvic Chekuri and Satish Palukuri (collectively hereinafter co-defendants) joined

issue by service of an answer with cross-claim on May 14, 2019. Defendants Anthony Chang and Chao Chien Chang (collectively hereinafter defendants) joined issue by service of an answer with cross-claim on June 26, 2019.

In support of the motion, plaintiff submits an affidavit dated October 17, 2019. He affirms that on July 19, 2017 at approximately 5:53 p.m., he was operating his vehicle eastbound on the Long Island Expressway. At the time of the accident, he was traveling off the exit ramp of Exit 39. While traveling off the exit ramp, he brought his vehicle to a complete stop for traffic conditions in front of him. While his vehicle was at a complete stop, he was involved in a three car accident. His vehicle was struck in the rear by the vehicle operated by defendant Anthony Chang.

In support of the second motion, defendant driver Anthony Chang submits an affidavit dated November 30, 2019. He affirms that on the day of the accident he was operating a vehicle owned by defendant Chao Chien Chang. He was involved in an accident while driving on Exit 39 of the eastbound Long Island Expressway. As he traveled on Exit 39, he gradually came to a complete stop because of traffic ahead of him. When stopped, he was behind the vehicle operated by plaintiff. There was approximately one-half car length between his vehicle and plaintiff's vehicle. He had been stopped for approximately fifteen seconds when he was struck from behind by the vehicle operated by co-defendant Prudhvic Chekuri. The force of the impact from co-defendants' vehicle caused his vehicle to move forward and come in contact with plaintiff's vehicle. He did not contribute to the causing of the accident in any way.

In the accident description portion of the Police Accident Report (MV-104A), the responding officer notes, in relevant part:

"VEHICLE #1 (co-defendants) WAS IN COLLISION WITH VEHICLE #2 (defendants) WHICH CAUSED VEHICLE #2 TO COLLIDE WITH VEHICLE #3 (plaintiff)".

The proponent of a summary judgment motion must tender evidentiary proof in admissible form eliminating any material issues of fact from the case. If the proponent succeeds, the burden shifts to the party opposing the motion, who then must show the existence of material issues of fact by producing evidentiary proof in admissible form in support of his or her position (see Zuckerman v City of New York, 49 NY2d 557[1980]).

"When the driver of an automobile approaches another automobile from the rear, he or she is bound to maintain a reasonably safe rate of speed and control over his or her vehicle, and to exercise reasonable care to avoid colliding with the other vehicle" (Maccauley v ELRAC, Inc., 6 AD3d 584 [2d Dept. 2003]). It is well established law that a rear-end collision with a stopped or stopping vehicle creates a prima facie case of negligence on the part of the driver of the rearmost vehicle, requiring the operator of that vehicle to proffer an adequate, non-negligent explanation for the accident (see Klopchin v Masri, 45 AD3d 737 [2d Dept. 2007]; Hakakian v McCabe, 38 AD3d 493 2d Dept. 2007]; Reed v New York City Transit Auth., 299 AD2 330 [2d Dept. 2002]; Velazquez v Denton Limo, Inc., 7 AD3d787 [2d Dept. 2004]).

Here, movants satisfied their prima facie burden of establishing their entitlement to judgment as a matter of law on the issue of liability by demonstrating that their vehicles were stopped when struck in the rear (see Volpe v Limoncelli, 74 AD3d 795 [2d Dept. 2010]; Vavoulis v Adler, 43 AD3D 1154 [2d Dept. 2007]; Levine v Taylor, 268 AD2d 566 [2d Dept. 2000]).

Having made the requisite prima facie showing of entitlement to summary judgment, the burden then shifted to the non-moving parties to raise a triable issue of fact as to whether movants were also negligent, and if so, whether that negligence contributed to the happening of the accident (see Goemans v County of Suffolk, 57 AD3d 478 [2d Dept. 2007]).

Co-defendants oppose both motions on the grounds that the Court should allow this case to proceed to a jury trial on all issues as there can be more than one proximate cause of an accident. Plaintiff opposes the defendants' motion on similar grounds. Defendants oppose plaintiff's motion on the grounds that defendant driver Anthony Chang was not the proximate cause of the accident.

It is undisputed that co-defendants' vehicle rear ended defendants' vehicle which was propelled into the rear end of plaintiff's vehicle. This Court finds, therefore, that non-moving parties failed to provide evidence of a non-negligent explanation for the accident sufficient to raise a triable question of fact (see Bernier v Torres, 79 AD3d 776 [2d Dept. 2010]; Lampkin v Chan, 68 AD3d 727 [2d Dept. 2009]; Cavitch v Mateo, 58 AD3d 592 [2d Dept. 2009]; Garner v Chevalier Transp. Corp., 58 AD3d 802 [2d Dept. 2009]; Kimyagarov v Nixon Taxi Corp., 45 AD3d 736 [2d Dept. 2007]; Gomez v Sammy's Transp., Inc., 19 AD3d 544 [2d Dept. 2005]).

Accordingly, and for the reasons stated above, it is hereby

ORDERED, that the partial summary judgment motion by plaintiff DOWAYNE LEE (**seq. no. 1**) is granted; and it is further

ORDERED, that the summary judgment motion by defendants ANTHONY CHANG and CHAO CHIEN CHANG (**seq. no. 2**) is granted, plaintiff's complaint and any and all cross-claims are dismissed as against defendants ANTHONY CHANG and CHAO CHIEN CHANG; and it is further

ORDERED, that upon completion of discovery on the issue of damages, filing a Note of Issue, and compliance with all the rules of the court, this action shall be placed on the trial calendar of the court for a trial on serious injury and damages, only.

Dated: January 30, 2020
Long Island City, N.Y.



ROBERT J. McDONALD
J.S.C.

FILED
FEB - 5 2020
COUNTY CLERK
QUEENS COUNTY