

Yoo Ja Oh v Hazel

2020 NY Slip Op 35637(U)

May 15, 2020

Supreme Court, Bronx County

Docket Number: Index No. 24266/2018E

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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YOO JA OH

Index No. 24266/2018E

-against-

Hon. MARY ANN BRIGANTTI

DARREL R. HAZEL, et al.

Justice Supreme Court

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The following papers numbered 1 to 4 were read on this motion (Seq. No. 2) for SUMMARY JUDGMENT noticed on October 24, 2019.

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).	5, 6

Upon the foregoing papers, the defendants Darrel R. Hazel ("Hazel") and Paraco Gas Corp., (collectively, "the Paraco Defendants") move (Seq #002) for an order pursuant to CPLR 3212 granting them summary judgment on the issue of liability, dismissing any cross-claims asserted against them, and dismissing the complaint of the plaintiff Yoo Ja Oh ("Plaintiff"). Co-defendants Richard Charlton ("Charlton") and Presidential Express Trucking Inc., (collectively "the Presidential Express Defendants") oppose the motion. Separately, Plaintiff moves (Seq #003) for summary judgment against the Presidential Express Defendants on the issue of liability. The Presidential Express Defendants oppose Plaintiff's motion. In the interest of judicial economy, these two motions are consolidated and disposed of in the following decision and order.

I. Standard of Review

"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], *aff'd* 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]).

II. Background

This case involves a three-vehicle collision. For clarity, the Court will compile all of the relevant admissible factual allegations in this matter from sequences #002 and 003 in this Section.

In this case, Plaintiff submitted an affidavit wherein she stated that as she was traveling along the northbound side of the Throgs Neck Bridge (hereinafter, "the Bridge") in "very heavy" traffic she was involved in a motor vehicle accident. Plaintiff stated that the Bridge has "three lanes for moving traffic" and that "from the time [she] got onto" the Bridge, Plaintiff was "traveling in the middle lane." At the accident location "there is no traffic control device." Before the accident occurred Plaintiff "slow[ed] down for heavy traffic... since the vehicle in front of [her] had been slowing down and nearly completely stopped." As Plaintiff was slowing down her vehicle "to a near full stop," the Presidential Express Defendants' vehicle, which was "traveling directly behind [Plaintiff] in the same lane," "suddenly and inexplicably struck the rear of [her] vehicle." Plaintiff additionally indicated that this motor vehicle accident was "well-documented in that it was recorded by the Throgs Neck Bridge Authority." This recording (hereinafter, "Video of Incident"), which is said to "fairly and accurately depict[] the incident," was submitted by Plaintiff.

The Paraco Defendants additionally submitted the affidavit of Hazel, who stated that he was involved in a three-vehicle collision while traveling along the northbound side of the Bridge. Hazel asserted that at the time of this accident he “was fully stopped due to an unrelated traffic accident ahead of [his] vehicle, when [his] vehicle was struck in the rear by” Plaintiff’s vehicle. Hazel claims that he did not stop short or in any other way cause the accident in which Plaintiff was involved. In addition, Hazel “took photographs immediately after the accident” and submitted them with his affidavit.

Finally, the Presidential Express Defendants submitted the affidavit of Charlton, who stated that he was involved in a three-vehicle collision while traveling along the northbound side of the Throgs Neck Bridge. Right before the subject accident occurred, Charlton “observed” the Paraco Defendants’ vehicle “suddenly slam on its brakes at the same time that there was” a separate vehicle accident “unfolding in front” of the Paraco Defendants’ vehicle. The Paraco Defendants’ vehicle “was instantly rear ended by” Plaintiff’s vehicle. Charlton claimed that Plaintiff’s vehicle “unexpectedly switched lanes” from the left lane to the center lane “immediately prior to this collision, and that Plaintiff’s vehicle “cut off [Charlton’s] stopping space.” As a result, Charlton “made contact with” Plaintiff’s vehicle.

III. Applicable Law, and Analysis

A. The Paraco Defendants’ Motion (Seq #002)

“It is well established that a rear-end collision with a stopped or stopping vehicle establishes a prima facie case of negligence on the part of the rear vehicle's driver, and imposes a duty upon the driver of the rear vehicle to come forward with an adequate nonnegligent explanation for the accident” (*Quiros v Hawkins*, 180 A.D.3d 500 [1st Dept 2020], citing *Williams v Kadri*, 112 A.D.3d 422 [1st Dept 2013]). Additionally, “[i]n a chain-reaction collision, responsibility presumptively rests with the rearmost driver” (*Mustafaj v Driscoll*, 5 A.D.3d 138 [1st Dept 2004]). In this case, the Paraco Defendants have established

their prima facie entitlement to summary judgment, as it is unrefuted that the Paraco Defendants' vehicle was the lead vehicle in this chain-reaction collision. The burden therefore shifts to the opponents of the motion "to establish the existence of material issues of fact which require a trial of the action" (*Xiang Fu He v Troon Mgt., Inc.*, 34 N.Y.3d 167, 175 [2019], quoting *Vega v Restani Constr. Corp.*, 18 N.Y.3d 499, 503 [2012]).

In opposition to the motion, the Presidential Express Defendants have failed to raise an issue of fact. As discussed above, the Presidential Express Defendants have not refuted that the Paraco Defendants' vehicle was the lead vehicle in this chain-reaction collision. Accordingly, the Paraco Defendants' motion for summary judgment is granted because there is no evidence that they were negligent (*Urena v GVC Ltd.*, 160 A.D.3d 467 [1st Dept 2018]).

The Court notes that the Paraco Defendants' motion is not premature since both Hazel and Charlton, the operators of the Paraco Defendants' and the Presidential Express Defendants' vehicles, respectively, were able to submit affidavits, and therefore, the Presidential Express Defendants were "able to submit facts 'essential to justify opposition [to the motion]'" (*Jeffrey v DeJesus*, 116 A.D.3d 574 [1st Dept 2014], quoting CPLR 3212 [f]). The above conclusions are reached without considering the police accident report as it "recites hearsay and was prepared by an officer who had not observed the accident" (*Roman v Cabrera*, 113 A.D.3d 541, 542 [1st Dept 2014], citing *Singh v Stair*, 106 A.D.3d 632, 633 [1st Dept 2013]).

The Court further notes that it does not consider the Video of Incident for purposes of deciding the Paraco Defendants' motion (seq #002) because no party made any arguments regarding the Video of Incident or contested whether the Paraco Defendants' vehicle was the lead vehicle in this chain-reaction collision.

B. Plaintiff's Motion (Seq #003)

As previously discussed in Section III.A., “[i]t is well established that a rear-end collision with a stopped or stopping vehicle establishes a prima facie case of negligence on the part of the rear vehicle's driver, and imposes a duty upon the driver of the rear vehicle to come forward with an adequate nonnegligent explanation for the accident” (*Quiros*, 180 A.D.3d 500, citing *Williams*, 112 A.D.3d 422). In this case, Plaintiff established her prima facie entitlement to summary judgment against the Presidential Express Defendants. Plaintiff's testimony that she was traveling in the “middle lane” of the Bridge, in “very heavy” traffic, when she was struck from the rear by the Presidential Express Defendants' vehicle supports a prima facie finding of negligence against the Presidential Express Defendants. Moreover, since traffic conditions were heavy along the Bridge, the Presidential Express Defendants were “supposed to make reasonable use of [their] senses, drive at a safe rate of speed under existing conditions, and maintain a safe distance from other motor vehicles, which was not done in this case” (*Miller v DeSouza*, 165 A.D.3d 550 [citations omitted]; see also *Diller v City of New York Police Dep't*, 269 A.D.2d 143, 144 [1st Dept 2000]). The burden therefore shifts to the opponents of the motion “to establish the existence of material issues of fact which require a trial of the action” (*Xiang Fu He*, 34 N.Y.3d at 175, quoting *Vega*, 18 N.Y.3d at 503).

In opposition to the motion, the Presidential Express Defendants have raised a triable issue of fact. Charlton's testimony indicates that Plaintiff's vehicle “instantly rear ended” the Paraco Defendants' vehicle after Plaintiff made a sudden lane change from the left lane to the middle lane in front of the Presidential Express Defendants vehicle. Charlton's testimony also indicates that Plaintiff's sudden lane change occurred “immediately prior” to the Presidential Express Defendants' vehicle rear ending Plaintiff's vehicle. These factual allegations raise issues of fact as to whether Plaintiff caused the accident with the Presidential Express Defendants (see *Figuroa v Cadbury Util. Constr. Corp.*, 239 A.D.2d 285 [1st Dept

1997]; *Morris v Green*, 156 A.D.3d 540 [1st Dept 2017]). The submitted testimony is simply insufficient to establish, as a matter of law, which driver was responsible for this accident.

In addition, the Video of Incident, agreed by the parties to be uploaded to Youtube (see TNB BA Roadway Level South East Wall, YouTube (May 5, 2020), <https://www.youtube.com/watch?v=evgmLuh30n0&feature=youtu.be>) also does not assist the Court in deciding Plaintiff's motion. The timestamp of the Video of Incident, from 1:00 – 1:06 (i.e., one minute to one minute and six seconds), does not permit the Court to sufficiently identify which lane Plaintiff was traveling in prior to the subject accident. Accordingly, the Court finds that there are material issues of fact, which requires denial of Plaintiff's motion.

The Court notes that Plaintiff's motion is not premature since both Plaintiff and Charlton, the operator of the Presidential Express Defendants' vehicle, were able to submit affidavits, and therefore, the Presidential Express Defendants were "able to submit facts 'essential to justify opposition [to the motion]'" (*Jeffrey*, 116 A.D.3d 574, quoting CPLR 3212 [f]). The above conclusions are reached without considering the police accident report as it "recites hearsay and was prepared by an officer who had not observed the accident" (*Roman*, 113 A.D.3d at 542, citing *Singh*, 106 A.D.3d at 633).

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IV. Conclusion

Accordingly, it is hereby,

ORDERED, that the Paraco Defendants' motion for summary judgment (seq #002) is granted, and the Plaintiff's complaint and any cross-claims asserted against them is dismissed, and it is further,

ORDERED, that Plaintiff's motion for summary judgment (seq #003) is denied, and it is further,

ORDERED, that the Clerk of the Court is directed to enter judgment accordingly.

This constitutes the Decision and Order of this Court.

Dated: 5/15/20

Hon.  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