

Rios v Rivers
2021 NY Slip Op 30791(U)
March 3, 2021
Supreme Court, Kings County
Docket Number: 503473/2019
Judge: Lara J. Genovesi
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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 3rd day of March 2021.

PRESENT:

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

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MIGUEL ANTONIO LABANDA RIOS,

Plaintiff,

-against-

HAKEEM RASHAWN RIVERS, MATTHEW D. STAFFIERI and JERRY RODRIGUEZ,

Defendants.

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Index No.: 503473/2019

DECISION & ORDER

03/15/2021 11:12 AM

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

Notice of Motion/Cross Motion/Order to Show Cause and Affidavits (Affirmations) Annexed _____
Opposing Affidavits (Affirmations) _____
Reply Affidavits (Affirmations) _____

NYSCEF Doc. No.:

10, 11; 42, 43

36; 48, 51

40; 53

Introduction

Defendant, Jerry Rodriguez, moves, by notice of motion, sequence number one, pursuant to CPLR § 3212, for summary judgment on the issue of liability and for such other relief as the Court deems proper. Defendant Matthew D. Staffieri opposes this

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motion. Plaintiff, Miguel Antonio Labanda Rios, moves, by notice of motion, sequence number three, for summary judgment on the issue of liability and for such other relief as the Court deems proper. Defendants Rodriguez and Staffieri oppose this motion. Defendant Hakeem Rashawn Rivers has not appeared.

Background

This action involves a four car motor vehicle accident on September 10, 2018, in the west bound middle lane on the Belt Parkway in Brooklyn, New York.

Plaintiff annexed an affirmation to his motion. Plaintiff affirmed that he was a passenger in Rodriguez's vehicle, and that as Rodriguez's vehicle was slowing down, he felt an impact from the rear of the vehicle (*see* NYSCEF Doc. # 45, Rios Aff., ¶ 6, 7). Plaintiff affirmed that Rodriguez did not make any short or sudden stops prior to the accident (*see id.* at ¶ 8). Plaintiff affirmed further that the impact pushed Rodriguez's vehicle forward, causing it to come into contact with the rear of the vehicle in front of them (*see id.* at ¶ 7).

Defendant Rodriguez annexed an affirmation to his motion. Rodriguez affirmed that while his vehicle was at a complete stop, Rivers' vehicle come into contact with the rear of his vehicle (*see* NYSCEF Doc. # 16, Rodriguez Aff., ¶ 4). Rodriguez affirmed further that the impact pushed Rodriguez's vehicle forward, and the front of Rodriguez's vehicle came into contact with the rear of non-party Kheong Chee's vehicle (*see id.* at ¶ 5).

Defendant Staffieri annexed an affirmation in opposition to Rodriguez's motion. Staffieri affirmed that "the vehicle operated by co-defendant Rodriguez made contact

with a non-party vehicle first. Then, co-defendant Rovers' vehicle made contact with co-defendant Rodriguez's vehicle. Finally, my vehicle made contact with co-defendant Rivers' vehicle." (*see* NYSCEF Doc. # 52, Staffieri Aff., ¶ 6).

Rodriguez also annexed the Certified Police Accident Report to his motion. The Police Accident Report lists four vehicles involved in this accident: Chee's vehicle ("VEH1"), Rodriguez's vehicle ("VEH2"), Rivers' vehicle ("VEH3"), and Staffieri's vehicle ("VEH4") (*see* NYSCEF Doc. # 13, Certified Police Accident Report). VEH1 stated that he was "HEADING W/B M/L AT ABOVE LOCATION, SLOWING DOWN FOR APPROACHING HEAVY TRAFFIC, WHEN VEH2 REAR END HIS VEHICLE" (*see id.*). VEH2 stated he was "HEADING W/B M/L AT ABOVE LOCATION, SLOWING DOWN APPROACHING HEAVY TRAFFIC, WHEN VEH3 REAR END HIS VEHICLE CAUSING VEH2 TO REAR END VEH1" (*see id.*). VEH3 stated he was "HEADING W/B M/L AT ABOVE LOCATION, SLOWING DOWN APPROACHING HEAVY TRAFFIC, WHEN VEH4 REAR END HIS VEHICLE CAUSING VEH3 TO REAR END VEH2" (*see id.*). VEH4 stated he was "HEADING W/B M/L AT ABOVE LOCATION, WHEN VEH3 ABRUPTLY STOP, CAUSING VEH4 TO REAR AND VEH3 AND ALL SUBSEQUENT VEHICLES" (*see id.*).

This action was commenced by the filing of the summons and complaint on February 15, 2019 (*see* NYSCEF Doc. # 1). Issue was joined on April 11, 2019, and July 7, 2019 (*see* NYSCEF Doc. # 5, 8).

Discussion

Summary Judgment

“[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 the 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 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]).

“A rear-end collision with a stopped or stopping vehicle establishes a prima facie case of negligence on the part of the operator of the rear vehicle, thereby requiring that operator to rebut the inference of negligence by providing a nonnegligent explanation for the collision” (*Xin Fang Xia v. Saft*, 177 A.D.3d 823, 113 N.Y.S.3d 249 [2 Dept., 2019]; *see also Ordonez v. Lee*, 177 A.D.3d 756, 110 N.Y.S.3d 339 [2 Dept., 2019]). A plaintiff does not need to demonstrate the absence of their own comparative negligence to be entitled to partial summary judgment as to a defendant's liability (*see Rodriguez v City of*

New York, 31 N.Y.3d 312, 76 N.Y.S.3d 898 [2018 N.Y. Slip Op. 02287]). However, the issue of a plaintiff's comparative negligence may be decided in the context of a summary judgment motion where the plaintiff moved for summary judgment dismissing a defendant's affirmative defense of comparative negligence (*see Poon v. Nisanov*, 162 A.D.3d 804, 808, 79 N.Y.S.3d 227 [2 Dept., 2018]).

“In a multi-vehicle, chain reaction accident, when the operator of a vehicle that was propelled into another vehicle by a following vehicle presents evidence that he or she was able to safely bring his or her vehicle to a stop behind the lead vehicle before being struck in the rear by a following vehicle, that operator has established his or her prima facie entitlement to judgment as a matter of law” (*Niosi v. Jones*, 133 A.D.3d 578, 19 N.Y.S.3d 550 [2 Dept., 2015] (citing *Fonteboa v. Nugget Cab Corp.*, 123 A.D.3d 759, 999 N.Y.S.2d 113 [2 Dept., 2014]; *Raimondo v. Plunkitt*, 102 A.D.3d 851, 958 N.Y.S.2d 460 [2 Dept., 2013]; *Good v. Atkins*, 17 A.D.3d 315, 793 N.Y.S.2d 82 [2 Dept., 2005]; *Elezovic v. Harrison*, 292 A.D.2d 416, 739 N.Y.S.2d 410 [2 Dept., 2002])). Thus, “in chain collision accidents, the operator of a middle vehicle may establish prima facie entitlement to judgment as a matter of law by demonstrating that the middle vehicle was struck from behind by the rear vehicle and propelled into the lead vehicle” (*Kuris v. El Sol Contracting and Const. Corp.*, 116 A.D.3d 675, 983 N.Y.S.2d 580 [2 Dept., 2014] (citing *Raimondo v. Plunkitt*, 102 A.D.3d 851, *supra*; *Hill v. Ackall*, 71 A.D.3d 829, 895 N.Y.S.2d 837 [2 Dept., 2010]; *Katz v. Masada II Car & Limo Serv., Inc.*, 43 A.D.3d 876, 841 N.Y.S.2d 370 [2 Dept., 2007])).

In the case at bar, defendant Rodriguez and plaintiff, as to defendant Staffieri, met their prima facie burden. Rodriguez affirmed that he stopped his vehicle on the Belt Parkway because of traffic conditions when he was rear ended by defendant Rivers. Plaintiff affirmed that he was a passenger in Rodriguez's vehicle and "felt an impact from the rear of the vehicle," and that "after the initial impact, the front end of the vehicle I was a passenger in, was forced into the rear bumper of the vehicle in front of mine" (*see* NYSCEF Doc. # 45, Rios Aff. ¶ 6, 7). Rodriguez also provided the Certified Police Accident Report which contained Staffieri's admission that he rear-ended Rivers, causing Rivers to rear-end Rodriguez (*see* NYSEF Doc # 13, Certified Police Accident Report; *see also* *Yassin v. Blackman*, 188 AD3d 62 [2 Dept., 2020]). While driving on Belt Parkway, Rodriguez's vehicle was slowing down due to approaching traffic. Rodriguez demonstrated that she was not negligent in the happening of the accident. Rodriguez further established that the actions of Staffieri were the sole proximate cause of the accident. Rodriguez affirmed that his vehicle was at a complete stop when it was struck in the rear by Rivers' vehicle (*see generally* *Poon v. Nisanov*, 162 A.D.3d 804, *supra*; *see also* *Ortiz v Welna*, 152 A.D.3d 709, 58 N.Y.S.3d 556 [2 Dept., 2017]).

In opposition, Staffieri raises triable issues of fact. Staffieri annexed an affirmation in which he affirmed that Rodriguez never stopped behind Chee's vehicle, and in fact struck Chee's vehicle in the rear before Rivers' vehicle contacted Rodriguez's vehicle, and before Staffieri's vehicle contacted Rivers' vehicle, which goes against the admissions in the Certified Police Accident Report. Staffieri raises a triable issue of fact as to whether he set into motion a chain of events which resulted in Rodriguez's vehicle

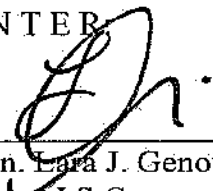
being struck in the rear, and whether Staffieri's actions were a proximate cause of the accident (*see Strickland v. Tirino*, 99 A.D.3d 88, 952 N.Y.S.2d 599 [2 Dept., 2012]; *Inzano v. Brucculeri*, 257 A.D.2d 605, 684 N.Y.S.2d 260 [2 Dept., 1999]).

Plaintiff did not meet the prima facie burden to show entitlement to summary judgment as to liability against Rodriguez. Plaintiff's affirmation indicates that Rodriguez's vehicle was "slowing down" when it was struck in the rear by Rivers' vehicle, causing it to propel forward and strike the rear of Chee's vehicle (*see* NYSCEF Doc. # 45, Rios Aff. ¶ 6, 7). This shows that Rodriguez was the operator of a vehicle that was able to safely bring the vehicle to a stop behind the rear vehicle before being propelled forward after being struck in the rear by Rovers' vehicle, supporting Rodriguez's prima facie showing of entitlement to summary judgment as to liability (*see Niosi v. Jones*, 133 A.D.3d 578, *supra*).

Conclusion

Accordingly, both defendant's motion and plaintiff's cross-motion for summary judgment as to liability are denied with leave to refile after the completion of discovery.¹ The parties are directed to attend a compliance conference on XXX. This constitutes the decision and order of this case.

ENTER



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

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¹ An Order by the Honorable Lawrence Knipel dated November 19, 2020 set a deadline for plaintiff and defendants to appear for EBTs, the appearance for and exchange of IME(s), and the filing of Notice of Issue (*see* NYSCEF Doc. # 49).