

Imamova v Acheampong-Quaye
2021 NY Slip Op 30873(U)
March 17, 2021
Supreme Court, Kings County
Docket Number: 512544/2019
Judge: Richard Velasquez
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At an IAS Term, Part 66 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 17th day of MARCH, 2021

P R E S E N T:
HON. RICHARD VELASQUEZ, Justice.

-----X

SAFIYA IMAMOVA,

Plaintiff,

-against-

Index No.: 512544/2019
Decision and Order
Motion Seq. No. 1

MAGNUS ACHEAMPONG-QUAYE and EAN HOLDING,
LLC

Defendants,

-----X

The following papers NYSCEF Doc #'s 19 to 28 read on this motion:

<u>Papers</u>	<u>NYSCEF DOC NO.'s</u>
Notice of Motion/Order to Show Cause	
Affidavits (Affirmations) Annexed _____	19-23
Opposing Affidavits (Affirmations) _____	25; 27
Reply Affidavits (Affirmations) _____	28

After having heard Oral Argument on MARCH 17, 2021 and upon review of the foregoing submissions herein the court finds as follows:

Plaintiff moves for an order pursuant to CPLR 3212 1) granting plaintiff summary judgment on the issue of liability and 2) striking the first affirmative defense from defendant's answer. (MS#1). Defendant opposes the same.

In the present case, plaintiff's EBT establishes that she was hit in the rear by defendant MAGNUS ACHEAMPONG-QUAYE while driving on the Williamsburg bridge. It is well settled "a rear-end collision is sufficient to create a prima facie case of liability and imposes a duty of explanation with respect to the operator of the offending vehicle." *Macauley v ELRAC, Inc.*, 6 AD3d 584 (2nd Dept. 2004); *Levine v Taylor*, 268 AD2d 566

(2nd Dept. 2000) *citing Pfaffenbach v White Plains Express Corp.*, 17 NY2d 132, 135; *Gambino v City of New York*, 205 AD2d 583. “Conclusory allegations in opposition do not rebut the inference of negligence created by an unexplained rear-end collision.” *Macauley v ELRAC, Inc.*, 6 AD3d 584, 585 (2nd Dept 2004). Additionally, it is well settled “a party is negligent in failing to see what, by the reasonable use of his senses, he should have seen.” *Abbas v Salavel*, 73 AD3d 1100, 1101 (2 Dept 2010). Moreover, when a driver approaches another vehicle from the rear, the driver is bound to maintain a reasonable safe rate of speed, to maintain control of his or her vehicle, and to exercise reasonable care to avoid colliding with the other vehicle. See *Abramoniczv. Roberto*, 220 AD 2d 374 (2nd Dept. 1995).

Here, plaintiff established her prima facie entitlement to judgment as a matter of law by demonstrating that her vehicle was struck in the rear by the vehicle operated by the defendant, see *Perez v. Roberts*, 91 AD3d 620, 621, 936 NYS.2d 259; *Giangrasso v. Callahan*, 87 AD3d 521, 522, 928 NYS2d 68; *Hauser v. Adamov*, 74 AD3d at 1025, 904 NYS.2d 102; *Hanakis v. DeCarlo*, 98 AD3d 1082, 1084, 951 NYS2d 206, 208 (2012). In opposition, the defendant fails to raise a triable issue of fact because their affidavit corroborates the plaintiff’s testimony. Specifically, regarding the accident’s happening the defendant testified that he made contact with the darker vehicle and he was trying to mitigate the impact when he went to the left, making contact with the white vehicle. See NYSCEF Doc. No. 27, titled Defendants EBT P 28, lines 17-22. The front of his vehicle contacted the dark vehicle on its back end and contacted the white vehicle on its bumper more towards the left side. See NYSCEF Doc. No. 27, titled Defendants EBT Page 30 lines 3-23. Contrary to defendants further assertions, plaintiff was driving

the dark vehicle which he rear-ended, not the white vehicle in the left lane. As such defendant's own affidavit establishes he hit the dark vehicle in the rear. The dark vehicle was plaintiff's blue vehicle.

Next the court shall address defendant EAN HOLDING LLC contention that the plaintiff has not established a prima facie case against them on the basis of the application of the Graves Amendment. The Graves Amendment provides; "(a) In general.—An owner of a motor vehicle that rents or leases the vehicle to a person (or an affiliate of the owner) shall not be liable under the law of any State or political subdivision thereof, by reason of being the owner of the vehicle (or an affiliate of the owner), for harm to persons or property that results or arises out of **the use, operation, or possession of the vehicle during the period of the rental or lease, if— (1) the owner (or an affiliate of the owner) is engaged in the trade or business of renting or leasing motor vehicles; and (2) there is no negligence or criminal wrongdoing on the part of the owner (or an affiliate of the owner)**" (49 USC § 30106 [a] [1], [2]).

In the present case defendant EAN HOLDINGS contentions regarding the Graves Amendment are unavailing. First, as stated above protection under the Graves Amendment occurs for harm to persons or property that results or arises out of "**the use, operation, or possession of the vehicle during the period of the rental or lease**". In the present case, the car that was involved in this accident **was not being rented or leased at the time of the accident** but being used by an employee of the company for the purpose of traversing to and from work. Moreover defendant EAN HOLDINGS, LLC has failed to annex any records at all including a rental or lease agreement for the time period in question, as well as no records regarding the condition

of the car at any time, nor any records demonstrating that they are not responsible for the maintenance of the subject vehicle. See also *Couchman v. Nunez*, 180 AD3d 645, 115 NYS3d 708 (2nd Dept. 2020), see also, *Luma v. Elrac, Inc.*, 19 Misc 3d 1138, 862 NYS2d 815 (2008). The court notes there is no lease or rental agreement as the defendant driver was an employee of the defendant EAN HOLDINGS, LLC the owner of the vehicle and the Graves Amendment does not apply to this case as a matter of law.

Accordingly, plaintiff's motion for summary judgment is hereby granted in its entirety, for the reasons stated above. (MS#1).

This constitutes the Decision/Order of the court.

Dated: Brooklyn, New York
MARCH 17, 2021

ENTER FORTHWITH:



HON. RICHARD VELASQUEZ