

Lesane v Ramirez

2021 NY Slip Op 30946(U)

March 24, 2021

Supreme Court, Kings County

Docket Number: 516712/2017

Judge: Richard Velasquez

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This opinion is uncorrected and not selected for official publication.

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 24th day of MARCH, 2021

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

-----X
RASHEEMA TAMICA LESANE and GRADY SHAMEL
HAYES JR.,

Plaintiff,
-against-

Index No.: 516712/2017
Decision and Order

JUAN RAMIREZ and LUNDYN S. BOZANT,

Defendants,
-----X

The following papers NYSCEF Doc #'s 59 to 96 read on this motion:

<u>Papers</u>	<u>NYSCEF DOC NO.'s</u>
Notice of Motion/Order to Show Cause Affidavits (Affirmations) Annexed _____	59-69; 70-78
Opposing Affidavits (Affirmations) _____	81; 82
Reply Affidavits (Affirmations) _____	84-95; 96

After having heard Oral Argument on MARCH 24, 2021 and upon review of the foregoing submissions herein the court finds as follows:

Plaintiff, GRADY SHAMEL HAYES JR. moves pursuant to CPLR 3212 for an order granting partial summary judgment against defendants (MS#4). Plaintiff, RASHEEMA TAMICA LESANE cross-moves for summary judgment against defendants. (MS#5).

In the present case, the plaintiff, GRADY SHAMEL HAYES JR. EBT (see NYSCEF doc #64 pp.11) establishes that he was driving the vehicle on the date of the accident and that his was hit in the rear by defendants while stopped at a light (see NYSCEF Doc no 69 Certified police report). (see *Hanakis v. DeCarlo*, 98 AD3d 1082, 1084, 951 NYS2d 206; *Napolitano v. Galletta*, 85 AD3d at 882, 925 NYS2d 163). “A rear-end collision with a stopped vehicle creates a prima facie case of negligence against the operator of the moving vehicle, thereby requiring that operator to rebut the inference of negligence by providing a non-negligent explanation for the collision” (*Hauser v. Adamov*, 74 AD3d 1024, 1025, 904 NYS2d 102). Here, plaintiff GRADY SHAMEL HAYES JR. established his prima facie entitlement to judgment as a matter of law by demonstrating that his vehicle was struck in the rear by the vehicle owned by defendant RAMIREZ and operated by defendant BOZANT, 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).

Next the Court will address Plaintiff, RASHEEMA TAMICA LESANE motion for summary judgment. It is also well established “the right of an innocent passenger to summary judgment on the issue of whether he or she was at fault in the happening of an accident is not restricted by potential issues of comparative negligence as between two defendant drivers” (see CPLR 3212[g]; *Jung v. Glover*, 169 AD3d 782, 783, 93 NYS3d 390; *Phillip v. D & D Carting Co., Inc.*, 136 AD3d 18, 24–25, 22 NYS3d 75; *Anzel v. Pistorino*, 105 AD3d 784, 786, 962 NYS2d 700; *Medina v. Rodriguez*, 92 AD3d 850, 850, 939 NYS2d 514; *Garcia v. Tri-County Ambulette Serv.*, 282 AD2d 206,

207, 723 NYS2d 163; *Silberman v. Surrey Cadillac Limousine Serv.*, 109 AD2d 833, 833–834, 486 NYS2d 357). Here, the plaintiff made a prima facie showing of entitlement to summary judgment on their motion (see generally *Alvarez v. Prospect Hosp.*, 68 NY2d 320, 324, 508 NYS2d 923, 501 NE2d 572). It is uncontested that the injured plaintiff was a passenger seated in co-plaintiff's vehicle. Neither driver suggested that the injured plaintiff bore any fault in the happening of the accident (see *Phillip v. D & D Carting Co., Inc.*, 136 AD3d at 25, 22 NYS3d 75), quoting *Romain v. City of New York*, 177 AD3d 590, 591, 112 NYS3d 162, 164 (2d Dep't 2019). Plaintiff, RASHEEMA TAMICA LESANE in the present case is an innocent passenger is entitled to summary judgment on the issue of liability to the extent that they are not liable for the happening of the accident.

In opposition, defendants fail to raise a triable issue of fact because they fail to submit an admissible affidavit by either defendant and instead only submit an attorney affirmation. (see *Sehgal v. www.nyairportsbus.com, Inc.*, 100 AD3d 860, 955 NYS2d 604, 2012 NY Slip Op.; *Hanakis v. DeCarlo*, 98 AD3d at 1084, 951 NYS2d 206; *Perez v. Brux Cab Corp.*, 251 AD2d 157, 159, 674 NYS2d 343). The attorney affirmations submitted defendants are not based on personal knowledge of the facts and have no probative value (see, *Skinner v. City of Glen Cove*, 216 AD2d 381, 628 NYS2d 719; *Thoma v. Ronai*, 189 AD2d 635, 592 NYS2d 333, *affd.* 82 NY2d 736, 602 NYS2d 323, 621 NE2d 690). *Bendik v. Dybowski*, 227 AD2d 228, 229, 642 NYS2d 284, 286 (1996). Therefore, the defendants have failed to raise a triable issue of fact.

Accordingly, Plaintiff, GRADY SHAMEL HAYES JR. moves pursuant to CPLR 3212 for an order granting partial summary judgment against defendants is hereby

granted, for the reasons stated above. (MS#4). Plaintiff, RASHEEMA TAMICA LESANE cross-motion for summary judgment against defendants is hereby granted, for the reasons stated above. (MS#5). Any requests for sanctions or other relief not specifically addressed are hereby denied.

This constitutes the Decision/Order of the court.

Dated: Brooklyn, New York
March 24, 2021

ENTER FORTHWITH:



HON. RICHARD VELASQUEZ