

Clas v Wright

2021 NY Slip Op 31550(U)

January 7, 2021

Supreme Court, Kings County

Docket Number: 524759/18

Judge: Francois A. Rivera

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At an IAS Term, Part 52 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York on the 7th day of January 2021

HON. FRANCOIS A. RIVERA

-----X
ANNETTE CLAS, DEFENDANT GHEI'S

Plaintiffs,
-against-- -

DECISION & ORDER
Index No. 524759/18

TROY OJAN WRIGHT and AVINSH GHEI,

Defendants.

-----X
Recitation in accordance with CPLR 2219 (a) of the papers considered on the notice of motion filed by defendant Avinshi Ghei (hereinafter Ghei) on October 22, 2019 under motion sequence number two, for an order pursuant to CPLR 3212 granting summary judgment in Ghei's favor on the issue of liability and dismissing the complaint of Annette Clas (hereinafter Clas) and the cross claims of Troy Ojan Wright (hereinafter Wright) as asserted against him. The motion is opposed.

- Notice of Motion
- Affirmation in Support
- Exhibits A-D
- Memorandum of Law in Support.
- Affirmation in Opposition by Clas
- Exhibits A-D
- Affirmation in Opposition by Wright
- Exhibits A-B
- Affirmation in Reply

BACKGROUND

On December 10, 2018, Clas commenced the instant action for damages for personal injury by filing a summons and verified complaint with the Kings County Clerk's office. On January 9, 2019, Wright joined issue by filing a verified answer. On

February 28, 2019, Ghei joined issue by filing a verified answer with cross claims.

The complaint alleges the following salient facts. On February 26, 2018, at approximately 8:30 am, Clas was driving an automobile on Central Park Avenue at or near its intersection with Canfield Avenue, in the County of Westchester, City of Yonkers and State of New York. On the same date, time and place, Ghei was driving his 2017 Infinity bearing license plate HVU7425 and Wright was driving his 2015 Nissan bearing license plate T717595C. On the same date, time and place the vehicle driven by Ghei and the vehicle driven by Wright came into contact with each other due to the drivers' negligent operation of their respective cars. The contact caused a collision with the plaintiff's vehicle and caused the plaintiff to sustain serious physical injuries.

LAW AND APPLICATION

Ghei has moved for summary judgment in his favor on the issue of liability and for dismissal of the complaint and all cross claim asserted against him. In support of the motion he submitted, among other things, his affidavit and Clas' affidavit.

Clas' affidavit demonstrated that at the time of the accident, she was the driving her vehicle on Central Park Avenue near its intersection with Canfield Avenue in the City of Yonkers and came to a complete stop on the roadway while she waited for the traffic light to change to green. She then felt a very hard impact when she was struck in the rear by the vehicle operated Ghei. She averred that the vehicle operated by Ghei was struck by the vehicle operated by Wright.

Ghei's affidavit demonstrated that at the time of the collision, he was stopped at a red light on Central Park Avenue at or near its intersection with Canfield Avenue, in the City of Yonkers when he was struck in the rear by Wright's vehicle and was propelled into the vehicle operated by the plaintiff.

In a chain collision accident, the operator of the middle vehicle may establish prima facie entitlement to judgment as a matter of law by demonstrating that the middle vehicle was properly stopped behind the lead vehicle when it was struck from behind by the rear vehicle and propelled into the lead vehicle (*Chuk Hwa Shin v Correale*, 142 AD3d 518, 519 [2nd Dept 2016], citing *Niosi v Jones*, 133 AD3d 578, 580 [2nd Dept 2015]).

Here, Ghei established his prima facie entitlement to judgment as a matter of law dismissing all cross claims asserted against him by submitting evidence demonstrating that prior to striking the rear of the plaintiff's vehicle, his vehicle was stopped behind the plaintiff's vehicle and was propelled into the plaintiff's vehicle after it was struck in the rear by Wright's vehicle.

In opposition, both Wright and Clas have claimed that Ghei's motion is premature in that no discovery had been conducted. While a party is entitled to a reasonable opportunity to conduct discovery in advance of a summary judgment determination, a party contending that a summary judgment motion is premature must demonstrate that discovery might lead to relevant evidence or that the facts essential to justify opposition to the motion were exclusively within the knowledge and control of the movant (*Skura v Wojtowski*, 165 AD3d 1196 [2nd Dept 2018]). Here, neither Clas nor Wright satisfied

their respective burden of demonstrating that Ghei's motion for summary judgment was premature, since the mere hope or speculation that evidence sufficient to defeat the motion might be uncovered during discovery is an insufficient basis for denying the motion (*id.*).

CONCLUSION

The motion by defendant Avinshi Ghei for an order pursuant to CPLR 3212 granting summary judgment in Ghei's favor on the issue of liability and dismissing the complaint of Annette Clas and the cross claims of Troy Ojan Wright as asserted against Ghei is granted.

The foregoing constitutes the decision and order of this Court.

ENTER:



J.S.C.