Sutton v Duenas
2021 NY Slip Op 31816(U)
May 27, 2021
Supreme Court, New York County
Docket Number: 159807/2019
Judge: Lisa S. Headley

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LISA S. HEADLEY **PART** IAS MOTION 22

Justice

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TROY SUTTON,

Plaintiff,

- v -

SONYHA DUENAS, GERALD DIXON, EVELYN PENA, ANABEL MARTINEZ, BEAVER CONCRETE CONSTRUCTION CO., INC.

Defendant.

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INDEX NO. 159807/2019

MOTION DATE 09/23/2020

MOTION SEQ. NO. 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 49, 50, 51, 52, 53, 54, 63, 64, 65, 66, 67, 68, 69, 83, 84

were read on this motion to/for JUDGMENT - SUMMARY.

This action was filed as a result of a multiple motor vehicle accident that occurred November 16, 2016. In the complaint, it is alleged that an employee of defendant Beaver Concrete Construction Co., Inc. (Defendant Beaver Concrete) slipped and fell onto the Harlem River Drive into oncoming traffic. Co-defendant Sonyha Duenas (Defendant Duenas) was driving her vehicle (Vehicle 1) when she came to an abrupt stop to avoid hitting the employee of Defendant Beave Concrete. Co-defendant Gerald Dixon, who was operating the vehicle (Vehicle 2) owned by co-defendant Evelyn Pena, and was driving behind Vehicle 1. Plaintiff, Troy Sutton, was the operator of the third vehicle in the collision, (Vehicle 3) and was driving directly behind Vehicle 2. According to the police report, Vehicle 2 (Defendant Dixon) and Vehicle 3 (Plaintiff Sutton) were "stopped safely behind vehicle one." Defendant Anabel Martinez drove the fourth car (Vehicle 4), which came around the corner and hit defendant Sutton's car (Vehicle 3) and allegedly started a chain reaction rear-end collision involving all four cars (Vehicles 1, 2, 3, 4).

The movant-defendants, Gerald Dixon and Evelyn Pena, who operated and owned Vehicle 2, filed the instant motion for summary judgment to dismiss all claims and counterclaims against them. The movant-defendants argue that there is a presumption that the rear most car in this multiple motor vehicle collision is the responsible party. See, *Russ v. Investech Sec*, 6 A.D.3d 602 (2d Dep't 2004). The movant-defendants submit the police report, which states that their car

(Vehicle 2) and plaintiff Troy Sutton's car (Vehicle 3) were "stopped safely" behind Duenas's car (Vehicle 1), and they contend that this establishes their lack of liability. In addition, the movant-defendants submit Dixon's affidavit, where he states that he stopped on the highway (in Vehicle 2) to avoid colliding with Duenas's vehicle (Vehicle 1), and that he remained still until plaintiff's car (Vehicle 3) bumped into his car (Vehicle 2) and propelled his car (Vehicle 2) into the Duenas' vehicle (Vehicle 1). *See, Affidavit of Gerald Dixon*. The movant-defendants argue that there is no evidence countering the presumption that defendant Dixon was not negligent, and therefore summary judgment to dismiss is proper in this case because defendant Dixon was not liable for the accident. *See*, *Franco v. Breceus*, 70 A.D.3d 767 (2d Dep't 2010); *see also*, *Wooldridge-Solano v Dick*, 143 A.D.3d 698 (2d Dep't 2016).

Plaintiff filed opposition to the instant motion and argues, *inter alia*, that the motion is premature because depositions have not taken place, and that the movant-defendants have not provided information regarding how long defendant Dixon (Vehicle 2) had been stopped and how closely he followed co-defendant Duenas (Vehicle 3).

Co-defendant Beaver Concrete also opposes the instant motion, and adopts the plaintiff's arguments that the motion is premature, and there should be depositions before the court renders any dispositive rulings as to the parties' relative liabilities.

Co-defendant Martinez (Vehicle 4) also submitted opposition papers, which adopts the plaintiff's and Beaver Concrete's argument that discovery remains outstanding and the motion for summary judgment is premature. In addition, co-defendant Martinez argues that Dixon's affidavit does not indicate whether Dixon (Vehicle 2) had to stop short to avoid hitting Duenas (Vehicle 3). Further, defendant Martinez's affidavit alleges that he "heard the sound of screeching tires" and "at least two impacts" before his car (Vehicle 4) turned the curve in the road and saw the first three vehicles involved in the collision. *See, defendant Martinez's affidavit*. Martinez (Vehicle 4) contends that although he could not stop his car fast enough to avoid hitting plaintiff's car, the impact of his car "was not heavy" *Id.* at ¶ 8. Defendant Martinez contends that "the vehicles ahead of me had already collided by the time I hit the vehicle in front of me in the rear." *Id.* at ¶ 10.

In reply, movant-defendants contend that plaintiff, Troy Sutton, failed to submit an affidavit to contradict movant-defendant Dixon's description of the accident; Beaver Concrete did not submit the affidavit of the employee who had firsthand knowledge of the accident; and

Martinez's affidavit lacks merit because Martinez (Vehicle 4) did not witness the accident and he fails to raise any issue of fact as to the movant-defendants' liability.

"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." *See, Winegrad v. York Univ. Med. Ctr.*, 64 N.Y.2d 851, 853 (1985). Once the moving party has made this showing, the burden shifts to the party opposing the motion to "demonstrate by admissible evidence the existence of a factual issue requiring a trial of the action or tender an acceptable excuse for his failure … to do [so]." *See, Zuckerman v. City of New York*, 49 NY2d 557, 560 [1980]). "A rear-end collision with a stopped vehicle, or a vehicle slowing down, establishes a *prima facie* case of negligence on the part of the operator of the rear-ending vehicle, which may be rebutted if that driver can provide a non-negligent explanation for the accident." *Baez v. MM Truck & Body Repair, Inc.*, 151 A.D.3d 473, 476 (1st Dep't 2017). Being propelled forward in a chain reaction collision is a non-negligent explanation for a rear-end motor vehicle accident. *See, Arrastia v. Sbordone*, 225 A.D.2d 375, 375 (1st Dep't 1996).

Here, movants have made out a *prima facie* case of negligence, and the burden now shifts to the non-moving parties to raise a triable issue of fact. Upon examination of the papers submitted to this Court, the movant-defendants motion is granted and this court finds, *inter alia*, that the certified police report, although hearsay for the purpose of trial, a certified police report may be used in a summary judgment motion to buttress the moving or opposing party's affidavit. S*ee, Ashby v. Estate of Encarnacion*, 178 A.D.3d 763, 765 (2d Dep't 2019).

Moreover, this court rejects the opposing parties' argument that this motion is premature because discovery is outstanding. "[D]efendant's failure to raise any factual issues to absolve him of liability or even submit a sworn statement of facts or to credibly explain the failure to do so defeats the need for discovery. Since defendant is the party with knowledge of the factual circumstances as to how… [the accident occurred], discovery would serve no purpose." *Johnson v. Phillips*, 261 A.D.2d 269 (1st Dep't 1999). Here, the opposing parties have failed to raise issue of fact in the submitted sworn statements. Neither plaintiff nor Beaver Concrete included an affidavit by a party with knowledge of the facts. Moreover, these arguments do not overcome movants' *prima facie* case, as no one has submitted evidence disputing that the second car was stopped at the time of the accident. Thus, the parties opposing the instant motion have failed to offer a non-negligent explanation for the accident. As such, the defendant-movants' motion for

summary judgment on the issue of liability is granted, and the action is dismissed against movant-defendants Gerald Dixon and Evelyn Pena.

Accordingly, it is

ORDERED that the within action is dismissed with prejudice against co-defendants, Gerald Dixon and Evelyn Pena, **only**; and the remainder of the action shall continue against the remaining defendants; and it is further

ORDERED that the caption is amended to read:

TROY SUTTON,

Plaintiff,

- against - Index No. 159807/2019

SONYHA A. DUENAS, ANABEL MARTINEZ, and BEAVER CONCRETE CONSTRUCTION CO., INC.,

Defendants.

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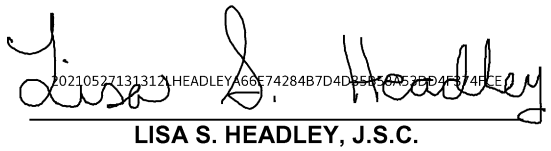
and it is further

ORDERED that any relief sought not expressly addressed herein has nonetheless been considered; and it is further

ORDERED that movants shall notice the County Clerk of the amended caption by filing form EF 23; and it is further

ORDERED that within 30 days of entry, movant-defendants shall serve a copy of this decision/order upon all parties with notice of entry.

This constitutes the Decision/Order of the Court.



5/27/2021
DATE

LISA S. HEADLEY, J.S.C.

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION	
	X	GRANTED		DENIED		GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT		REFERENCE