

Kudevic v Minkhojov
2021 NY Slip Op 32852(U)
December 31, 2021
Supreme Court, Kings County
Docket Number: Index No. 508461/2020
Judge: Peter P. Sweeney
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: PART 73

Index No.: 508461/2020
Motion Date: 10-4-21
Mot. Seq. Nos.: 1-2

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SIMONE KUDEVIC,
Plaintiff,

-against-

DECISION/ORDER

ZAYNIDDIN MINKHOJOV, LIMOUSINE SERVICES PLUS
INC, "JOHN DOE #1" (THE NAME BEING FICTITIOUS
AND INTENDED TO DESIGNATE THE DRIVER OF THE
MOTOR VEHICLE OWNED BY ZAYNIDDIN
MINKHOJOV) AND "JOHN DOE #2" (THE NAME BEING
FICTITIOUS AND INTENDED TO DESIGNATE THE
DRIVER OF THE MOTOR VEHICLE OWNED BY
LIMOUSINE SERVICES PLUS INC),

Defendants.

----- X

Upon the following e-filed documents, listed by NYSCEF as item numbers 13-29, the
motion and cross-motion are decided as follows:

In this action to recover damages for personal injuries, the defendant ZAYNIDDIN
MINKHOJOV moves for an Order pursuant to CPLR § 3212 granting him summary judgment
dismissing plaintiff's complaint, together with all cross-claims, on the ground that he is not liable
for the accident as a matter of law (**Mot. Seq. # 1**). Plaintiff cross-moves for an Order pursuant
to CPLR § 3212 granting him summary judgment on the issue of liability against defendant
LIMOUSINE SERVICES PLUS INC; or in the alternative, granting plaintiff summary judgment
on liability against all defendants (**Mot. Seq. # 2**). The motion and cross motion are
consolidated for disposition.

In support of his motion, defendant Zayniddin Minkhojov submitted an affidavit stating
that on Thursday, October 17, 2019, he was the driver of a 2018 Toyota Highlander, license plate
number T751394C, that was involved in an accident on Flatbush Avenue, in between Avenue S
and Avenue T, in Brooklyn, New York. He averred that just prior to the accident, his vehicle

had travelled northbound on Flatbush Avenue, a major thoroughfare that had three lanes for moving traffic in the northbound direction. His vehicle was in the left travel lane on Flatbush Avenue at the time of the accident. He maintained that he gradually slowed down his vehicle in the area of the accident due to the presence of a construction crew ahead of him in the left lane. He stated that while he was slowing down, his vehicle was suddenly struck in the rear by a black, Toyota vehicle with license plate number T699590C owned by defendant LIMOUSINE SERVICES PLUS INC. He denied stopping short or making any sudden lane changes before the accident.

In support of his motion, plaintiff submitted an affidavit stating that at the time of the accident, he was a passenger in a Lyft motor vehicle owned and operated by defendant ZAYNIDDIN MINKHOJOV, bearing license plate No. T751394C, New York when said vehicle was struck in the rear by another motor vehicle owned by defendant LIMOUSINE SERVICES PLUS INC. bearing New York license plate No. T699590C.

“ ‘A driver of a vehicle approaching another vehicle from the rear is required to maintain a reasonably safe distance and rate of speed under the prevailing conditions to avoid colliding with the other vehicle’ ” (*Witonsky v. New York City Tr. Auth.*, 145 A.D.3d 938, 939, 43 N.Y.S.3d 505, quoting *Nsiah–Ababio v. Hunter*, 78 A.D.3d 672, 672, 913 N.Y.S.2d 659; see Vehicle and Traffic Law § 1129[a]). 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 (see *Tutrani v. County of Suffolk*, 10 N.Y.3d 906, 861 N.Y.S.2d 610, 891 N.E.2d 726; *Merino v. Tessel*, 166 A.D.3d 760, 87 N.Y.S.3d 554; *Edgerton v. City of New York*, 160 A.D.3d 809, 74 N.Y.S.3d 617).

Here, the affidavits of the plaintiff and defendant Minkhojov established that the operator of the vehicle owned by defendant LIMOUSINE SERVICES PLUS INC. struck the rear of the vehicle operated by Minkhojov while it was slowing down. Thus, plaintiff and defendant Minkhojov demonstrated, prima facie, that the negligence of the operator of the vehicle owned by defendant LIMOUSINE SERVICES PLUS INC. was negligent and that operator’s negligence was the sole proximate cause of the accident.

Defendant LIMOUSINE SERVICES PLUS INC. failed to submit any admissible proof rebutting the inference that the operator of its vehicle was negligent by providing a nonnegligent explanation for the collision. Likewise, defendant LIMOUSINE SERVICES PLUS INC. failed to submit any admissible proof raising a triable issue of fact as to whether any negligence of defendant Minkhojov or the plaintiff contributed to the accident.

Section 388(1) of the Vehicle and Traffic Law provides that the owner of a motor vehicle is liable for the negligence of anyone who operates the vehicle with the owner's express or implied consent (*see Country-Wide Ins. Co. v. National R.R. Passenger Corp.*, 6 N.Y.3d 172, 178, 811 N.Y.S.2d 302, 844 N.E.2d 756; *Tsadok v. Veneziano*, 65 A.D.3d 1130, 1132, 885 N.Y.S.2d 336; *Headley v. Tessler*, 267 A.D.2d 428, 700 N.Y.S.2d 849). There is a strong presumption that the operator was driving the vehicle with the owner's express or implied consent (*see Murdza v. Zimmerman*, 99 N.Y.2d 375, 380, 756 N.Y.S.2d 505, 786 N.E.2d 440; *Tsadok v. Veneziano*, 65 A.D.3d at 1132, 885 N.Y.S.2d 336), a presumption that may only be rebutted by “substantial evidence” sufficient to show that the vehicle was not operated with the owner's consent (*Matter of State Farm Mut. Auto. Ins. Co. v. Ellington*, 27 A.D.3d 567, 568, 810 N.Y.S.2d 356; *see Panteleon v. Amaya*, 85 A.D.3d 993, 994, 927 N.Y.S.2d 85; *see also Manning v. Brown*, 91 N.Y.2d 116, 667 N.Y.S.2d 336, 689 N.E.2d 1382; *Tsadok v. Veneziano*, 65 A.D.3d at 1132, 885 N.Y.S.2d 336). Since defendant LIMOUSINE SERVICES PLUS INC. failed to submit any such evidence, the Court finds that LIMOUSINE SERVICES PLUS INC. is vicariously liable for the negligence of the person that was operating its vehicle at the time of the accident.

The motions were not premature. Defendant LIMOUSINE SERVICES PLUS INC. failed to demonstrate how further discovery might reveal or lead to relevant evidence, or that facts essential to oppose the motion were exclusively within the plaintiff's control (*see CPLR 3212[f]*; *Yiming Zhou v. 828 Hamilton, Inc.*, 173 A.D.3d 943, 103 N.Y.S.3d 472).

The court has considered defendant's remaining arguments in opposition to the motion and find them to be without merit.

Accordingly, it is hereby

ORDRED that defendant Minkhojov’s motion for summary judgment dismissing all claims against him, including all cross-claims, is **GRANTED**, it is further

ORDRED that the branch of plaintiff’s motion for partial summary judgment on the issue of liability against defendant LIMOUSINE SERVICES PLUS INC. is **GRANTED**; and it is further

ORDERED that the branch of plaintiff’s motion for an order striking all affirmative defenses raised by defendant LIMOUSINE SERVICES PLUS INC. that the plaintiff’s negligence contributed to the accident is also **GRANTED**.

This constitutes the decision and order of the Court.

Dated: December 31, 2021



PETER P. SWEENEY, J.S.C.

Note: This signature was generated electronically pursuant to Administrative Order 86/20 dated April 20, 2020