

<b>Desruisseauz v Ancona</b>
2021 NY Slip Op 33153(U)
December 10, 2021
Supreme Court, Queens County
Docket Number: Index No. 716963/20
Judge: Carmen R. Velasquez
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SHORT FORM ORDER

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE CARMEN R. VELASQUEZ IAS PART 38
Justice

GARRY DESRUISSEAUZ, Index No. 716963/20

Plaintiff, Motion

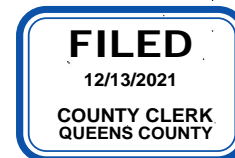
Date: August 16, 2021

-against-

M# 1, 2 & 3

JOSEPH ANCONA, ET AL.,

Defendants.



The following papers numbered EF 19-76 read on this motion by the plaintiff for summary judgment on the issue of liability against defendants Joseph Ancona, Delea Leasing Corp. and Steven Duvert and dismissing the affirmative defenses of culpable conduct and comparative negligence (Sequence No. 1); separate motion by defendant Steven Duvert for summary judgment dismissing the complaint and all cross claims insofar as asserted against him on liability grounds (Sequence No. 2); and separate motion by defendant Cacheline Maitre for summary judgment dismissing the complaint and all cross claims insofar as asserted against her on liability grounds (Sequence No. 3).

Table with 2 columns: Document Description and Papers Numbered. Includes entries for Notice of Motion - Affidavits - Exhibits, Affirmations in Opposition, and Replying Affirmations.

Upon the foregoing papers it is ordered that these three motions for summary judgment are jointly decided as follows:

Plaintiff allegedly sustained serious injuries while he was a passenger in a vehicle that was involved in a multi-vehicle

accident on January 2, 2019 on Brookville Boulevard near the intersection with North Conduit Avenue in Queens County. Plaintiff was a passenger in the vehicle operated by defendant Cacheline Maitre. Plaintiff alleges that the vehicle in which he was a passenger was struck in the rear by the vehicle operated by defendant Steven Duvert. Plaintiff further asserts that prior to this impact, the Duvert vehicle was struck in the rear by the vehicle owned by defendant Delea Leasing Corp. and operated by defendant Joseph Ancona. Plaintiff commenced the instant action to recover damages for negligence. Plaintiff and the defendants Duvert and Maitre now move, separately, for summary judgment.

It is well established that a rear-end collision with a stopped or stopping vehicle creates a prima facie case of negligence with respect to the operator of the moving vehicle and imposes a duty on the operator of the moving vehicle to come forward with an adequate, non-negligent explanation for the accident. (see *Finney v Morton*, 127 AD3d 1134, 1134 [2d Dept 2015]; *Foti v Fleetwood Ride, Inc.*, 57 AD3d 724, 724 [2d Dept 2008]; *Ahmad v Grimaldi*, 40 AD3d 786, 787 [2d Dept 2007]; *Emil Norsic & Son, Inc. v L.P. Transp., Inc.*, 30 AD3d 368, 368 [2d Dept 2006].) If the operator of the moving vehicle cannot come forward with evidence to rebut the inference of negligence, the operator of the stationary vehicle is entitled to summary judgment. (see *Dileo v Greenstein*, 281 AD2d 586, 586 [2d Dept 2001]; *Lopez v Minot*, 258 AD2d 564, 564 [2d Dept 1999].)

Further, it is well settled that the right of an innocent passenger to an award of 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 the defendant drivers. (*Brabham v City of New York*, 105 AD3d 881, 883 [2d Dept 2013]; *Anzel v Pistorino*, 105 AD3d 784, 786 [2d Dept 2013]; *Medina v Rodriguez*, 92 AD3d 850, 850 [2d Dept 2012].)

In the matter at hand, the plaintiff made a prima facie showing of entitlement to judgment as a matter of law. In his affidavit, plaintiff avers that at the time of the accident, the vehicle in which he was as passenger was at complete stop for approximately 25-30 seconds due to traffic congestion. Plaintiff further avers that the accident occurred when the vehicle operated by defendant Ancona struck the rear of the defendant Duvert's vehicle, and the Duvert vehicle then struck the vehicle of defendant Maitre. Plaintiff also states that he did not interfere with the operation or movement of the vehicle in which he was a passenger.

For similar reasons, defendant Maitre has made a prima facie showing of entitlement to judgment as a matter of law. In her affidavit, said defendant states her vehicle was stopped for 25-30 seconds at the subject intersection when it was struck in the rear by the Duvert vehicle. She also avers that at the time of the incident, her foot was pressing down on the brake pedal. In addition, she avers that she was not involved in the initial impact between the Anacona vehicle and the Duvert vehicle.

No party, in opposition, has submitted sufficient evidence raising a triable issue of fact as to any negligence by either defendant Maitre or the plaintiff.

Defendant Ancona submits an affidavit in opposition in which he avers that as he traveled on Brookville Boulevard and approached the subject intersection, a white pick up truck, suddenly and without warning, entered the intersection without stopping at a stop sign directly in front of his vehicle. He further avers that he applied his brakes to avoid an accident with the truck. Defendant Ancona also states that although he avoided an accident with the white truck, he noticed that the vehicles in front of him had stopped abruptly. He applied pressure on the brake but was unable to stop before making a light impact with the vehicle of defendant Duvert. Defendant Ancona also avers that he was faced with a sudden and unexpected circumstance when the truck entered the intersection without stopping. He also explains that as a result, his view was obstructed.

The court finds the assertion of defendant Ancona insufficient to raise a triable issue of fact. Indeed, defendant Ancona states that he was able to avoid an accident with the truck that entered the intersection. He also states that the vehicles in front of his vehicle stopped abruptly. However, the assertion of an abrupt or sudden stop is insufficient to constitute a non-negligent explanation for the accident. (*see Cajas-Romero v Ward*, 106 AD3d 850, 852 [2d Dept 2013]; *Franco v Breceus*, 70 AD3d 767, 768 [2d Dept 2010]; *Arias v Rosario*, 52 AD3d 551, 553 [2d Dept 2008]; *Campbell v City of Yonkers*, 37 AD3d 750, 751 [2d Dept 2007].)

To the extent defendants Ancona and Delea Leasing Corp. assert that the motions should be denied as premature since discovery is not complete, such contention is without merit. The hope and speculation that evidence may be uncovered during discovery is an insufficient basis to deny the motion for summary judgment. (*Cajas-Romero v Ward*, 106 AD3d 850, 852 [2d Dept

2013]; *Essex Ins. Co. v Carpentry*, 74 AD3d 733, 734 [2d Dept 2010]; *Conte v Frelen Assocs., LLC*, 51 AD3d 620, 621 [2d Dept 2008].)

Defendant Duvert also seeks summary judgment. In his annexed affidavit, defendant Duvert avers that at the time of the subject accident, his vehicle was at a complete stop for approximately eight seconds behind the vehicle of defendant Maitre, in which plaintiff was a passenger. Defendant Duvert states that while his vehicle was stopped, it was struck in the rear by the vehicle of defendant Ancona. He further avers that this impact caused his vehicle to be pushed into the rear of the Maitre vehicle. Inasmuch as the Duvert vehicle, which was stopped, was propelled into the Maitre vehicle, defendant Duvert made a showing of his entitlement to summary judgment. (*Bardizbanian v Bhuiyan*, 181 AD3d 772, 772-773 [2d Dept 2020]; *Morales v Amar*, 145 AD3d 1000, 1002 [2d Dept 2016].) No party has raised a triable issue of fact as to any negligence by defendant Duvert.

Accordingly, the branch this motion by the plaintiff for summary judgment on the issue of liability is granted to the extent that an assessment of damages against the defendants Joseph Ancona and Delea Leasing Corp. shall be held at the time the case is called for trial. (Seq. No. 1).

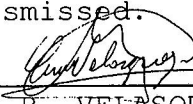
The branch this motion by the plaintiff for summary judgment on the issue of liability as against defendant Steven Duvert is denied. (Seq. No. 1).

The branch this motion by the plaintiff for summary judgment dismissing certain affirmative defenses is granted, and the first and tenth affirmative defenses in the Answer of defendants Joseph Ancona and Delea Leasing Corp., alleging culpable conduct and comparative negligence, respectively, are dismissed. (Seq. No. 1).

The motion by defendant Steven Duvert for summary judgment is granted, and the complaint and all cross claims as against defendant Steven Duvert are dismissed. (Seq. No. 2).

The motion by defendant Cacheline Maitre for summary judgment is granted, and the complaint and all cross claims as against defendant Cacheline Maitre are dismissed. (Seq. No. 3).

Dated: December 10, 2021

  
CARMEN R. VELASQUEZ, J.S.C.

