

State Farm Mut. Auto. Ins. Co. v Vasquez

2021 NY Slip Op 33308(U)

September 6, 2021

Supreme Court, Rockland County

Docket Number: Index No. 031562/2018

Judge: Sherri L. Eisenpress

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

-----X
STATE FARM MUTUAL AUTOMOBILE INSURANCE
COMPANY, as subrogee of JERFFREY JEUNE,

Plaintiff,

-against-

YOLANDA VASQUEZ and HUGO VASQUEZ,

Defendants.

-----X
YOLANDA VASQUEZ and HUGO VASQUEZ,

Third-Party Plaintiffs,

-against-

LUCIEN SEVERE,

Third-Party Defendant.

-----X
JEFFREY JEUNE,

Plaintiff,

-against-

LUCIEN SEVERE, HUGO VASQUEZ, and YOLANDA
VASQUEZ,

Defendants.

-----X
Sherri L. Eisenpress, A.J.S.C.

DECISION & ORDER

Action #1

Index No.: 031562/2018

(Motion # 3)

Action #2

Index No.: 033128/2019

(Motion #1)

The following papers, numbered 1-10, were considered in connection with (i) Third-Party Defendant Lucien Severe’s Notice of Motion in Action #1, for summary judgment and dismissal of the third-party action, pursuant to Civil Practice Law and Rules § 3212; and (ii) Defendant Lucien Severe’s Notice of Motion in Action #2, for summary judgment and dismissal of the Complaint and any cross-claims against him, pursuant to Civil Practice Law and Rules § 3212 :

PAPERS**NUMBERED****Action #1**

NOTICE OF MOTION/AFFIRMATION IN SUPPORT/STATEMENT OF FACTS/
MEMORANDUM OF LAW IN SUPPORT/EXHIBITS 1-4

Action #2

NOTICE OF MOTION/AFFIRMATION IN SUPPORT/STATEMENT OF FACTS/
MEMORANDUM OF LAW/ EXHIBITS 5-8

AFFIRMATION IN OPPOSITION BY VASQUEZ DEFENDANTS 9

AFFIRMATION IN REPLY 10

Upon a careful and detailed review of the foregoing papers, the Court now rules as follows:

The above captioned actions arise out of a multi-vehicle accident which occurred on August 19, 2017, at the intersection of West Eckerson Road and Zuba Lane in the Town of Ramapo. A subrogation action was commenced under Index #031562/2018 (action #1) on March 21, 2018, against Defendants Yolanda and Hugo Vasquez, who served an answer on September 17, 2018. On August 18, 2018, the Vasquez defendants commenced a third-party action against Lucien Severe. An Answer to the third-party complaint was filed on August 12, 2019, after denial of the Vasquez' default motion. Plaintiff Jeffrey Jeune commenced an action under Index #033128/2019 (action #2) on June 14, 2019. Issue was joined as to Defendant Lucien Severe on July 16, 2019 and as to the Vasquez Defendants on August 22, 2019. Since the two actions arise out of the same occurrence, they were joined for discovery and trial. The Court now has before it summary judgment motions made by Lucien Severe to dismiss him as a defendant/third-party defendant from each action.

At the time of the subject occurrence, Plaintiff Jeune was operating a 2009

Mercedes 4-door sedan in the single eastbound lane of West Eckerson Road. The Vasquez vehicle, a 2001 Honda 4 door sedan, was traveling west-bound on Eckerson Road. Defendant/Third-Party Defendant Severe was operating a black 2002 Nissan Suburban also in the west-bound lanes of Eckerson Road.

Plaintiff Jeune testified that as he was traveling on Eckerson Road, the Vasquez vehicle traveling in the opposite direction attempted to make a left turn onto Zuba Lane and struck his vehicle. After being struck by the Vasquez vehicle, he testified that his car experienced a second impact when it bounced off the curb and spun around, then experienced a third impact, but he does not know with what object because he blacked out. Mr. Jeune testified that he never saw any contact between the Vasquez vehicle and Severe's vehicle prior to the impact with his vehicle and although he testified that the Vasquez vehicle was stopped, he did not testify that it was struck from behind prior to his impact.

Defendant/Third-Party Defendant Severe, testified that at the time of the accident, he was traveling in the right lane of two lanes traveling in his direction on West Eckerson Road. The Vasquez vehicle was in the left lane in his direction on Eckerson Road, slightly ahead of his vehicle. He heard the impact between the Vasquez and Jeune vehicle, and after the initial impact with those two cars, the Vasquez vehicle struck his vehicle. Mr. Severe testified that his vehicle never made contact with the Jeune vehicle. Yolanda Vasquez testified that she had stopped her vehicle for about a minute, waiting to make a left hand turn onto Zuba Lane, when the rear of her vehicle was struck by a green "Jeep car." As a result of being struck from behind, she claims that her vehicle was pushed forward, and that the Jeune vehicle, which was traveling in the opposite direction, came and impacted her car.

Defendant/Third-Party Defendant Severe moves in both actions for summary judgment and dismissal of the actions against him. Severe argues that there is no direct, or

indirect, evidence that any damages allegedly sustained by State Farm, the Vasquez defendants or Plaintiff Jeune was caused by him. He asserts that the record is undeniably clear that his vehicle never made contact with Jeune. Moreover, he contends that although Vasquez testified that her vehicle was stopped on West Eckerson Road waiting to make a left turn onto Zuba Lane when it was allegedly struck in the rear and pushed forward, she testified that the vehicle which struck her was a green jeep, and not Severe's black Nissan Suburban.

In opposition to the summary judgment motions, the Vasquez defendants argue that there are material issues of fact based upon the three different versions of the subject occurrence. More specifically, Vasquez argues that there are questions of fact as to whether 1) the Vasquez vehicle was stopped before the intersection; 2) whether the Vasquez vehicle was already making a left hand turn onto Zuba when there was an impact with Jeune; 3) whether or not Severe's vehicle impacted Vasquez's vehicle prior to Vasquez' vehicle impacting Jeune's vehicle; and 4) whether or not Severe's vehicle impacted Plaintiff's vehicle at all.

The proponent of a summary judgment motion must establish his or her claim or defense sufficient to warrant a court directing judgment in its favor as a matter of law, tendering sufficient evidence to demonstrate the lack of material issues of fact. Giuffrida v. Citibank Corp., et al., 100 N.Y.2d 72, 760 N.Y.S.2d 397 (2003), citing Alvarez v. Prospect Hosp., 68 N.Y.2d 320, 508 N.Y.S.2d 923 (1986). The failure to do so requires a denial of the motion without regard to the sufficiency of the opposing papers. Lacagnino v. Gonzalez, 306 A.D.2d 250, 760 N.Y.S.2d 533 (2d Dept. 2003). However, once such a showing has been made, the burden shifts to the party opposing the motion to produce evidentiary proof in admissible form demonstrating material questions of fact requiring trial. Gonzalez v. 98 Mag

Leasing Corp., 95 N.Y.2d 124, 711 N.Y.S.2d 131 (2000), citing Alvarez, supra, and Winegrad v. New York Univ. Med. Center, 64 N.Y.2d 851, 508 N.Y.S.2d 923 (1985).

On a motion for summary judgment, evidence is to be viewed in the light most favorable to the party opposing the motion, giving them the benefit of every favorable inference, and the Court should not pass on issues of credibility. Torres v. Jeremias, 283 A.D.2d 484, 724 N.Y.S.2d 461 (2d Dept. 2001); Cortale v. Educational Testing Services, 251 A.D.2d 1998, 674 N.Y.S.2d 753, 756 (2d Dept. 1998). However, mere conclusions or unsubstantiated allegations unsupported by competent evidence are insufficient to raise a triable issue. Gilbert Frank Corp. v. Federal Ins. Co., 70 N.Y.2d 966, 525 N.Y.S.2d 793 (1988); Zuckerman v. City of New York, 49 N.Y.2d 557 (1980), 427 N.Y.S.2d 595.

In the instant matter, the Court finds that Defendant/Third-Party Defendant Severe has established his prima facie entitlement to summary judgment and dismissal of the action against him, and in opposition thereto, no triable issue of fact has been established. "An act or admission is a proximate cause of an accident if it was a substantial factor in bringing about the accident. That means if it had such an effect in producing the accident that reasonable men or women would regard it as a cause of the accident." Rubin v. Pecoraro, 141 A.D.2d 525, 527, 529 N.Y.S.2d 142 (2d Dept. 1988). While there is no doubt that there are divergent versions of the subject occurrence, and triable issues of fact as to whether the Vasquez vehicle was stopped or struck in the rear; in each of the versions, there is no evidence that any actions by Severe was a proximate cause of the subject occurrence.

Plaintiff Jeune and Defendant/Third-Party Defendant Severe each testified that there was no contact between the Severe vehicle, and the Vasquez vehicle, prior to the Vasquez vehicle making contact with the Jeune vehicle. While Vasquez testified that she was rear-ended prior to making contact with the Jeune vehicle (testimony that will be accepted as

true for purposes of these motions), she describes this unidentified vehicle as being a "green Jeep car," which does not vaguely approximate the description of the Severe vehicle. Despite Vasquez remaining at the scene for some time after the occurrence, and all three vehicles involved in the incident remaining at the scene until removed, Ms. Vasquez did not identify the Severe vehicle as being the one that struck her in the rear, after the fact. As such, the allegation that the Severe vehicle struck the rear of Ms. Vasquez' vehicle is nothing more than impermissible speculation. Nor is there any evidence that Severe's vehicle made contact with the Jeune vehicle.

Accordingly, it is hereby

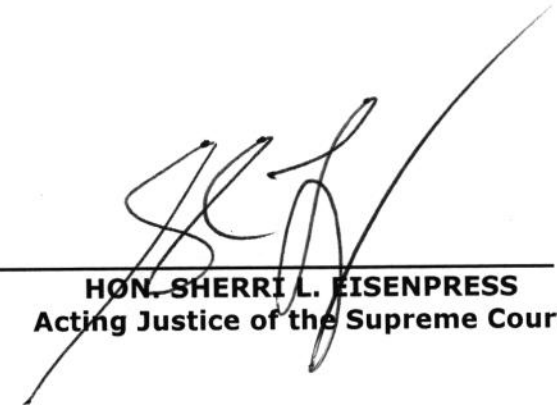
ORDERED that Third-Party Defendant Severe's Notice of Motion for Summary Judgment and dismissal of the third-party action (Action #1, Motion #3) is GRANTED in its entirety, and the third-party action is dismissed; and it is further

ORDERED that Defendant Severe's Notice of Motion for Summary Judgment and dismissal of the action, and all cross-claims against him (Action #2, Motion #1 is GRANTED in its entirety; and it is further

ORDERED that counsel for the remaining parties in both actions shall appear for a Settlement Conference on **OCTOBER 7, 2021 at 10:30 a.m.** via Microsoft Teams. The Court expects counsel to be fully familiar with the matter, have settlement authority, and be able to contact their adjuster and/or clients during the conference if requested by the Court to do so.

The foregoing constitutes the Decision and Order of this Court on Action #1, Motion #3 and Action #2, Motion #1.

Dated: New City, New York
September 6, 2021



HON. SHERRIL L. EISENPRESS
Acting Justice of the Supreme Court

To: All parties (via NYSCEF)