

Onerli v Tejera

2021 NY Slip Op 33897(U)

September 20, 2021

Supreme Court, Bronx County

Docket Number: Index No. 25766/2017E

Judge: Ben R. Barbato

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

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IBRAHIM ONERLI,

Plaintiff,

-against-

Index No.: 25766/2017E

ELIZABETH TEJERA, CHARLES GABRIEL,
and GERALDINE GABRIEL,

Defendants.

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HON. BEN R. BARBATO:

Defendants, CHARLES GABRIEL, and GERALDINE GABRIEL, move for summary judgment in their favor, dismissing Plaintiff's claims and any cross claims as against them.

This is an action to recover damages for alleged personal injuries sustained by Plaintiff, IBRAHIM ONERLI, in a multi-vehicle car accident, which occurred on or about May 23, 2016, at 1:45 p.m., on the Willis Avenue Bridge, near Bruckner Boulevard, in the Bronx, New York. Plaintiff was a passenger in the motor vehicle operated by nonparty Kyler McVay, which allegedly came into contact with the motor vehicle operated and owned by Defendants CHARLES GABRIEL, and GERALDINE GABRIEL, respectively.

The pertinent history of this matter includes that this Court dismissed the Complaint as against Defendant, ELIZABETH TEJERA, because she passed away on, or

about, June 22, 2016, which was prior to the commencement of this action. (See Order dated March 5, 2021, at NYSCEF Doc No 29; see TEJERA's Death Certificate, at NYSCEF Doc No 28).

This action was stayed due to the death of TEJERA, from June 20, 2018 until March 5, 2021 – when the Court ordered that the stay be lifted, and that a discovery compliance conference be scheduled for May 4, 2021. (See Order dated March 5, 2021). Shortly thereafter, on April 22, 2021, Defendants made the instant motion. The Note of Issue has not been filed; and no discovery has been exchanged.

In support of their motion, Defendants' submissions include the pleadings, Defendant CHARLES GABRIEL's Affidavit, and the Police Accident Report.

Defendant CHARLES GABRIEL describes the motor vehicle accident as follows: His vehicle was struck in the rear by a vehicle driven by decedent, TEJERA, while he was stopped at a red light on the Willis Avenue Bridge. He was at a complete stop for less than one minute prior to the accident. At the time of the accident, he was positioned about 3 to 4 feet behind the vehicle ahead of his vehicle. As a result of the heavy impact to the rear, his vehicle was pushed forward, causing it to make contact with the vehicle ahead (-- which was presumably the vehicle in which Plaintiff was a passenger).

Defendant describes the Willis Avenue Bridge, at the location of the accident, as having four lanes of travel in his direction. He was the third vehicle stopped at the light in his lane. The accident involved six vehicles. The traffic was moderate at the time of the accident.

Defendant further alleges that he had no warning that his car was going to be struck until the actual impact occurred; he did not hear any horns, brakes or screeching tires, prior to the impact. Also, he states that he had no opportunity to do anything to avoid the accident or to take evasive action. (See Affidavit by Defendant CHARLES GABRIEL, dated March 27, 2021).

In opposition to the motion, Plaintiff alleges that the motion should be denied as premature, since no discovery has been exchanged and depositions have not been conducted. Discovery could not proceed during the pendency of the stay which was in effect due to the death of Defendant TEJERA. Defendants made the instant motion in the month after the stay was lifted, and prior to the date of the discovery compliance conference scheduled by the Court.

Plaintiff seeks the opportunity to depose the other drivers and passengers involved in this six-vehicle collision. In particular, Plaintiff seeks to cross examine movant Defendant driver, CHARLES GABRIEL, regarding his role, and the details of

the accident. This is especially so, since Defendant CHARLES GABRIEL is attributing liability to the deceased nonparty TEJERA.

Further, Plaintiff seeks to depose a person most likely to have first-hand knowledge regarding decedent's actions, nonparty Ruth Coaxum, who was a passenger in the vehicle operated by decedent TEJERA (See Police Accident Report, at NYSCEF Doc No 39). There were ten drivers and passengers, named in the Police Report, involved in this six-vehicle collision, who have knowledge of relevant facts; and Plaintiff seeks the opportunity to gather the pertinent information and records. It is alleged that the injured Plaintiff, a passenger, was facing forward and could not observe the actions of decedent (located two vehicles behind his vehicle), and other drivers, in the moments leading up to the impacts – and that relevant facts are within the exclusive knowledge of other parties and nonparties, whose interests are adverse to that of Plaintiff.

Consequently, Plaintiff maintains that essential facts may exist, which cannot yet be stated, within the meaning of CPLR 3212(f) "Facts unavailable to opposing party", which provides that:

"Should it appear from affidavits submitted in opposition to the motion that facts essential to justify opposition may exist but cannot then be stated, the court may deny the motion or may order a continuance to permit affidavits to

be obtained or disclosure to be had and may make such other order as may be just”.

The parties herein should have the “opportunity to develop the record regarding the factual basis of defendants' [allegations,] ... the applicability of which is generally an issue of fact.” (*Nelson v Bestway Coach Express*, 36 AD3d 488, 488 [1st Dept 2007]; see *Diaz v Jadan*, 116 AD3d 600 [1st Dept 2014]); see *Belziti v Langford*, 105 AD3d 649 [1st Dept 2013]; see *Yant v Mile Sq. Transp., Inc.*, 89 AD3d 492 [1st Dept 2011]).

Thus, the Plaintiff herein should have the opportunity, for example, to conduct deposition of the parties and nonparties involved, and gather relevant documents – so as to ascertain who was liable for the happening of the accident, and whether there was more than one proximate cause for this multi-vehicle collision.

Accordingly, Defendants’ motion for summary judgment is denied, as premature, without prejudice to the making of a timely motion, if warranted, after the completion of discovery and the filing of the Note of Issue. This constitutes the decision and order of this court.

Dated: 9/30, 2021



HON. BEN R. BARBATO, J.S.C.