

**Jerez v Cayre**

2022 NY Slip Op 31404(U)

April 26, 2022

Supreme Court, New York County

Docket Number: Index No. 159104/2019

Judge: James G. Clynnes

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. JAMES G. CLYNES PART 22M

Justice

-----X

ALFREDO A ANTE JEREZ,
Plaintiff,

- v -

STANLEY CAYRE, ALEXANDER D CABRERA, LAMOUR
CAB CORP., MOHAMMED A MOSTAFA, FULL SCALE
WOODWORKING, INC., SEGUNDO LAU

Defendant.

INDEX NO. 159104/2019

MOTION DATE 01/28/2020,
03/23/2020,
07/23/2020

MOTION SEQ. NO. 001 003 004

DECISION + ORDER ON MOTION

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 28, 29, 30, 31, 32, 33, 34, 35, 44, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58

were read on this motion to/for JUDGMENT - SUMMARY

The following e-filed documents, listed by NYSCEF document number (Motion 003) 37, 38, 39, 40, 59

were read on this motion to/for JUDGMENT - SUMMARY

The following e-filed documents, listed by NYSCEF document number (Motion 004) 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 83, 84, 85, 86, 87

were read on this motion to/for JUDGMENT - SUMMARY

Upon the foregoing documents, the motion of Defendants Stanley Cayre ("Cayre") and Alexander D. Cabrera ("Cabrera") for summary judgment in their favor and dismissal of the complaint and cross-claims against them and the cross-motion of plaintiff Alfredo A. Ante-Jerez ("plaintiff") for summary judgment on the issue of liability in his favor and against defendants Lamour Cab Corp. ("Lamour") and Mohammed Mostafa ("Mostafa") (Motion Sequence #001); and the motion by defendants Full Scale Woodworking Inc. ("Full Scale") and Segundo Lau ("Lau") for summary judgment in their favor and dismissal of the complaint and cross-claims against them and for summary judgment in their favor, dismissal of the complaint and any cross claims against them and against defendants Lamour and Mostafa in the amount of \$4,557.11 (Motion Sequence #003 and #004); and the motion by defendants Full Scale and Lau for summary judgment in their favor and dismissal of the complaint and cross-claims against them on the ground that the action is barred by the exclusivity remedy provisions of Workers'

Compensation Law 11 and 29 (6) (Motion Sequence #003 and #004) and granting summary judgment on their cross-claim in their favor and against defendants Lamour Cab Corp. and Mohammed Mostafa in the amount of \$4,557.11 (Motion Sequence #003 and #004) are hereby consolidated for decision and order and decided as set forth herein.

This action (Action #1) was previously joined for trial with the related actions *Juan E. Madera v Lamour Cab Corp and Mohammed A. Mostafa*, Index Number 32723/2019E (Action #2)<sup>1</sup> and *Beata Zieba v Mohammed A. Mostafa, Lamour Cab Corp, Segundo Lau, Full Scale Woodworking Inc., Alexander D. Cabrera, Stanley Cayre, Juan E. Madera and Stork Driver LLC*, Index Number 510426/2020 (action #3) because all three actions arise from the same four-vehicle accident on May 31, 2019.

There is no dispute that the four vehicles involved in the accident were in the following order from front to back: first, the vehicle owned and operated by non-parties Stork Driver LLC and Juan Madera (plaintiff in Action #2); second, the vehicle owned and operated by defendants Cayre and Cabrera; third, the vehicle owned and operated by defendants Full Scale and Lau; and fourth (rear-most), the vehicle owned and operated by defendants Lamour and Mostafa. Plaintiff was a passenger in the vehicle owned and operated by defendants Full Scale and Lau. There is no dispute that the rear most vehicle owned and operated by the defendants Lamour and Mostafa struck the stopped vehicle owned and operated by defendants Full Scale and Lau, in which plaintiff was a passenger, causing it to move forward and make contact with the rear of the vehicle owned and operated by the defendants Cayre and Cabrera, causing that vehicle to move forward and make contact with the rear of the vehicle in front of it.

### **Motion Sequence 001**

The submission of defendants Cayre and Cabrera for summary judgment and dismissal of the complaint and all cross-claims against them, which includes the affidavit of the defendant Cabrera in which he avers that he was operating the vehicle owned by defendant Cayre; that he was stopped in heavy traffic when a box truck struck his vehicle in the rear and caused the front

---

<sup>1</sup> In Action #2, the court granted summary judgment on liability in favor of the plaintiff operator of the first vehicle and against defendants Lamour and Mostafa the owner and operator of the rear-most vehicle in the chain reaction collision (See NYSCEF DOC. NO.: 23, Index Number 32723/2019E). In Action #3, the court granted summary judgment on liability in favor of the operator of the first vehicle (NYSCEF DOC NO 57, Index Number 510426/2020), the owner and operator of the second vehicle (defendants Cayre and Cabrera) (NYSCEF DOC. NO.: 59, Index Number 510426/2020) and the owner and operator of the third vehicle (Full Scale and Lau) (NYSCEF DOC. NO.: 58, Index Number 510426/2020). A stipulation of discontinuance of the action against the remaining defendants (Lamour and Mostafa) (NYSCEF DOC. NO.: 72, Index 510426/2020) was filed.

of his vehicle to make contact with the rear of the vehicle in front of it and that he could not have done anything to avoid the collisions, establishes prima facie entitlement to summary judgment as a matter of law (*See Chang v Rodriguez*, 57 AD3d 295 [1st Dept 2008] [“In a chain-reaction collision... responsibility presumptively rests with the rearmost driver.”]).

The plaintiff’s submission in support of his cross-motion, which includes the affidavit of the plaintiff in which he avers that he was a passenger in the vehicle owned and operated by defendants Full Scale Woodworking, Inc. and Lau; that it was stopped in traffic for about ten seconds when it was struck in the rear by the vehicle owned and operated by the defendants Lamour and Mostafa and pushed forward causing the vehicle in which plaintiff was a passenger to make contact with the rear of the vehicle in front of it, which was owned and operated by defendants Cayre and Cabrera, establishes a prima facie case of negligence. A rear-end collision with a stopped or stopping vehicle establishes a prima facie negligence on the part of the rear vehicle’s driver and imposes a duty upon the driver of the rear vehicle to come forward with an adequate nonnegligent explanation for the accident (*Quiros v Hawkins*, 180 AD3d 500 [1st Dept 2020]). Accordingly, plaintiff has established his prima facie entitlement to summary judgment and the burden shifts to defendants to provide evidence of a nonnegligent explanation for the accident, or a nonnegligent reason for defendants’ failure to maintain a safe distance between defendants’ care and the lead car (*Woodley v Ramirez*, 25 AD3d 451, 452 [1st Dept 2006]).

Plaintiff’s affidavit in support of his cross-motion, also establishes that defendants Full Scale and Lau are entitled to summary judgment in their favor and against defendants Lamour Cab Corp. and Mohammed Mostafa (*Id.*).

The attorney affirmation in opposition submitted by defendants Lamour and Mostafa failed to provide a non-negligent explanation for the rear-end collision and failed to raise an issue of fact sufficient to preclude summary judgment in favor of plaintiff and defendants Cayre and Cabrera. Therefore, the motion for summary judgment in favor of defendants Cayre and Cabrera and dismissal of the complaint and all cross-claims against them is granted and plaintiff’s cross-motion for summary judgment on liability in favor of plaintiff against defendants Lamour and Mostafa is granted.

#### **Motion Sequences 003 and 004**

Defendants Full Scale and Lau seek an order granting summary judgment in their favor, dismissal of the complaint and all cross-claims against them and summary judgment on their cross-claim against defendants Lamour and Mostafa for property damages in the amount of \$4,557.11 (motion sequence #003 and #004) and also seeking summary judgment and dismissal of the complaint and any cross-claims on the grounds that the action is barred by the exclusivity remedy provisions of Workers' Compensation Law 11 and 29 (6) (motion sequence #4).

The submission of defendants Full Scale and Lau established prima facie negligence against defendants Lamour and Mostafa through the affidavit of defendant driver Lau in which he avers that he was operating the vehicle owned by defendant Full Scale; that he came to a gradual stop in heavy traffic; that he was completely stopped when his vehicle was struck in the rear; and that but for being struck in the rear, the vehicle he was operating would not have struck the vehicle in front of it; and that he could not have taken evasive action to avoid the accident. Cabrera's affidavit is corroborated by the affidavit of plaintiff submitted in support of the cross-motion. The attorney affirmation in opposition submitted by defendants Lamour and Mostafa does not provide a non-negligent explanation for the rear-end collision and therefore does not raise an issue of fact sufficient to preclude summary judgment in favor of defendants Full Scale and Lau. The motion by defendants Full Scale and Lau for summary judgment in their favor and against defendants Lamour and Mostafa and for dismissal of the complaint and all cross-claims against them is granted.

The Court need not determine that portion of the motion by defendants Full Scale and Lau seeking summary judgment and dismissal of the complaint and all cross-claims based Workers Compensation Law 11 and 29 (6) and therefore that portion of the motion is denied as moot.

The portion of the motion by defendants Full Scale and Lau seeking summary judgment on their cross-claim for property damage in the amount of \$4,557.11 against defendants Lamour and Mostafa is denied at this time with leave to file a notice of inquest on the cross-claim for property damages against defendants Lamour and Mostafa.

Based upon the foregoing it is

ORDERED that the motion by defendants Cayre and Cabrera for summary judgment and dismissal of the complaint and all cross-claims against them (Motion Sequence #001) is granted; and it is further

ORDERED that plaintiff's cross-motion for summary judgment in his favor and against defendants Lamour and Mostafa (Motion Sequence #001) is granted; and it is further

ORDERED that the motion by defendants Full Scale and Lau seeking an order granting summary judgment in their favor and dismissal of the complaint and all cross-claims against them (motion sequence #003 and #004) is granted; and it is further

ORDERED that the motion by defendants Full Scale and Lau seeking an order granting summary judgment in their favor, dismissal of the complaint and all cross-claims on the grounds that the action is barred by the exclusivity remedy provisions of Workers' Compensation Law 11 and 29 (6) (motion sequence #003 and #004) is denied as moot; and it is further

ORDERED that the motion by defendants Full Scale and Segundo Lau seeking summary judgment on the cross-claim against defendants Lamour and Mostafa for property damages in the amount of \$4,557.11 (motion sequence #003 and #004) is denied with leave to file a notice of inquest for the property damage claim.

This constitutes the Decision and Order of the Court.

4/26/2022

DATE

*James G. Clynnes*  
JAMES G. CLYNES, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE