

Webster v Jia Chen

2022 NY Slip Op 32445(U)

January 13, 2022

Supreme Court, Queens County

Docket Number: Index No. 709570/2021

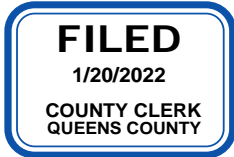
Judge: Robert J. McDonald

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This opinion is uncorrected and not selected for official publication.

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK
CIVIL TERM - IAS PART 34 - QUEENS COUNTY
25-10 COURT SQUARE, LONG ISLAND CITY, N.Y. 11101



P R E S E N T : HON. ROBERT J. MCDONALD
Justice

- - - - - x

VICTORIA M. WEBSTER, Index No.: 709570/2021

Plaintiff, Motion Date: 1/13/22

- against - Motion No.: 32

JIA CHEN, CAVENA EDWARDS, and LEROY EDWARDS, Motion Seq.: 1

EDWARDS,

Defendants.

- - - - - x

The following electronically filed documents read on this motion by plaintiff for an Order pursuant to CPLR 3212, granting summary judgment in favor of plaintiff and against defendants on the issue of liability; and on this cross-motion by defendant Jia Chen for an Order pursuant to CPLR 3212, granting summary judgment to defendant Jia Chen and dismissing the complaint and any and all cross-claims:

	<u>Papers</u> <u>Numbered</u>
Notice of Motion-Affirmation-Exhibits.....	EF 13 - 19
Notice of Cross-Motion-Affirmation-Exhibits.....	EF 20 - 25
Edwards' Affirmations in Opposition-Exhibits.....	EF 27 - 33
Reply Affirmation & Opposition to Cross-Motion.....	EF 36 - 37
Reply Affirmation-Exhibits.....	EF 34 - 35

In this negligence action, plaintiff seeks to recover damages for personal injuries allegedly sustained as a result of a three-car accident that occurred on December 22, 2020 on 143-04 Farmers Boulevard, in Queens County, New York.

Plaintiff commenced this action by filing a summons and complaint on April 21, 2021. Defendants Cavena Edwards and Leroy Edwards (collectively hereinafter the Edwards defendants) joined issue by service of an answer on June 18, 2021. Defendant Chen joined issue by service of an answer on July 6, 2021. Plaintiff now moves for partial summary judgment on the issue of liability. Defendant Chen cross-moves for summary judgment.

In support of the motion, plaintiff submits an affidavit, affirming that at the time of the accident, her vehicle's headlights, taillights, and brake lights were operational. The weather was nice, fair, and clear without any precipitation. Her vehicle was traveling in stop-and-go traffic. There was a traffic control device at the intersection of Farmers Boulevard and 144th Avenue that was causing the slow and steady build-up of traffic on southbound Farmers Boulevard. Traffic in front of her vehicle eventually came to a slow and steady stop, to which she did the same. She was completely stopped in traffic on Farmers Boulevard for one to two seconds when she was struck in the rear by defendant Chen's vehicle. Prior to the impact, she was traveling in stop-and-go traffic on Farmers Boulevard, and reached a maximum speed of eight miles per hour. She could not have stopped suddenly, quickly, and/or rapidly because the speed she was traveling was not excessive under the traffic conditions.

Plaintiff also submits a copy of the certified Police Accident Report (MV-104AN). In the Accident Description portion, the responding officer notes, in relevant part:

AT TPO V1 (plaintiff) STATES WHILE TRAVELING STRAIGHT AT ABOVE LOCATION V2 DID REAR END V1 IFO LOCATION. V2 (Chen) STATES WHILE TRAVELING STRAIGHT AT ABOVE LOCATION V1 DID STOP SHORT CAUSING HIM TO REAR END V1. V2 FURTHER STATES V3 DID REAR END V2 AFTER V2 GUT V1. V3 (Cavena Edwards) STATES WHILE TRAVELING STRAIGHT AT ABOVE LOCATION V2 DID STOP SHORT CAUSING HER TO REAR END V2.

Based on the submitted evidence, plaintiff contends that summary judgment is warranted as her stopped vehicle was rear-ended by defendant Chen's vehicle. Thus, defendants are negligent as a matter of law for violating Vehicle and Traffic Law 1129(a).

In opposition and in support of the cross-motion, defendant Chen submits an affidavit, affirming that because of heavy traffic, he brought his vehicle to a gradual stop. He had been stopped for about 1 to 2 seconds. His eyes remained straight ahead. His foot never left the brake. While looking straight ahead, he felt a heavy impact to the rear of his vehicle, which pushed him forward, causing his vehicle to make contact with the vehicle directly in front of him. He did not have any warning prior to the impact to the rear of his vehicle that an accident was about to take place. He did not contribute in any way to the happening of the accident. He does not agree with the description contained in the police report. He speaks Mandarin, and the police did not ask him how the accident occurred. He did not speak to anyone else at the accident scene.

Based on his affidavit, defendant Chen contends that he is entitled to summary judgment as he is not liable for the subject accident since his stopped vehicle was struck in the rear by the Edwards defendants' vehicle.

In opposition to the motion and cross-motion, Cavena Edwards submits an affidavit, affirming that she was driving her vehicle straight on Farmers Boulevard when defendant Chen's vehicle approached from her left, cut in front of her vehicle, and stopped short. She hit the brakes on her vehicle, but was unable to stop in time. Chen's vehicle then struck plaintiff's vehicle. Prior to the impact, she was travelling at approximately 27 miles per hour.

Based on her affidavit, the Edwards defendants contend that summary judgment must be denied as there are questions of fact, including, inter alia, questions regarding the sole proximate cause of the accident.

The proponent of a summary judgment motion must tender evidentiary proof in admissible form eliminating any material issues of fact from the case. If the proponent succeeds, the burden shifts to the party opposing the motion, who then must show the existence of material issues of fact by producing evidentiary proof in admissible form in support of his or her position (see Zuckerman v City of New York, 49 NY2d 557 [1980]). "A court deciding a motion for summary judgment is required to view the evidence presented in the light most favorable to the party opposing the motion and to draw every reasonable inference from the pleadings and proof submitted by the parties in favor of the opponent to the motion" (Myers v Fir Cab Corp., 64 NY2d 806 [1985]).

"When the driver of an automobile approaches another automobile from the rear, he or she is bound to maintain a reasonably safe rate of speed and control over his or her vehicle, and to exercise reasonable care to avoid colliding with the other vehicle" (Macauley v ELRAC, Inc., 6 AD3d 584 [2d Dept. 2003]). It is well established law that a rear-end collision creates a prima facie case of negligence on the part of the driver of the rearmost vehicle, requiring the operator of that vehicle to proffer an adequate, non-negligent explanation for the accident (see Hearn v Manzolillo, 103 AD3d 689 [2d Dept 2013]; Taing v Drewery, 100 AD3d 740; Kastritsios v Marcello, 84 AD3d 1174[2d Dept. 2011]; Klopchin v Masri, 45 AD3d 737 [2d Dept. 2007]; Hakakian v McCabe, 38 AD3d 493 [2d Dept. 2007]; Velazquez v Denton Limo, Inc., 7 AD3d 787 [2d Dept. 2004]).

Here, plaintiff affirmed that her stopped vehicle was struck in the rear. Thus, plaintiff satisfied her prima facie burden of establishing entitlement to judgment as a matter of law on the issue of liability (see Volpe v Limoncelli, 74 AD3d 795 [2d Dept. 2010]; Vavoulis v Adler, 43 AD3d 1154 [2d Dept. 2007]).

However, viewing the evidence submitted, including the affirmed statement of defendant driver Edwards that Chen's vehicle made a sudden lane change in front of her vehicle, in the light most favorable to the nonmoving parties, triable issues of fact as to the proximate cause of the subject accident remain (see Ortiz v Hub Truck Rental Corp., 82 AD3d 725 [2d Dept. 2011][finding that evidence that a plaintiff's vehicle made a sudden lane change directly in front of a defendant's vehicle, forcing that defendant to stop suddenly, is sufficient to rebut the inference of negligence]; Reitz v. Seagate Trucking, Inc., 71 AD3d 975 [2d Dept. 2010][finding that the defendants rebutted the inference of negligence by adducing evidence that the plaintiffs' vehicle suddenly changed lanes directly in front of their vehicle, forcing the defendant to stop suddenly]; Oguzturk v. General Elec. Co., 65 AD3d 1110 [2d Dept. 2009]). Since this matter involves more than simply a trier of fact's apportionment of fault between the two defendant drivers, plaintiff is not entitled to summary judgment on the issue of liability (see, e.g. Phillip v D & D Carting Co., Inc., 136 AD3d 18 [2d Dept. 2015]).

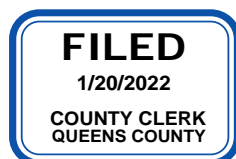
Moreover, any issues of credibility must be determined by the trier of fact rather than on a motion for summary judgment. "A court may not weigh the credibility of witnesses on a motion for summary judgment, unless it clearly appears that the issues are not genuine, but feigned" (Conciatori v Port Auth. of N. Y. & N. J., 46 AD3d 501 [2d Dept. 2007]).

Accordingly, for the above stated reasons, it is hereby,

ORDERED, that plaintiff's motion for summary judgment is denied; and it is further

ORDERED, that the cross-motion by defendant Jia Chen is likewise denied.

Dated: January 13, 2022
Long Island City, N.Y.



Robert J. McDonald
ROBERT J. McDONALD
J.S.C.