

Garcia v Crespo

2022 NY Slip Op 34894(U)

December 16, 2022

Supreme Court, Kings County

Docket Number: Index No. 510616/2019

Judge: Carl J. Landicino

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At an IAS Term, Part 81 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 16th day of December 2022.

PRESENT:

HON. CARL J. LANDICINO,
Justice.

-----X
MATILDE GARCIA,

Index No.:510616/2019

Plaintiff,

-against-

DECISION AND ORDER

LUIS CRESPO, BNOS MALKE BELZ, BNOS JERUSALEM
D'CHASEDI BELZ & CONGREGATION, CAMPOS F. BENITEZ AND WAH YIP FU,
Motion Sequence #2, #3

Defendants.

-----X
Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion

	<u>Papers Numbered</u>
Notice of Motion/Cross Motion and Affidavits (Affirmations) Annexed	36-49, 51-60,
Opposing Affidavits (Affirmations).....	50, 62, 64, 65, 67,
Reply Affidavits (Affirmations)	61, 63,

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After a review of the papers and oral argument, the Court finds as follows:

The instant action relates to a claim for alleged personal injuries arising from a motor vehicle collision involving multiple vehicles that allegedly occurred on October 19, 2018. Plaintiff Matilde Garcia (the "Plaintiff") alleges that she was injured when the vehicle she owned and operated was hit in the rear by a vehicle owned and operated by Defendant Campos F. Benitez ("Benitz") which was hit in the rear by a vehicle operated by Defendant Luis Crespo ("Crespo") and owned by Defendants Brios Malke Belez ("Belez") and Bnos Jerusalem D'Chasedi Belz and Congregation ("Jerusalem") (collectively "Congregation" or "Defendant Congregation"). The Plaintiff also alleges in her Complaint that Defendant Way Yip Fu ("Fu"), who was operating his vehicle in front of the Plaintiff's vehicle at the time of the

accident, was also negligent. The incident apparently occurred on McDonald Avenue at its intersection with Greenwood Avenue in Brooklyn, NY.

The Plaintiff now moves (motion sequence #2) for summary judgment pursuant to 3212 on the issue of liability against Defendant Congregation and seeks to have the case set down for immediate trial. The Plaintiff contends that the vehicle operated by Defendant Crespo (Congregation vehicle) struck the Benitez vehicle in the rear and the Benitez vehicle then struck the Plaintiff's vehicle in the rear, while the Plaintiff's vehicle was stopped at a red traffic light. The Plaintiff argues that this constitutes a violation of Vehicle and Traffic Law ("VTL") §1129(a), as Defendant Crespo did not maintain a safe distance from the Benitez's vehicle, and VTL 1146, because Defendant Crespo did not exercise due care.

Defendant Congregation opposes the Plaintiff's motion and contends that Defendant Benitez's vehicle cut in front of the Congregation vehicle prior to its collision with the Benitez vehicle. Defendant Congregation contends that this provides a non-negligent reason for the accident and should result in this Court denying the Plaintiff's motion for summary judgment.

Defendant Way Yip Fu ("Fu") moves (motion sequence #3) for summary judgment pursuant to CPLR 3212 dismissing the complaint and all cross-claims against Defendant Fu. Defendant Fu argues that summary judgment should be granted in his favor. Defendant Fu contends that at the time of the accident he was in front of the Plaintiff's vehicle and stopped at a traffic light when his vehicle was rear ended by the Plaintiff's vehicle, after her vehicle had been struck and pushed into Defendant Fu's vehicle.

Defendant Congregation opposes Defendant Fu's motion and contends that Defendant Benitez's deposition had not been completed at the time the motion was made. Defendant Congregation contends that it did not have view of the other vehicles and the motion is therefore premature. Defendant Benitez partially opposes the Plaintiffs motion and opposes Fu's motion, contending that Fu has failed to make a *prima facie* showing based upon admissible evidence.

Summary judgment is a drastic remedy that deprives a litigant of his or her day in court, and it “should only be employed when there is no doubt as to the absence of triable issues of material fact.” *Kolivas v. Kirchoff*, 14 AD3d 493 [2d Dept 2005], citing *Andre v. Pomeroy*, 35 NY2d 361, 364, 362 N.Y.S.2d 1341, 320 N.E.2d 853[1974]. The proponent for summary judgment must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact. See *Sheppard-Mobley v. King*, 10 AD3d 70, 74 [2d Dept 2004], citing *Alvarez v. Prospect Hospital*, 68 NY2d 320, 324, 508 N.Y.S.2d 923, 501 N.E.2d 572 [1986], *Winegrad v. New York Univ. Med. Ctr.*, 64 NY2d 851, 853, 487 N.Y.S.2d 316, 476 N.E.2d 642 [1985]. “In determining a motion for summary judgment, evidence must be viewed in the light most favorable to the nonmoving party, and all reasonable inference must be resolved in favor of the nonmoving party.” *Adams v. Bruno*, 124 AD3d 566, 566, 1 N.Y.S.3d 280, 281 [2d Dept 2015] citing *Valentin v. Parisio*, 119 AD3d 854, 989 N.Y.S.2d 621 [2d Dept 2014]; *Escobar v. Velez*, 116 AD3d 735, 983 N.Y.S.2d 612 [2d Dept 2014].

Once a moving party has made a *prima facie* showing of its entitlement to summary judgment, “the burden shifts to the opposing party to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action” *Garnham & Han Real Estate Brokers v Oppenheimer*, 148 AD2d 493 [2d Dept 1989]. Failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers. See *Demshick v. Cmty. Hous. Mgmt. Corp.*, 34 AD3d 518, 520, 824 N.Y.S.2d 166, 168 [2d Dept 2006]; see *Menzel v. Plotnick*, 202 AD2d 558, 558–559, 610 N.Y.S.2d 50 [2d Dept 1994]. However, “[a] plaintiff is no longer required to show freedom from comparative fault in establishing his or her *prima facie* case...” if they can show “...that the defendant's negligence was a proximate cause of the alleged injuries.” *Tsyganash v. Auto Mall Fleet*

Mgmt., Inc., 163 AD3d 1033, 1034, 83 N.Y.S.3d 74, 75 [2d Dept 2018]; *Rodriguez v. City of New York*, 31 N.Y.3d 312, 320, 101 N.E.3d 366, 371 [2018].

Turning to the merits of the Plaintiff's motion (motion sequence #2), the Plaintiff relies primarily on the Plaintiff's deposition, Defendant Fu's deposition, and the deposition of Defendant Crespo. Plaintiff stated that her vehicle was stopped at the time of the accident (See Plaintiff's Motion, Exhibit "E", Page 13). When asked whether the vehicle in front of her [Fu vehicle] had come to a stop prior to the accident the Plaintiff stated, "[y]es because the light was red." (See Plaintiff's Motion, Exhibit "E", Page 16). When asked about the collision, the Plaintiff stated, "[t]he gray car [Benitez vehicle] is the one that went and struck the back so it pushed in my trunk and I hit the BMW [Fu vehicle] in front of me." (See Plaintiff's Motion, Exhibit "E", Page 17). When asked what part of the vehicle behind her struck her vehicle, the Plaintiff stated "[t]he front part." (See Plaintiff's Motion, Exhibit "E", Page 18). The Plaintiff stated that while in her vehicle, she heard a "really loud sound" and she was hit. (See Plaintiff's Motion, Exhibit "E", Page 20).

During his deposition, when he was asked if he had been stopped at a red light, Defendant Fu stated "[y]es." (See Plaintiff's Motion, Exhibit "F", Page 19). He stated that he heard two sounds and felt one impact at the time of the accident (See Plaintiff's Motion, Exhibit "F", Page 33).

During his deposition, when asked whether the vehicles involved in the collision were in front of his vehicle, Crespo stated, "one car came from behind me, right, and passed me to my right and got in front of me. I already saw. I was watching. I was careful about it. Once that car got in front of me, that's when everything happened." (See Plaintiff's Motion, Exhibit "G", Page 24) He could not recall the color of that vehicle. "That's the one I hit from behind, yeah." (See Plaintiff's Motion, Exhibit "F", Page 25). He stated that he was decelerating at 10 mph prior to the accident. (See Plaintiff's Motion, Exhibit "F", Page 28). Defendant Crespo testified that he did not hear any contacts before or after his collision with

the vehicle in front of him. (See Plaintiff's Motion, Exhibit "F", Page 29). He stated that he did not remember whether the vehicle in front of him was stopped before hitting it and did not see brake lights. (See Plaintiff's Motion, Exhibit "F", Page 32) He stated that he could see the BMW was the first vehicle at the light. He could not identify the vehicle behind the BMW. (See Plaintiff's Motion, Exhibit "F", Page 35). See *Martinez v. Allen*, 163 AD3d 951, 82 N.Y.S.3d 130 [2d Dept 2018]. "A rear-end collision with a stopped or stopping vehicle creates a *prima facie* case of negligence against the operator of the rear vehicle, thereby requiring that operator to rebut the inference of negligence by providing a non-negligent explanation for the collision." *Klopchin v. Masri*, 45 AD3d 737, 737, 846 N.Y.S.2d 311, 311 [2d Dept 2007]. Additionally, "[i]n a chain collision accident, the operator of the middle vehicle may establish *prima facie* entitlement to judgment as a matter of law by demonstrating that the middle vehicle was properly stopped behind the lead vehicle when it was struck from behind by the rear vehicle and propelled into the lead vehicle." *Mihalatos v. Barnett*, 175 AD3d 492, 493, 106 N.Y.S.3d 165, 166 [2d Dept 2019], quoting *Chuk Hwa Shin v. Correale*, 142 AD3d 518, 519, 36 N.Y.S.3d 213, 214 [2d Dept 2016].

In opposition, Defendant Congregation raises the issue of culpable conduct on the part of Defendant Benitez. Defendant Congregation contends that Benitez came around his vehicle and cut in front of Crespo's vehicle. Crespo stated that all traffic stopped and he rear ended the Benitez vehicle. Defendant Congregation does not dispute that the Benitez vehicle hit the Plaintiff's vehicle thereafter. Defendant Congregation's non-negligent excuse is vague and conclusory. He did not say he could not stop. Therefore, Defendant Congregation does not establish a non-negligent excuse. See *Sayyed v. Murray*, 109 AD3d 464, 465, 970 N.Y.S.2d 279, 281 [2d Dept 2013]. However, Crespo's testimony does sufficiently raise the issue of Benitez's conduct contributing to the collision between the Benitez and the Congregation vehicle. There can be more than one cause of an accident. The fact that Defendant Congregation may not have asserted a non-negligent excuse, that does not mean that his testimony relating

to the operation of the Benitez vehicle cannot implicate Benitez as well. *See Cox v. Nunez*, 23 AD3d 427, 427, 805 N.Y.S.2d 604, 605 [2d Dept 2005]. Benitez allegedly moving around the Congregation vehicle and driving in front of it under the traffic conditions described by Crespo could have arguably contributed to the collision. Benitez is silent on this issue. Accordingly, Crespo was negligent and a proximate cause of the accident. Benitez's comparative negligence, if any remains a material issue of fact.

Turning to the merits of the motion by Defendant Fu (motion sequence #3), as stated above, the vehicle operated by Defendant Fu was stopped at a red light when he was struck from behind. When asked how long he was stopped, Defendant Fu stated "[c]ouldn't have been more than one to two minutes." When asked what part of his car was struck, Defendant Fu stated "[m]y back bumper." (See Defendant Fu's Motion, Exhibit "G", Page 20). The Plaintiff acknowledged that she collided with the Fu vehicle. This testimony is sufficient for Defendant Fu to meet his *prima facie* burden. *See Bros. v. Bartling*, 130 AD3d 554, 556, 13 N.Y.S.3d 202, 204 [2d Dept 2015].

As to Defendant Congregation's opposition, it should be noted initially that the "motion was not premature since the defendant failed to demonstrate that discovery might lead to relevant evidence or that facts essential to justify opposition to the motion were exclusively within the knowledge and control of the plaintiff." *Turner v. Butler*, 139 AD3d 715, 716, 32 N.Y.S.3d 174, 175 [2d Dept 2016]. Defendant Congregation argues that the motion by Defendant Fu is premature as Defendant Benitez had not been deposed and there is a question as to whether Defendant Benitez's vehicle came in contact with the plaintiff's vehicle first. Defendant Congregation also contends that it did not have a view of the Fu vehicle at the red light. Congregation's attorney raises the possibility of the Benitez vehicle having collided with the Plaintiff's vehicle, prior to the Benitez/Congregation collision. This lacks merit for various reasons. An attorney cannot raise issues not confirmed by testimony or other admissible evidence. Additionally, Crespo had a clear view of the Benitez vehicle and he does not dispute that. When asked if the vehicles

involved in the accident were in front of him in the left lane, Crespo stated that “One car -- one car came -- one car came from behind me, right, and passed me to my right and got in front of me. I already saw. I was watching. I was careful about it. Once that car got in front of me, that's when everything happened.” When asked about the collision, Crespo stated that “[t]hat's the one I hit from behind, yeah. Because it was like everybody stopped.” (See Defendant Fu’s Motion, Exhibit “E”, Page 24-25). When asked whether the car in front of him was stopped he stated “I don't remember that.” When asked if he witnessed any other impacts among the vehicles in front of him he stated, “[n]o, 'cause I was focused on the front.” When asked again if he had seen any impacts involving the vehicles in front of his vehicle, he stated “[n]o.” (See Defendant Fu’s Motion, Exhibit “E”, Page 29). When asked if he remembered whether the vehicle in front of him stopped, he stated that “[w]ell, I just remember me hitting the car in front of me I saw. I don't know whether he stopped.” (See Defendant Fu’s Motion, Exhibit “E”, Page 30-32). When asked if he was able to see the vehicle that was in front of the vehicle right in front of him, Crespo stated that “[t]he first car that stopped at the beginning of the light, before all the car ran -- before the other car made a left, I saw a BMW had stopped.” (See Defendant Fu’s Motion, Exhibit “E”, Page 57). Congregation’s opposition to the Plaintiff’s motion does not address this testimony. Moreover, even assuming that Benitez hit the Plaintiff’s vehicle first it does not establish fault on the part of Defendant Fu, and Crespo was in a position to observe whether that occurred. “The mere hope or speculation that evidence sufficient to defeat a motion for summary judgment may be uncovered during the discovery process is insufficient to deny the motion” *Cortes v. Whelan*, 83 A.D.3d 763, 764, 922 N.Y.S.2d 419, 421 [2d Dept 2011], quoting *Lopez v. WS Distribution, Inc.*, 34 A.D.3d 759, 760, 825 N.Y.S.2d 516, 517 [2d Dept 2006].

Based on the foregoing, it is hereby ORDERED as follows:

The Plaintiff's motion (motion sequence #2) for summary judgment on the issue of liability is granted solely to the extent that Defendant driver Crespo was negligent and a proximate cause of the accident.

Defendant Fu's motion (motion sequence #3) is granted. The complaint and any cross-claims against Defendant Fu are dismissed.

The foregoing constitutes the Decision and Order of the Court.

ENTER:



Carl J. Landicino, J.S.C.

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