

Jeremie v Jones

2022 NY Slip Op 35030(U)

February 24, 2022

Supreme Court, Bronx County

Docket Number: Index No. 30544/2020E

Judge: Ben R. Barbato

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.

E#002

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX, PART 15

-----X

MARQUANIO L. JEREMIE,

Index №. 30544/2020E

-against-

Hon. **BEN R. BARBATO**

DONALD LESLIE JONES, JR., LIMA CAB CORP.
and TYWAN ERIK MCDOWELL,

Justice Supreme Court

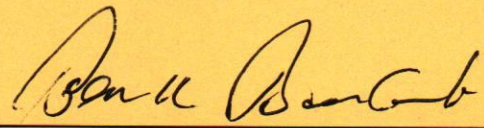
-----X

The following papers, were read on this Motion (NYSCEF Seq. No. 2), for Summary Judgment, submitted November 22, 2021

Notice of Motion – Affirmation & Exhibits -- by Plaintiff Jeremie	NYSCEF Doc No(s). 16-26
Notice of Cross Motion--Aff & Exhibits- by Defendant MCDOWELL	NYSCEF Doc No(s). 27-31
Answering Affirmation & Exhibits-	NYSCEF Doc No(s).
Replying Affirmation & Exhibits –	NYSCEF Doc No(s).

Upon the foregoing papers, Plaintiff JEREMIE’s Motion for partial summary judgment in his favor on liability as against two Defendants, JONES/LIMA, and for related relief; and Defendant MCDOWELL’s Cross Motion for summary judgment in his favor dismissing the complaint and all cross claims as against him, and for related relief; are decided, without opposition, in the annexed memorandum decision and order.

Dated: FEB 24 2022 2022

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

- 1. CHECK ONE..... CASE STILL ACTIVE
- 2. MOTIONS IS GRANTED IN PART
- 3. CROSS MOTIONS IS GRANTED

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----X

MARQUANIO L. JEREMIE,
Plaintiff,

-against-

Index No.: 30544/2020E

DONALD LESLIE JONES, JR., LIMA CAB CORP., and
TYWAN ERIK MCDOWELL,
Defendants.

-----X

HON. BEN R. BARBATO:

Plaintiff, MARQUANIO L. JEREMIE, moves for partial summary judgment in his favor on liability as against two of the Defendants, DONALD LESLIE JONES, JR., LIMA CAB CORP., and for dismissal of Defendants’ affirmative defense alleging Plaintiff’s culpable conduct, and for related relief; and

Defendant, TYWAN ERIK MCDOWELL, cross moves for summary judgment in his favor dismissing the complaint and all cross claims as against him, and for related relief.

This is an action to recover damages for alleged personal injuries sustained by Plaintiff JEREMIE in a multi-vehicle accident, which occurred on, or about, June 22, 2019, at about 1:46 A.M., on the westbound Grand Central Parkway, in Queens County, New York. The above-entitled action was consolidated for joint trial with the action, entitled *McDowell v. McCrobie, Jeremie, Lima, and Jones*,

Queens Supreme Court Index No. 719508/2020E (See “Joint Trial Order”, dated May 21, 2021).

In this accident, the front-most vehicle, a 2015 Honda, was operated and owned by Plaintiff JEREMIE, and Keton McCrobie, respectively. Behind JEREMIE’s vehicle, was the 2018 Honda operated and owned by Defendant MCDOWELL. The rear-most vehicle was the 2015 Toyota Taxi operated and owned by Defendants JONES and LIMA, respectively.

The submissions on the Motion, and Cross Motion, include the pleadings; the Police Accident Report; the Affidavit of the Plaintiff JEREMIE, dated March 22, 2021; and the Affidavit of Defendant MCDOWELL, dated March 5, 2021. There was no opposition submitted by Defendants JONES/LIMA.

In the companion action, with which this action was consolidated for joint trial, the Court had issued orders, on liability, dated June 2, 2021, and June 8, 2021, respectively, (*see McDowell v. McCrobie, Jeremie, Lima, and Jones*, Queens Supreme Court Index No. 719508/2020E).

Alleged Facts:

The Plaintiff, JEREMIE, describes the happening of the accident as follows:

“As I was travelling, I noticed a stalled vehicle stopped in my lane of

travel, which was the right most lane. This vehicle was approximately 300 feet in front of me when I first noticed it. My rate of speed was approximately 45 miles per hour at the time I noticed the vehicle.

I came to a complete stop in the right hand lane in order to change lanes into the middle lane. As I was stopped I looked in my rear view mirror and noticed the vehicle behind me was also stopped. I stopped in order to make sure it was safe to proceed into the middle lane.

As I was stopped for approximately 30 seconds I felt one heavy impact to the rear of my vehicle. I was looking at my driver's sideview mirror when I felt this impact.

When the impact occurred my vehicle was at a complete stop and was entirely within the right hand lane of travel.

I later learned that the vehicle driven by ... Tywan McDowell was stopped behind me when he was struck by the vehicle operated by Donald Jones and owned by Lima Cab Corp.

When Mr. McDowell's vehicle was struck it was propelled forward into the rear of my vehicle.

The only contact involving my vehicle was the rear of my vehicle being contacted by the front of ... [McDowell's] vehicle.

At no time prior to the impact occurring to the rear of my vehicle did my vehicle come into contact with any other vehicle or object at the scene of the accident".

(See Plaintiff JEREMIE's Affidavit, dated March 22, 2021).

Consistent therewith, Defendant MCDOWELL states that he was stopped for traffic, when, suddenly and without warning, his vehicle was rear-ended by the 2015 Toyota, with license plate number 1K65H, which was owned and operated by Defendant LIMA and JONES, respectfully. Defendant MCDOWELL further states that: "As a result of this impact, [my]... vehicle was forcefully propelled into the vehicle ... operated by ... JEREMIE". (See Defendant

MCDOWELL's Affidavit, dated March 5, 2021).

In the Police Accident Report, the accident is described as follows:

"AT TPO DRIVER OF VEHICLE 1 [JEREMIE] STATES WHILE DRIVING IN RIGHT LANE AN UNINVOLVED VEHICLE DID STOP IN FRONT OF VEHICLE 1 [JEREMIE]. VEHICLE 1 [JEREMIE] TRIED TO GET OVER WHEN VEHICLE 2 [MCDOWELL] DID REAR END VEHICLE 1 [JEREMIE]. DRIVER OF VEHICLE 2 [MCDOWELL] STATES WHILE DRIVING NOTICED THAT THERE WAS A STALLED VEHICLE IN FRONT OF VEHICLE 1 [JEREMIE], VEHICLE [2] STOPPED TO GET OVER AS WELL WHEN VEHICLE 3 [JONES] DID REAR END VEHICLE 2 [MCDOWELL] CAUSING VEHICLE 2 [MCDOWELL] TO REAR END VEHICLE 1 [JEREMIE]. DRIVER OF VEHICLE [3 JONES] STATES HE WAS DRIVING AND SAW THE CARS IN FRONT OF HIM STOPPED BUT COULD NOT STOP IN TIME REAR ENDING VEHICLE 2 [MCDOWELL] INTO VEHICLE 1 [JEREMIE]"

Applicable Law/Analysis:

Vehicle and Traffic Law § 1129 (a) "Following too closely", provides that:

"The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon and the condition of the highway."

Drivers are expected to maintain enough distance between themselves and the cars ahead of them, so as to avoid collisions with stopped vehicles, taking into account weather and road conditions. (*See Matos v Sanchez*, 147 AD3d 585, 586 [1st Dept 2017]).

"A rear-end collision with a stopped or stopping vehicle establishes a prima

facie case of negligence on the part of the driver of the rear vehicle, and imposes a duty on the part of the operator of the moving vehicle to come forward with an adequate, nonnegligent explanation for the accident" (Matos v Sanchez, 147 AD3d 585, 586, 47 NYS3d 307 [1st Dept 2017]) ... defendant driver's assertion that plaintiffs' vehicle stopped abruptly does not explain why defendant driver failed to maintain a safe distance, and is insufficient to constitute a nonnegligent explanation" (Urena v GVC Ltd., 160 AD3d 467, 467 [1st Dept 2018]).

Furthermore, in "a chain-reaction collision, responsibility presumptively rests with the rearmost driver" (Mustafaj v Driscoll, 5 AD3d 138, 138 [1st Dept 2004]; see Chang v Rodriguez, 57 AD3d 295 [1st Dept 2008]).

Moreover, in a multi-vehicle accident, a movant may meet his "initial burden ... by demonstrating, prima facie, that [his] stopped vehicle was propelled forward into the ... vehicle [ahead] after [his] vehicle was struck in the rear by a third vehicle" (Williams v Sala, 152 AD3d 729, 730 [2d Dept 2017]).

Accordingly, Plaintiff JEREMIE made a *prima facie* showing, of his entitlement to partial summary judgment in his favor on liability as against JONES/LIMA, and Defendant MCDOWELL made a *prima facie* showing, of his entitlement to summary judgment dismissing the complaint and cross claims as against him, by their sworn Affidavits -- wherein they state, *inter alia*, that JONES/LIMA's vehicle had rear-ended MCDOWELL's vehicle, causing it to be

propelled forward into JEREMIE's vehicle.

Thus, the burden shifted to Defendants JONES/LIMA to advance a non-negligent explanation. However, said Defendants did not oppose the Motion and Cross Motion.

With respect to Defendant driver, JONES, he is the person alleged to have knowledge of the relevant facts concerning the circumstances surrounding the happening of the accident, however, he has not submitted his own affidavit or sworn testimony; and said Defendants JONES/LIMA have not made the requisite showing.

A motion for summary judgment on liability is properly granted, where, as here, in "opposition to [movants'] *prima facie* showing, defendants failed to submit any evidence to raise a triable issue of fact" (*Thompson v Pizzaro*, 155 AD3d 423, 423 [1st Dept 2017]; see *Zuckerman v New York*, 49 NY2d 557, 563 [1980]). In *Thompson*, the Court also held that the: "motion was not premature. Depositions are unnecessary, since defendants have personal knowledge of the facts, yet "failed to meet their obligation of laying bare their proof and presenting evidence sufficient to raise a triable issue of fact" " (*Thompson v Pizzaro*, 155 AD3d at 423).

It is also noted that, in the companion action, with which this action was joined for trial, the Court had granted JEREMIE and Keton McCrobie (who were defendants therein) summary judgment in their favor dismissing that complaint and all cross claims asserted as against them; and had granted MCDOWELL (who is the plaintiff therein) summary judgment in his favor on liability as against JONES/LIMA. (See Orders, dated June 2, 2021, and July 8, 2021, respectively, in *McDowell v. McCrobie, Jeremie, Lima, and Jones*, Queens Supreme Court Index No. 719508/2020E, at NYSCEF Doc Nos. 64, 66).

Conclusion:

Accordingly, herein, Plaintiff JEREMIE's Motion, for partial summary judgment in his favor on liability, is granted, without opposition, to the extent that Defendants JONES/LIMA are found liable for the happening of the accident and JONES' negligence was a substantial factor in causing the accident; and that JEREMIE was free from comparative fault for the happening of this collision. Thus, Defendants JONES/LIMA's affirmative defense alleging Plaintiff JEREMIE's culpable conduct is dismissed.

However, this Court makes no determination as to other issues herein, including, but not limited to, whether Plaintiff JEREMIE's alleged injuries were

proximately caused by the negligence of the Defendants JONES/LIMA; and whether Plaintiff JEREMIE sustained a “serious injury” within the meaning of the Insurance Law.

In addition, Defendant MCDOWELL’s Cross Motion for summary judgment in his favor dismissing the complaint and all cross claims as against him, is granted, without opposition.

This constitutes the decision and order of this Court.

Dated: FEB 24 2022, 2022



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