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| Bueno-Estevez v Hacker |
| 2022 NY Slip Op 35043(U) |
| May 31, 2022 |
| Supreme Court, Queens County |
| Docket Number: Index No. 716853/2020 |
| Judge: Robert J. McDonald |
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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

HARLEN W. BUENO-ESTEVEZ,

Index No.: 716853/2020

Plaintiff,

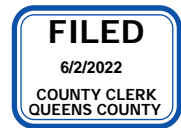
Motion Date: 5/26/2022

- against -

Motion No.: 2

AKEEM HACKER and DAVID WILLIAMS,

Motion Seq.: 1



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 on the issue of liability:

Papers
Numbered:

Notice of Motion-Affidavit-Exhibits.....EF 8-14

This is an action to recover damages for personal injuries allegedly sustained by plaintiff as a result of a motor vehicle accident that occurred on August 23, 2020.

This action was commenced by the filing of a summons and complaint on September 25, 2020. Defendant DAVID WILLIAMS joined issue by service of a verified answer on March 16, 2021. A preliminary conference was held on March 25, 2021, and a compliance conference was held on December 9, 2021. Plaintiff now seeks partial summary judgment on the issue of liability.

Plaintiff submits an affidavit in support of this motion, which states that he was traveling below the speed limit when he observed a stopped vehicle in the opposite lane struck in the rear by another vehicle, which caused the stopped vehicle to move across into his lane, causing a heavy impact to his vehicle.

Plaintiff's counsel submits an affirmation in support, stating that this accident was caused solely and wholly by the defendants' negligence and carelessness, and plaintiff was free from culpable conduct. Plaintiff also submits a copy of the Police Accident Report (MV-104AN). In the accident description portion, the responding officer noted:

AT TPO OPERATOR OF VEHICLE ONE (Defendant) STATES THAT WHILE DRIVING EB ON JAMAICA AVE, OPERATOR OF VEHICLE TWO (Defendant) STOPPED SHORT CAUSING A COLLISION. OPERATOR OF VEHICLE TWO STATES THAT WHILE STOPPED AT 193 ST AND JAMAICA AVE VEHICLE ONE COLLIDED WITH THE REAR OF HIS VEHICLE PUSHING HIM INTO THE PATH OF VEHICLE THREE (Plaintiff). OPERATOR OF VEHICLE THREE STATES WHILE TRAVLEING WB ON JAMAICA AVENUE HE WAS STRUCK IN THE RR BY VEHICLE TWO.

Plaintiff's counsel points to Vehicle and Traffic Law Section 1129(a), which states the following: "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 vehicle and the traffic upon and the condition of the highway."

It is well established that when a driver "approaches another vehicle from the rear, he is bound to maintain reasonably safe rate of speed, maintain control of his vehicle, and use reasonable care to avoid colliding with the other vehicle" (Barile v Lazzarini, 222 AD2d 635 [2d Dept. 1995]; see Williams v Spencer-Hall, 113 AD3d 759 [2d Dept. 2014]; Taing v Drewery, 100 AD3d 740 [2d Dept. 2012]).

Here, plaintiff's counsel contends that defendants DAVID WILLIAMS and AKEEM HACKER failed to abide by the Vehicle and Traffic Laws by traveling too closely, and without due regard with respect to the speed of their vehicles. Given that plaintiff did not contribute to this accident, and defendants acted negligently, plaintiff moves for summary judgment as to liability.

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]).

Here, plaintiff's affidavit, along with the accident report, eliminate any issues of fact in this case. As such, plaintiff has made the requisite prima facia showing of entitlement to summary judgment. The burden then shifted to defendants to raise a triable issue of fact as to whether plaintiff was also negligent, and if so, whether that negligence contributed to the happening of the accident (see Goemans v County of Suffolk, 57 AD3d 478 [2d Dept. 2007]).

Here, this Court finds that defendants failed to provide evidence as to a non-negligent explanation for the accident sufficient to raise a triable question of fact (see Lampkin v Chan, 68 AD3d 727 [2d Dept. 2009]; Cavitch v Mateo, 58 AD3d 592 [2d Dept. 2009]; Garner v Chevalier Transp. Corp., 58 AD3d 802 [2d Dept. 2009]; Kimyagarov v Nixon Taxi Corp., 45 AD3d 736 [2d Dept. 2007]).

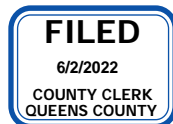
No opposition has been submitted.

Accordingly, and based on the above reasons, it is hereby,

ORDERED, that the motion is granted. Plaintiff shall have partial summary judgment on the issue of liability against defendants DAVID WILLIAMS and AKEEM HACKER, and the Clerk of Court is authorized to enter judgment accordingly; and it is further

ORDERED, that upon completion of discovery on the issue of damages, filing a Note of Issue, and compliance with all the rules of the court, this action shall be placed on the trial calendar of the court for a trial on serious injury and damages.

Dated: May 31, 2022
Long Island City, NY



Robert J. McDonald

HON. ROBERT J. MCDONALD, J.S.C.

