

Zeman v Manto
2022 NY Slip Op 35166(U)
December 12, 2022
Supreme Court, Queens County
Docket Number: Index No. 701403/2022
Judge: Lourdes M. Ventura
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SUPREME COURT OF THE STATE OF NEW YORK
QUEENS COUNTYPRESENT: HON. LOURDES M. VENTURA PART 37*Justice*

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INDEX NO. 701403/2022

KYLE ZEMAN,

Plaintiff,

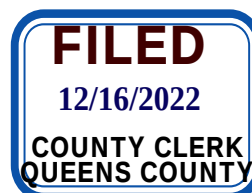
MOTION SEQ.

- v -

NO. 001VICENTE B. MANTO, COLLEEN G. IMANUEL,
DANIEL R. MILAZZO, EDWARD V.
CALANDRELLI,

Defendants.

ORDER



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The following e-filed documents, listed by NYSCEF document number (Motion 001) 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 37, 38, 39, 40, 41, 42, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64

were read on this motion to/for

JUDGMENT - SUMMARY.

Upon the foregoing documents, it is ordered that defendant Milazzo's motion is granted and defendant Imanuel's cross motion is granted as follows:

Plaintiff commenced the above-entitled action by summons and complaint to recover for personal injuries allegedly sustained during a five-motor vehicle, rear-end, chain-reaction collision on or about November 2, 2021. Each vehicle was owned and operated as follows: the first vehicle owned and operated by Vincente Manto [hereinafter "the Manto vehicle"]; the second vehicle owned and operated by the plaintiff, Kyle Zeman, [hereinafter "the plaintiff Zeman's vehicle"]; the third vehicle owned by Suzette Imanuel and operated by Colleen Imanuel [hereinafter "the Imanuel vehicle"]; the fourth vehicle owned and operated by Daniel R. Milazzo [hereinafter "the Milazzo vehicle"] and the fifth vehicle owned and operated by Edward Calandrelli [hereinafter "the Calandrelli vehicle"].

Defendant Daniel R. Milazzo ("defendant Milazzo") filed this motion seeking an Order pursuant to CPLR Rule 3212 granting summary judgment to defendant Milazzo and dismissing plaintiff's complaint and all cross-claims asserted against him, on the ground that the record contains no facts upon which defendant Milazzo can be found liable for the accident that gives rise to this action, therefore, the claims and cross-claims against him are dismissible as a matter of law.

In order to succeed on a motion for summary judgment "it is necessary that the movant establish [its] cause of action or defense 'sufficiently to warrant the court as a matter of law in directing judgment' in [its] favor [CPLR 3212, subd. (b)], and [it] must do so by tender of evidentiary proof in admissible form" (*Zuckerman v City of New York*, 49 NY2d 557 (1980)).

“Only if the movant succeeds in meeting its burden will the burden shift to the opponent to demonstrate through legally sufficient evidence that there exists a triable issue of fact” [cite omitted] (see *Richardson v County of Nassau*, 156 AD3d 924 [2d Dept 2017]). Consequently, where the movant fails to meet this initial burden, summary judgment must be denied regardless of the sufficiency of the opposing papers (see *Voss v Netherlands Ins. Co.*, 22 NY3d 728 [2014]). 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]). “A defendant moving for summary judgment in a negligence action has the burden of establishing, prima facie, that he or she was not at fault in the happening of the subject accident” (*Boulos v Lerner-Harrington*, 124 AD3d 709 [2d Dept 2015]).

“In 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” (*Chuk Hwa Shin v Correale*, 142 AD3d 518, 519 [2d Dept 2016]).

In support of defendant Milazzo’s motion, defendant Milazzo submits an affidavit which in relevant part states:

“10. The vehicle I was driving, was in good working order. Prior to the accident I was traveling southbound on the Cross Island Parkway in the left most lane at approximately 50-55 mph, 4 car-lengths behind the Immanuel vehicle ahead of me. I saw traffic ahead coming to a stop. In response to the stopping traffic, I brought my vehicle to a gradual, full and complete stop 1 ½ car lengths behind the Immanuel vehicle ahead of me, which was also stopped. I was stopped for 1-2 seconds with my right foot on the brake when I felt a heavy impact to the rear of my car by the Calandrelli vehicle behind me. The Calandrelli vehicle went under the back of my vehicle, lifting the back tires of my vehicle off the ground and pushing my vehicle into the Immanuel vehicle ahead of me. I saw the Immanuel vehicle make contact with the plaintiff Zaman’s vehicle ahead of it. I later learned that the Zaman vehicle made contact with the Manto vehicle, the first vehicle.

11. The first impact was to the rear of my vehicle by the Calandrelli vehicle and as a result of that impact my vehicle was forced into the Immanuel vehicle, which struck the plaintiff’s vehicle, which struck the Manta vehicle ahead of it.”

This Court finds that defendant Milazzo’s affidavit establishes prima entitled to judgment as a matter of law by demonstrating that defendant Milazzo’s vehicle was stopped behind defendant Imanuel’s vehicle when defendant Milazzo’s vehicle was struck in the rear by a defendant Calandrelli’s vehicle and said impact propelled defendant Milazzo’s vehicle forward into defendant Imanuel’s vehicle (*Daniel v Ian-Michael*, 188 AD3d 1155, 1156 [2d Dept 2020]).

Defendant Calandrelli opposes defendant Milazzo’s motion, and this court finds that defendant Calandrelli failed to raise triable issues of fact. Additionally, this Court is unpersuaded by defendant Calandrelli averments that defendant Milazzo’s motion is premature as defendant’s opposing papers fail to establish that additional discovery might lead to relevant evidence, or that

facts essential to oppose the motion were in the exclusive knowledge and control of the plaintiff (see CPLR 3212[f]). It is well settled that “[t]he 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” (*Mahmud v Ouyang*, 208 AD3d 861, 862 [2d Dept 2022]).

Defendant Manto also opposes defendant Milazzo’s motion and avers that said motion is premature and there are issues of fact. This Court finds that defendant Manto failed to raise triable issues of fact in opposition warranting denial of this motion.

Plaintiff also opposes defendant Milazzo’s motion averring that there are issues of fact warranting denial of defendant Milazzo’s motion. This Court finds that plaintiff failed to raise triable issues of fact in opposition.

Thus, defendant Milazzo’s summary judgment motion is granted, and the complaint and any cross claims are dismissed as asserted against defendant Milazzo.

Defendant Imanuel filed a cross motion seeking an Order pursuant to CPLR 3212 granting defendant Imanuel summary judgment on the issue of liability dismissing the claims and cross claims asserted against them.

Defendant Imanuel submits an affidavit which in relevant part states:

“3. Prior to the accident occurring, I was traveling southbound on the Cross Island Parkway. At some point, the traffic in front of me slowed to a stop. As a result, I also began to slow my car and come to a stop. Within a few seconds after coming to a gradual stop, I felt an impact to the rear of my vehicle. As the result of this impact to the rear, my car was pushed forward and into the rear of the car that was stopped in front of me.

4. After the accident, I learned that there were four other vehicles involved in this accident. The vehicle that struck my car in the rear was a 2020 Ford pickup truck driven by the co-defendant Daniel Milazzo. Milazzo's truck had been struck in the rear by a 2011 Audi driven by the co-defendant Edward Calandrelli. The vehicle my car was pushed into was a 2020 Chevrolet pickup truck driven by the plaintiff Kyle Zeman. Zeman's car was pushed into a 2018 Toyota driven by the co-defendant Vincente Manto.”

This Court finds that defendant Imanuel established *prima facie* entitlement to judgment as a matter of law dismissing all cross claims asserted against defendant Imanuel by submitting evidence demonstrating that prior to striking the rear of the plaintiffs' vehicle, defendant Imanuel’s vehicle was stopped behind the plaintiffs' vehicle and was propelled into the plaintiffs' vehicle after it was struck in the rear by defendant Milazzo’s vehicle (*Chuk Hwa Shin v Correale*, 142 AD3d 518, 519 [2d Dept 2016]).

Defendant Calandrelli opposes defendant Imanuel’s motion, and this court finds that defendant Calandrelli failed to raise triable issues of fact. Additionally, this Court is unpersuaded by defendant Calandrelli averments that defendant Milazzo’s motion is premature as defendant’s

opposing papers fail to establish that additional discovery might lead to relevant evidence, or that facts essential to oppose the motion were in the exclusive knowledge and control of the plaintiff (see CPLR 3212[f]). It is well settled that “[t]he 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” (*Mahmud v Ouyang*, 208 AD3d 861, 862 [2d Dept 2022]).

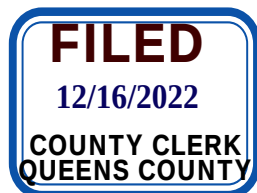
Defendant Manto also opposes defendant Imanuel’s cross motion and avers that said motion is premature and there are issues of fact. This Court finds that defendant Manto failed to raise triable issues of fact in opposition warranting denial of this motion.

Thus, defendant Imanuel’s summary judgment motion is granted, and the complaint and any cross claims are dismissed as asserted against defendant Imanuel.

Based upon the forgoing, defendant Milazzo summary judgment motion is granted, and the complaint and any cross claims are dismissed as asserted against defendant Milazzo; and defendant Imanuel’s cross motion for summary judgment motion is granted, and the complaint and any cross claims are dismissed as asserted against defendant Imanuel. Any other requested relief not expressly addressed herein has nonetheless been considered by this Court and is hereby denied.

This shall constitute the Decision and Order of the Court.

Dated: December 12, 2022



LOURDES M. VENTURA, J.S.C.