

Valerio v Belliard

2023 NY Slip Op 31145(U)

April 7, 2023

Supreme Court, New York County

Docket Number: Index No. 161133/2017

Judge: James G. Clynnes

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.

moving forward to the left in the process of leaving the parked position, put his turn signal on to let others know he was leaving, checked the center and left side mirrors, didn't see anyone coming, as he was coming out of the parking space at about 5 miles per hour, he felt a heavy impact to the back of his vehicle, causing his vehicle to move forward, he hit the brake and the car stopped.

Plaintiff testified in his EBT that on January 18, 2017, he was picked up from Columbia Presbyterian Hospital after surgery by his brother-in-law, Defendant Julio A. Belliard, he was helped into the vehicle, both he and Julio had seatbelts on, when he felt heavy impact from behind, the vehicle was propelled forward, and at the time of impact the Belliard vehicle was moving.

Defendant Paul testified in his EBT that he was working for MZZZ, Inc as an ambulance driver, he had a stop at New York Presbyterian hospital, pulled into patient pickup area, which was coordinated by the valet parking attendants, in the commuter lane, with parking spots for faculty and staff to his left, prior to the impact, he noticed that there were two vehicles in front of the Belliard vehicle, the Belliard vehicle was not parked at the time of the accident, the driver of the Belliard vehicle slammed on the brakes, and the front of Defendant Paul's vehicle touched the rear of the Belliard vehicle, at the moment of impact the Belliard vehicle was stopped then after the impact rolled forward.

Plaintiff has made out a prima facie case of negligence, and the burden shifts to Defendants MZZZ, LLC and Paul to raise a triable issue of fact (*see Winegrad v New York University Medical Center*, 64 NY2d 851, 853 [1985]).

In opposition, Defendants MZZZ, LLC and Paul contend that issues of fact remain because Defendant Paul testified that the Belliard vehicle stopped short, and was therefore stopped at the time of impact, but Plaintiff and Defendant Julio A. Belliard testified that the Belliard vehicle was moving at the time of impact. However, a rear-end collision with a stopped vehicle or with a vehicle that is coming to a stop, creates a prima facie case of negligence by the operator of the rear vehicle unless the operator proffers an adequate nonnegligent explanation for the accident (*see Urena v GVC Ltd*, 160 AD3d 467 [1st Dept 2018]; *Morgan v Browner*, 138 AD3d 560 [1st Dept 2016]; *Corrigan v Porter Cab Corp*, 101 AD3d 471, 472 [1st Dept 2012]). Here, Defendant Paul fails to offer a nonnegligent explanation other than the Belliard vehicle stopping short, for the accident. Therefore, regardless of whether the Belliard vehicle was moving or stopped, Defendants' opposition fails to provide a nonnegligent excuse sufficient to raise a triable issue of fact. The motion by the Belliard Defendants for summary judgment on liability in their favor and

against Defendants MZZZ, LLC and Paul, and for dismissal of the complaint and any cross-claims against the Belliard Defendants is granted.

With regard to the cross-motion by Plaintiff for summary judgment on the issue of liability against Defendants and finding no culpable conduct by him on the issue of liability, Plaintiff contends that he is an innocent passenger, and his motion should therefore be granted. Plaintiff contends that he does not oppose the Belliard Defendants' motion for summary judgment on liability and joins and adopts the arguments made therein. In the event that the Court denied Plaintiff's cross-motion, then Plaintiff would oppose the Belliard Defendants' motion and contend that all Defendants are jointly and severally liable.

In opposition, the Belliard Defendants contend that Plaintiff has failed to establish that the Belliard Defendants were negligent or the proximate cause of the subject accident. Defendants MZZZ, LLC and Paul do not oppose Plaintiff's cross motion.

There is no dispute that Plaintiff is free from liability as an innocent passenger and is therefore entitled to partial summary judgment on the issue of liability (*see Garcia v Tri-County Ambulette Service, Inc.*, 282 A.D.2d 206 [1st Dept. 2001]). "It is well settled that the right of an innocent passenger to summary judgment is not in any way restricted by potential issues of comparative negligence as between the drivers of the ... vehicles" (*Garcia, supra*). Plaintiff's cross-motion is granted. Accordingly, it is

ORDERED that the motion by Defendants Yelyselev Belliard and Julio A. Belliard (the Belliard Defendants) for summary judgment on liability in their favor and against Defendants MZZZ, LLC and Jerome J. Paul, and for dismissal of the complaint and any cross-claims against them is GRANTED; and it is further

ORDERED that the complaint is dismissed in its entirety as against said Defendants Yelyselev Belliard and Julio A. Belliard, and the Clerk is directed to enter judgment accordingly in favor of said Defendants; and it is further

ORDERED that the action is severed and continued against the remaining Defendants; and it is further

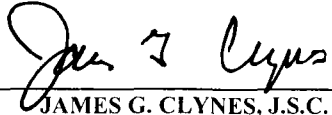
ORDERED that the caption be amended to reflect the dismissal and that all future papers filed with the Court bear the amended caption; and it is further

ORDERED that the cross-motion by Plaintiff Ian Valerio for summary judgment on liability in his favor is GRANTED as against Defendants MZZZ, LLC and Jerome J. Paul only; and it is further

ORDERED that Plaintiff shall serve a copy of this order with Notice of Entry upon the Clerk of the Court and the Clerk of the General Clerk’s Office, who are directed to mark the court’s records to reflect the change in the caption herein; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk’s Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website).

This constitutes the Decision and Order of the Court.

4/7/2023					
DATE			JAMES G. CLYNES, J.S.C.		
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	GRANTED IN PART	<input checked="" type="checkbox"/>
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>
				REFERENCE	