

Lopez v Target Mech. Inc.

2023 NY Slip Op 31197(U)

April 10, 2023

Supreme Court, New York County

Docket Number: Index No. 156973/2020

Judge: James G. Clynnes

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This opinion is uncorrected and not selected for official publication.

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 non-negligent explanation for the accident” (*Cabrera v Rodriguez*, 72 AD3d 553 [1st Dept 2010]).

In support of his motion, Lopez relies on his deposition testimony, the deposition testimony of Cintron, Vega, and Target Mechanical’s controller Tami Van, as well as a certified police accident report. Lopez testified that approximately one minute before the accident there was stop and go, medium traffic and that he was stopped in traffic when he was struck in the rear by a small white work truck. Cintron testified that she was the front seat passenger in the Lopez vehicle and that prior to the collision, traffic was slow in medium traffic and then stopped; that the vehicle she was in was stopped for approximately five to ten seconds before the accident; that she felt the collision behind her and saw a small white work truck, move from behind the vehicle in which she was a passenger to the right lane and drive away. Vega testified that she was a backseat passenger in the Lopez vehicle; that they were in stop and go traffic; that their vehicle came to a complete stop due to traffic in front of them; that she felt the impact from behind; and that as the small white van drove away, she was able to identify the vehicle as a white Ram van with the New York license plate 29647MK. Van testified that she is the Controller at Target Mechanical, that in August of 2019 Target Mechanical owned approximately two vehicles, white Dodge Rams, one of with the license plate 29647MK, which was not reported stolen or missing, and that Target Mechanical was involved in a project on Third Avenue and 125th Street on the date of the subject accident. The certified police report, which was created on the day of the subject accident, lists the license plate 29647MK as the second vehicle involved in the accident.

This testimony and evidence established prima facie negligence by Target Mechanical and the burden shifts to Defendant to provide a non-negligent explanation for the rear-end collision, or a non-negligent reason for the failure of the operator of Target Mechanical’s vehicle to maintain a safe distance between it and the vehicle operated by Lopez in which Cintron and Vega were passengers (*Mitchell v Gonzalez*, 269 AD2d 250 [1st Dept 2000]).

Target Mechanical submits the same attorney affirmation in opposition to both Motion Sequence Numbers 3 and 4 and contends, based upon the testimony of Target Mechanical’s representative Van, that an issue of fact as to the identity of the hit and run vehicle exists that is sufficient to preclude summary judgment on liability in favor of plaintiffs and against defendant. The court disagrees. Van testified that Target Mechanical had two employees who drove the

company vehicles at the time of the accident and that both employees denied being involved in an accident on that day and said they could not remember if they took the subject vehicle that day. Van also testified that she did not locate any repair invoices for the vehicles from the subject day. Without more, such as an affidavit or testimony from a person with first-hand knowledge of the accident, such as the employee who was driving Target Mechanical's vehicle on the date of the accident, Defendant's opposition fails to raise an issue of fact sufficient to preclude a determination of summary judgment on liability in favor of Plaintiff on the Counterclaim Lopez and all three Plaintiffs and against Defendant.

There is no evidence to support Defendant's Affirmative Defenses of comparative negligence (First Affirmative Defense), assumption of the risk (Second Affirmative Defense), multiple tortfeasors (Fifth Affirmative Defense), accord and satisfaction (Tenth Affirmative Defense), release (Eleventh Affirmative Defense), emergency situation (Twelfth Affirmative Defense), or intervening acts (Thirteenth Affirmative Defense). In relation to Defendant's Sixth Affirmative Defense, Lopez and Cintron provided uncontroverted testimony that they were wearing their seat belts at the time of the accident and Cintron testified that she was not wearing her seatbelt at the time of the accident. In relation to Defendant's Eighth Affirmative Defense, there is no evidence that this action which arises from an August 17, 2019 motor vehicle accident and was commenced in September 2020 was commenced outside the statute of limitations for personal injury actions. Defendant's opposition does not refer to or otherwise address that portion of Motion Sequence #4 which seeks to dismiss certain affirmative defenses.

Accordingly, it is hereby

ORDERED that the motion by Plaintiff on the Counterclaim Daniel Lopez for summary judgment in his favor and dismissal of the Counterclaim (Motion Sequence #3) is granted and the Counterclaim is dismissed against Plaintiff on the Counterclaim Daniel Lopez; and it is further

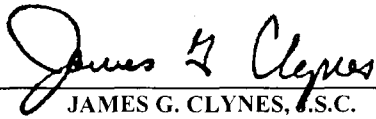
ORDERED that motion by Plaintiffs for summary judgment on the issue of liability in their favor and against Defendant and for dismissal of the Defendant's First (Comparative Negligence), Second (Assumption of Risk), Fifth (Article 16 - Multiple Tortfeasors), Eighth (Statute of Limitations) Tenth (Accord and Satisfaction), Eleventh (Release), and Twelfth (Emergency Doctrine), Thirteenth (Intervening Acts) Affirmative Defenses (Motion Sequence #4) is granted and those affirmative defenses are dismissed; and it is further

ORDERED that Plaintiffs' motion to dismiss Defendant's Sixth Affirmative Defense (failure to use seatbelt) is granted as to Lopez and Cintron, but denied as to Vega; and it is further

ORDERED that within 30 days of entry, Plaintiffs shall serve a copy of this Decision and Order upon Defendant with Notice of Entry.

This constitutes the Decision and Order of the Court.

4/10/2023
DATE


JAMES G. CLYNES, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>		<input checked="" type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>		<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE