

Rosario v Minick

2023 NY Slip Op 34595(U)

December 11, 2023

Supreme Court, New York County

Docket Number: Index No. 151809/2022

Judge: James G. Clynes

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. JAMES G. CLYNES PART 22M

Justice

OSVALDO ROSARIO, Plaintiff, - v - MICHAEL MINICK, KOMIL SALIEV, RASAQ BABTUNDE SALAU, Defendants. INDEX NO. 151809/2022 MOTION DATE 10/04/2022, 01/27/2023 MOTION SEQ. NO. 001 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 51, 53, 55, 56, 57, 63

were read on this motion to/for JUDGMENT - SUMMARY

The following e-filed documents, listed by NYSCEF document number (Motion 003) 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79

were read on this motion to/for JUDGMENT - SUMMARY

Upon the foregoing documents and following oral argument, the motion by Defendant Komil Saliev for summary judgment, dismissing all claims and cross-claims against him on the grounds that Plaintiff failed to establish liability by Defendant Saliev (Motion Sequence #1) and the motion by Defendant Rasaan Babtunde Salau for summary judgment, dismissing all claims and cross-claims against him (Motion Sequence #3) are consolidated for determination as follows:

Plaintiff seeks recovery for injuries allegedly sustained as a result of an October 11, 2021 motor vehicle accident involving 5 motor vehicles, including contact between the Defendant Saliev vehicle and Plaintiff's vehicle; contact between Plaintiff's vehicle and the Defendant Salau vehicle; contact between the Defendant Salau vehicle and the Defendant Minick vehicle and contact between the Defendant Minick vehicle and the vehicle of non-party Joseph Sherry

Motion Sequence #1

Defendant Saliev contends that he was operating his vehicle and was the first vehicle stopped at the traffic control signal when his vehicle was struck in the rear by the Defendant Salau

vehicle which was struck in the rear by the Defendant Minick vehicle and propelled forward into the Defendant Saliev vehicle.

In support of his motion, Defendant Saliev relies on his affidavit, in which he avers that he was completely stopped at a red light at the intersection of 48th Street and 7th Avenue when suddenly, and without warning, his vehicle was rear ended. He further avers that he observed that vehicle 4, a Hyundai, had rear ended vehicle 3, a Toyota Highlander, which then rear-ended vehicle 2, another Toyota Highlander, and pushed vehicle 2, into his vehicle.

Defendant Saliev also submits the signed but uncertified Report of Motor Vehicle Accident (MV-104) by Plaintiff, which states that Plaintiff was moving slowly in traffic on 48th Street when Vehicle 3 (whose driver is identified as Defendant Minick) rear-ended Vehicle 2 (whose driver is identified as Defendant Salau), causing Vehicle 2 (Salau) to rear-end Plaintiff's vehicle, causing his vehicle to rear-end Vehicle 5 (whose driver is identified as Defendant Saliev).

Defendant Saliev demonstrated his prima facie entitlement to judgment as a matter of law. A rear-end collision with a stopped vehicle, or a vehicle slowing down, establishes a prima facie case of negligence on the part of the operator of the rear-ending vehicle, which may be rebutted if that driver can provide a non-negligent explanation for the accident (*Passos v MTA Bus Co.*, 129 AD3d 481 [1st Dept 2015]; *Beloff v Gerges*, 80 AD3d 460 [1st Dept 2011]). The burden therefore shifts to non-movants to raise a triable issue of fact (*see Winegrad v New York University Medical Center*, 64 NY2d 851, 853 [1985]).

In opposition to Defendant Saliev's motion, Defendant Minick relies on his affidavit, in which he avers that the vehicle in front of him, bearing New York License Plate RASAQ (later identified as Defendant Salau's vehicle) suddenly and unexpectedly came to an abrupt stop after coming into contact with another vehicle in front of it bearing New York License plate T685022C (later identified as Plaintiff's vehicle), which came into contact with the vehicle in front of it (later identified as Defendant Saliev's vehicle), several feet away from Defendant Minick, Defendant Minick tried to stop, but he hit the vehicle in front of him (Defendant Salau's vehicle). Defendant Minick further avers that he "later learned" that Plaintiff's vehicle rear-ended Defendant Saliev's vehicle as a result of Defendant Saliev stopping short.

Defendant Minick's submission failed to raise sufficient issues of fact to preclude summary judgment in favor of Defendant Saliev. It is undisputed that Defendant Saliev was the first vehicle in line stopped at the red traffic light. Defendant Minick's statement that he "later learned"

Defendant Saliev stopped short is not a first-hand account of the accident. Acquiring knowledge of the accident from other sources cannot raise a material issue of fact. Further, the fact that Defendant Saliev's vehicle may have stopped short is not sufficient to provide a non-negligent explanation for a rear-end collision (*Tejeda v Aifa*, 134 AD3d 549 [1st Dept 2015]). No other opposition was filed. The motion by Defendant Saliev for summary judgment, dismissing all claims and cross-claims against him on the grounds that Plaintiff failed to establish liability by Defendant Saliev (Motion Sequence #1) is granted.

Motion Sequence#3

In support of his motion, Defendant Salau relies on his affidavit, in which he avers that he was at a complete stop at the red light at the intersection of W 48th Street and 7th Avenue, third vehicle from traffic line, when suddenly and without warning he heard a bang from the rear of his vehicle, causing his vehicle to move forward and make contact with the vehicle in front of him.

Defendant Salau also submits his signed but uncertified Report of Motor Vehicle Accident (MV-104), in which he states that he was in traffic on 48th Street and Broadway, toward the intersection of 7th Avenue, when suddenly Vehicle 2 (whose driver is identified as Defendant Minick) rear ended him, causing him to rear end the vehicle in front of him.

In opposition to Defendant Salau's motion, Defendant Minick relies on his affidavit, in which he avers that he was driving at a steady rate of speed when the vehicle in front of him several feet away bearing New York License Plate RASAQ came to an abrupt stop, coming into contact with the vehicle in front of it, he tried to stop, but there was contact between his vehicle and the RASAQ vehicle.

To grant summary judgment, it must be clear that no material or triable issues of fact are presented (*Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395 [1957]). The conflict between the Defendant Salau's and Defendant Minick's versions of the accident presents issues of fact sufficient to preclude an order granting summary judgment on the issue of liability in favor of Defendant Salau (*Prak v NY City Tr. Auth.*, 205 AD3d 489 [1st Dept 2022]). Defendant Salau's motion is denied with leave to renew upon the completion of discovery.

Accordingly, it is

ORDERED the motion by Defendant Komil Saliev for summary judgment, dismissing all claims and cross-claims against him (Motion Sequence #1) is granted; and it is further

ORDERED that the complaint is dismissed in its entirety as against Defendant Komil Saliev and the Clerk is directed to enter judgment accordingly in favor of said Defendant; 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 counsel for Defendant Komil Saliev 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); and it is further

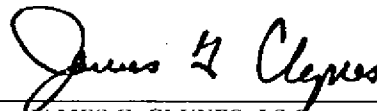
ORDERED that the motion by Defendant Rasaan Babtunde Salau for summary judgment, dismissing all claims and cross-claims against him (Motion Sequence #3) is denied with leave to renew upon the completion of discovery; and it is further

ORDERED that any relief sought not expressly addressed herein has nonetheless been considered; and it is further;

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

This constitutes the Decision and Order of the Court.

12/11/2023
DATE


JAMES G. CLYNES, J.S.C.

CHECK ONE: CASE DISPOSED DENIED NON-FINAL DISPOSITION

APPLICATION: GRANTED SUBMIT ORDER GRANTED IN PART OTHER

CHECK IF APPROPRIATE: SETTLE ORDER FIDUCIARY APPOINTMENT REFERENCE

INCLUDES TRANSFER/REASSIGN