

Abramov v Bonet Bldrs., LLC
2023 NY Slip Op 35177(U)
June 5, 2023
Supreme Court, Queens County
Docket Number: Index No. 722506/20
Judge: Timothy J. Dufficy
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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

PRESENT: HON. TIMOTHY J. DUFFICY
Justice

PART 35

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6/5/2023

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COUNTY CLERK
QUEENS COUNTY-----X
ROBERT ABRAMOV,

Plaintiff,

-against-

Index No.: 722506/20

Mot. Date: 3/14/23

Mot. Seq.: 2

BONET BUILDERS, LLC, LUIS R.
CHIMBORAZO and ISSAC WIDROFF,Defendants.
-----X

The following papers were read on this motion by plaintiff Robert Abramov (plaintiff) for an order granting him summary judgment, pursuant to CPLR 3212, on the issue of liability, against the defendants, and dismissing various affirmative defenses; and, the cross-motion by defendants Bonet Builders LLC and Luis R. Chimborazo for an order granting summary judgment on the issue of liability and dismissing the plaintiff's complaint and all cross claims against them.

PAPERS
NUMBERED

Notice of Motion-Affidavits-Exhibits.....	EF 51-56
Notice of Cross-Motion-Affidavits-Exhibits.....	EF 58-60
Answering Affidavits.....	EF 63, 65
Replying Affidavits.....	EF 67, 69

Upon the foregoing papers, the plaintiff moves, pursuant to CPLR 3212, for an order granting summary judgment in favor of the plaintiff and against the defendants on the issue of liability; and/or dismissing the affirmative defenses raised in defendant Isaac Widroff's (Widroff) answer alleging comparative negligence and/or failure to use seat-belts; dismissing the counterclaim against the plaintiff raised in Widroff's s answer alleging culpable conduct and comparative negligence; dismissing the affirmative defenses raised in defendants Bonet Builders, LLC (Bonet) and Luis R. Chimborazo's (Chimborazo) answer alleging comparative negligence, as it pertains to the plaintiff, and/or alleging an emergency and/or alleging failure to use seat-belts, and/or alleging plaintiff's culpable conduct in causing the accident; and , alleging the injuries and damages were caused by

the fault, negligence and carelessness of plaintiff; and, pursuant to CPLR 3212, granting summary judgment in favor of plaintiff holding the plaintiff himintiff free of any comparative fault; and/or directing a trial on the issue of damages only. Bonet and Chimborazo cross-move for summary judgment to dismiss plaintiff's complaint and all cross claims against them, relying on essentially the same evidence.

The motion by plaintiff for summary judgment on the issue of liability is granted, as to Widroff, and denied as to Bonet and Chimborazo. The branch of the motion seeking to strike the affirmative defenses of comparative negligence and failure to use seat-belts asserted in Widroff's answer is granted, as is the branch of the motion to dismiss Widroff's counterclaim alleging culpable conduct and comparative negligence. The cross-motion by Bonet and Chimborazo seeking summary judgment is also granted.

This action arises from a three-car collision, that occurred on August 12, 2019, on Rockaway Turnpike, in Cedarhurst, New York. The first vehicle was a Toyota Siena minivan owned and operated by plaintiff. The second vehicle was a Ford van owned by Bonet and operated by Chimborazo. The third vehicle was a GMC Yukon owned and operated by Widroff.

In support of the motion, plaintiff submits, *inter alia*, his examination before trial (EBT) transcript wherein he testified that he was wearing his seatbelt and that his vehicle was at a complete stop for a red light when he was struck from behind. Significantly, the plaintiff testified that there was only one impact to his vehicle and, before his vehicle was struck, he heard the sounds of "metal on metal" from behind him.

Plaintiff also submits the EBT testimony of Chimborazo and Widroff. Chimborazo testified that he was stopped behind the plaintiff's vehicle when his vehicle was struck from behind by the Widroff vehicle, pushing it into the rear of the plaintiff's vehicle. Widroff admitted striking the rear of the Chimborazo vehicle, but claims that Chimborazo stopped short.

A driver is entitled to summary judgment where there is no evidence that he operated his vehicle improperly or engaged in any conduct that helped bring about the collision. (*see Yusoprov v Supreme Carrier Corp.*, 240 AD2d 660 [2d Dept. 1997]; *Rebecchi v Whitmore*, 172 AD2d 600 [2d Dept. 1991]). A driver is also entitled to summary judgment when he "was in no position to either reasonably foresee or avoid a rear-end collision" (*Yusoprov, supra, Barnes v Lee*, 158 AD2d 414 [1st Dept. 1990]).

It is well established law that a rear-end collision with a stopped or stopping vehicle creates a *prima facie* case of negligence on the part of the driver of the rearmost vehicle, requiring the operator of that vehicle to proffer an adequate, non-negligent explanation for the accident (*see Klopchin v Masri*, 45 AD3d 737, [2d Dept. 2007]; *Hakakian v McCabe*, 38 AD3d 493, [2d Dept. 2007]; *Reed v. New York City Transit Authority*, 299 AD2d 330 [2d Dept. 2002]; *Velazquez v Denton Limo, Inc.*, 7 AD3d 787 [2d Dept. 2004].)

A rear-end collision with a stopped or stopping vehicle establishes a *prima facie* case of negligence on the part of the operator of the rear vehicle, requiring that operator to come forward with evidence of a non-negligent explanation for the collision in order to rebut the inference of negligence (*see Tutrani v County of Suffolk*, 10 NY3d 906, 908 [2008], *Mazen v Armstrong*, 190 AD3d 848, 849 [2d Dept. 2019]). “Evidence that a vehicle was struck in the rear and propelled into the vehicle in front of it may provide a sufficient non-negligent explanation ” (*Williams v Sala*, 152 AD3d 729 [2d Dept. 2017] quoting *Ortiz v Haidar*, 68 AD3d 953 [2d Dept. 2009]).

“In chain collision accidents, 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 struck from behind by the rear vehicle and propelled into the lead vehicle” (*Kuris v El Sol Contr. & Constr. Corp* [2d Dept. 2014]; *see Raimondo v Plunkitt*, 102 AD3d 851, 852 [2d Dept. 2013]; *Hill v Ackall*, 71 AD3d 829 [2d Dept. 2010]; *Katz v Masada II Car & Limo Serv., Inc.*, 43 AD3d 876 [2d Dept. 2007]).

Here, the plaintiff has established a *prima facie* entitlement to summary judgment through the submission of EBT testimony that he was at a stop when he was struck from the rear. The burden has now shifted to the opposing parties to demonstrate by admissible evidence the existence of a factual issue by evidentiary proof in admissible form (*see Zuckerman v City of New York*, 49 NY2d 557 [1980]). However, while Chimborazo has established a non-negligent explanation since his vehicle was stopped when struck from behind and propelled into the plaintiff’s vehicle, Widroff has not.

"[A] conclusory assertion by the operator of the following vehicle that the sudden stop of the vehicle ahead caused the accident is insufficient, in and of itself, to provide a non-negligent explanation" (*Brothers v. Bartling*, 130 AD3d 554, 556 [2d Dept. 2015]). The mere allegation of a sudden or short stop is insufficient to raise a triable issue of fact and cannot serve to defeat a motion for summary judgment (*See Bene v Dalessio*

135 AD3d 679 [2d Dept. 2016]). “[V]ehicle stops which are foreseeable under the prevailing traffic conditions, even if sudden and frequent, must be anticipated by the driver who follows” (*Munoz v Agenus, Inc.*, 207 AD3d 643, 645 [2d Dept. 2022]). Thus, plaintiff’s motion for summary judgment is granted as to Widroff, and denied as to Bonet Chimborazo. As discussed above and below, the evidence shows that Bonet and Chimborazo established that they were not negligent in this accident.

Plaintiff also seeks to dismiss the affirmative defenses and raised in Widroff’s answer alleging comparative negligence and/or failure to use seat-belts and the counterclaim against him. Plaintiff has established that he was free from comparative negligence in this rear end accident and that the affirmative defenses of comparative negligence and failure to use seat-belts are without merit. Thus, these said affirmative defenses dismissed, as is the counterclaim for culpable conduct and comparative negligence.

The cross-motion by Bonet and Chimborazo is granted. These defendants have established that their vehicle was stopped behind the plaintiff’s vehicle, when it was struck by the Widroff vehicle and propelled into the rear of the plaintiff’s vehicle. 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” (*Bardizbanian v Bhuiyan*, 181 AD3d 772, 773 [2d Dept. 2019] citing *Chuk Hwa Shin v Correale*, 142 AD3d 518, 519 [2d Dept. 2019]); *see also Milhalastos v. Barnett*, 175 AD3d 492, 493 [2d Dept. 2019]; *Arellano v Richards*, 162 AD3d 967, 967-968 [2d Dept. 2018]). Bonet and Chimborazo have made such a *prima facie* entitlement and the conclusory assertion of a sudden stop are insufficient to raise an issue of fact.

Accordingly, it is

ORDERED that plaintiff’s motion for summary judgment on the issue of liability is **granted ONLY against defendant Isaac Widroff**; and it is further

ORDERED that the affirmative defenses of comparative negligence and failure to use seat-belts asserted in Widroff’s answer are dismissed; and it is further

ORDERED Widroff's counterclaim against the plaintiff alleging culpable conduct and comparative negligence is dismissed; and it is further

ORDERED that plaintiff's motion for summary judgment against defendants Bonet Builders, LLC (Bonet) and Luis R. Chimborazo (Chimborazo) is **denied**; and it is further

ORDERED, that plaintiff's motion to dismiss the affirmative defenses raised in the answer of Bonet and Chimborazo is denied, as being moot; and it is further

ORDERED that the cross-motion for summary judgment by Bonet and Chimborazo is granted; and it is further

ORDERED that the plaintiff's complaint and all cross-claims against Bonet and Chimborazo are dismissed; and it is further

ORDERED that any arguments or requests for relief not addressed herein have nonetheless been considered by the Court and are denied.

The foregoing constitutes the decision and order and judgment of this Court.

Dated: June 5, 2023

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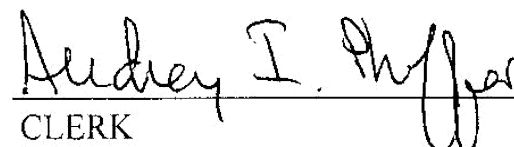
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QUEENS COUNTY**



TIMOTHY J. DUFFICY, J.S.C.


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