

Armenia v Smirnov Taxi, LLC

2024 NY Slip Op 33473(U)

September 13, 2024

Supreme Court, New York County

Docket Number: Index No. 158744/2018

Judge: James G. Clynes

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. JAMES G. CLYNES PART 22M

Justice

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KRISTIN ARMENIA,

Plaintiff,

- v -

SMIRNOFF TAXI, LLC, MD MURSALIN, FIRST ULTIMATE
TRANS CORP., IMRAHIMA KANTE, MYG HACKING
CORP., IBRAHIM MORO,

Defendant.

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INDEX NO. 158744/2018

MOTION DATE 10/26/2023, 11/27/2023

MOTION SEQ. NO. 003 005

AMENDED
DECISION + ORDER ON
MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 88, 89, 90, 114, 124

were read on this motion to/for JUDGMENT - SUMMARY

The following e-filed documents, listed by NYSCEF document number (Motion 005) 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 117, 118, 119, 125

were read on this motion to/for SUMMARY JUDGMENT (AFTER JOINDER)

This Amended Decision and Order corrects the Decisions and Orders dated June 25, 2024 (NYSCEF DOC NO 124) and September 9, 2024 (NYSCEF DOC NO 125).

Upon the foregoing documents and following oral argument, it is ordered that the motions by Defendants First Ultimate Trans Corp (First Ultimate) and Ibrahima Kante (Kante) for summary judgment in their favor and dismissal of the Complaint and cross-claims against them (Motion Sequence #3) and Plaintiff's motion for summary judgment on liability in Plaintiff's favor and against Defendants Smirnoff Taxi, LLC (Smirnoff) and MD Mursalin (Mursalin) and dismissing their Third Affirmative Defense (Contributory Negligence, Culpable Conduct, and Assumption of the Risk by Plaintiff) (Motion Sequence #5) are consolidated for decision and decided as follows:

Plaintiff seeks recovery for personal injuries sustained as a result of an August 10, 2016 motor vehicle accident involving the vehicle owned and operated by Smirnoff and Mursalin, in which Plaintiff was a passenger, and two other vehicles: the vehicle owned and operated by MYG and Moro and the vehicle owned and operated by First Ultimate and Kante.

The matter is discontinued as to MYG and Moro.

The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case (*Winegrad v NY Univ. Med. Ctr.*, 64 NY2d 851 [1985]). Once such entitlement has been demonstrated by the moving party, the burden shifts to the party opposing the motion to “demonstrate by admissible evidence the existence of a factual issue requiring a trial of the action or tender an acceptable excuse for his failure...to do [so]” (*Zuckerman v New York*, 49 NY2d 557, 560 [1980]).

“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” (*Leak v Hybrid Cars, Ltd.*, 132 AD3d 958 [2d Dept 2015]). In chain-collision accidents, the operator of the middle vehicle may establish prima facie entitlement to summary judgment by demonstrating that the middle vehicle was struck from behind by the rear vehicle and propelled into the lead vehicle (*Bardizbanian v Bhuiyan*, 181 AD3d 772 [2d Dept 2020]).

In support of their motions, First Ultimate and Kante and Plaintiff submit transcripts of the examination before trial of plaintiff and Kante and the affidavit of Kante. Plaintiff also submits a certified police report identifying the parties involved in the accident.

Plaintiff testified that she hailed a cab from the east side of First Avenue between 77th and 78th Streets, she was a passenger in a yellow taxi, she did not put her seatbelt on, when about 10 seconds after she entered the vehicle, she felt that she was thrust forward, and she hit her head on the partition. Plaintiff testified that she saw the vehicle immediately in front of them an instant before the accident, that the vehicle within which she was a passenger was moving at the time of the accident and hit the vehicle in front of them. Plaintiff further testified that she later learned that there was a third vehicle involved in the accident ahead of the vehicle with which her taxi came into contact.

Kante testified during his examination before trial that he was driving the taxi, with a male passenger, heading northbound on First Avenue, driving less than 20 miles per hour due to the traffic conditions, he was driving right behind a yellow taxi in the right moving lane of traffic, he was looking straight, he was moving slowly with his foot on top of the brake, not pressing on it, preparing to stop because traffic was heavy, when suddenly he felt an impact to

the rear of his vehicle and he pressed on his brakes, but the impact from the rear pushed his car into the taxi in front of him.

In his affidavit, Kante avers that he was driving northbound on First Avenue in the right lane behind a yellow cab, he had one passenger in his vehicle, traffic was heavy, the yellow cab in front of him began to slow down due to traffic, he applied his brakes to slow down when suddenly he felt an impact to the rear of his vehicle that pushed him into contact with the yellow cab in front of him.

The parties' submissions establish prima facie negligence by defendants Smirnoff Taxi LLC and MD Mursalin for the rear-end collision between their vehicle and the First Ultimate/Kante vehicle and the rear-end collision between the MYG/Moro vehicle in which plaintiff was a passenger and the First Ultimate/Kante vehicle. Kante's testimony provides a non-negligent explanation for the rear-end collision between the First Ultimate/Kante vehicle and MYG/Moro vehicle in which plaintiff was a passenger. A rear-end collision with a stopped or stopping vehicles is prima facie negligence against the rear vehicle driver unless an adequate nonnegligent explanation for the accident is given (*Kalair v Fajerman*, 202 AD3d 625 [1st Dept 2022]). In a chain-reaction collision, responsibility presumptively rests with the rearmost driver (*Cabrera v Thomas*, 193 AD3d 406 [1st Dept 2021]). Further, being propelled forward in a chain reaction collision is a non-negligent explanation for a rear-end motor vehicle accident (*Arrastia v Sbordone*, 225 AD2d 375 [1st Dept 1996]).

Plaintiff did not submit opposition to the motion by First Ultimate and Kante (Motion Sequence #3). Smirnoff and Mursalin are precluded from testifying at trial and from offering an affidavit with respect to dispositive motions on liability, pursuant to an Order dated April 28, 2023, (NYSCEF DOC NO 65). Smirnoff and Mursalin submitted attorney affirmations in opposition to both motions which do not provide a non-negligent explanation for the rear-end collision between their vehicle, in which plaintiff was a passenger, and the First Ultimate/Kante vehicle and therefore fail to raise a material issue of fact sufficient to preclude a determination of summary judgment on liability in favor of plaintiff, First Ultimate and Kante and against Smirnoff and Mursalin. New York courts have consistently held an attorney's affirmation to be inadequate to oppose a summary judgment motion (*See GTF Marketing Inc. v Colonial Aluminum Sales, Inc.*, 66 NY2d 965, 968 [1985]).

There is no evidence of contributory negligence on the part of First Ultimate or Kante.

The motion by First Ultimate and Kante for summary judgment in their favor and dismissal of the complaint and cross-claims against them is granted.

There is no dispute that Plaintiff is free from liability as an innocent passenger and is therefore entitled to partial summary judgment in her favor on the issue of liability (*see Garcia v Tri-County Ambulette Service, Inc.*, 282 A.D.2d 206 [1st Dept. 2001]). Therefore, plaintiff's motion for summary judgment on liability in her favor and against Smirnoff and Mursalin is granted and the portion of the motion seeking dismissal of the Third Affirmative Defense of Smirnoff and Mursalin, alleging culpable conduct, contributory negligence and assumption of the risk by plaintiff is granted and the Third Affirmative Defense of Smirnoff and Mursalin is dismissed.

Accordingly, it is

ORDERED that the motion by defendants First Ultimate Trans Corp LLC and Ibrahima Kante (Motion Sequence #3) for summary judgment in their favor and to dismiss the complaint herein is granted and the complaint and cross-claims are dismissed in their entirety as against said defendants, 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 Plaintiff's motion (Motion Sequence #5) for summary judgment on liability in Plaintiff's favor and against Defendants Smirnoff Taxi, LLC and MD Mursalin and dismissing their Third Affirmative Defense (Contributory Negligence, Culpable Conduct, and Assumption of the Risk by Plaintiff) is granted; and it is further

ORDERED that within 30 days of entry, counsel for the moving parties 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.

9/13/2024

DATE

James G. Clynes

JAMES G. CLYNES, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE