

Gutierrez v Minicozzi

2024 NY Slip Op 34829(U)

July 9, 2024

Supreme Court, Suffolk County

Docket Number: Index No. 614730/2022

Judge: Joseph Farneti

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SHORT FORM ORDER

INDEX No. 614730/2022

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 37 - SUFFOLK COUNTY

PRESENT:

Hon. JOSEPH FARNETI
Acting Justice of the Supreme Court

MOTION DATE 7/17/23 (001)
MOTION DATE 8/10/23 (002)
MOTION DATE 9/8/23 (003)
ADJ. DATE 10/12/23
Mot. Seq. # 001 MG
Mot. Seq. # 002 MG
Mot. Seq. # 003 MD

-----X
MILTON LEON GUTIERREZ,

Plaintiff,

SOTO LAW PLLC
Attorney for Plaintiff
75 Broadway, 4th Floor
White Plains, New York 10601

- against -

O'DWYER & BERNSTEIN, LLP
Attorney for Defendant Levine
8 East 41st Street, 8th Floor
New York, New York 10017

KATHLEEN E. MINICOZZI, ILENE LEVINE,
KATHLEEN RAMIREZ, TOYOTA LEASE
TRUST and HABBERSTAUD BMW,

Defendants.

SCAHILL LAW GROUP P.C.
Attorney for Defendant Minicozzi
1065 Stewart Avenue, Suite 210
Bethpage, New York 11714

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Upon the following papers read on these e-filed motions for summary judgment: Notice of Motion/Order to Show Cause and supporting papers filed by defendant Ramirez, on June 23, 2023; filed by defendant Habberstaud BMW, on July 14, 2023; filed by defendant Levine, on August 1, 2023; Answering Affidavits and supporting papers by defendant Minicozzi, filed on July 31, 2023; by defendant Habberstaud BMW, filed on August 28, 2023; by defendant Minicozzi, filed on August 29, 2023; by plaintiff, filed on October 5, 2023; Replying Affidavits and supporting papers by defendant Habberstaud BMW, filed on August 29, 2023 and October 11, 2023; by defendant Ramirez, filed on October 11, 2023; by defendant Levine, filed on October 11, 2023;

ORDERED that the motion by the defendant Kathleen Ramirez (#001), the motion by the defendant Habberstaud BMW (#002), and the motion by the defendant Ilene Levine (#003) are consolidated for purposes of this determination; it is

ORDERED that the motion by the defendant Kathleen Ramirez for summary judgment dismissing the complaint and all cross claims against her is granted; it is

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ORDERED that the motion by the defendant Habberstaud BMW for summary judgment dismissing the complaint and cross claims against it is granted; it is

ORDERED that the motion by the defendant Ilene Levine for summary judgment dismissing the complaint and cross claims against her is denied; and it is further

ORDERED that, upon searching the record (*see* CPLR 3212 [b]), the Court awards summary judgment in favor of the defendant Kathleen Minicozzi, and the complaint and cross claims as asserted against her are dismissed

This is an action to recover damages for injuries allegedly sustained by the plaintiff Milton Leon Gutierrez as a result of a multi-vehicle accident, which occurred on September 12, 2021, on Route 58, near its intersection with Kroemer Avenue, in the Town of Riverhead. The accident allegedly happened when the plaintiff's vehicle struck a vehicle operated by the defendant Kathleen Minicozzi in the rear, which then struck a vehicle operated by the defendant Ilene Levine in the rear, and Ms. Levine's vehicle was then propelled forward into a vehicle operated by the defendant Kathleen Ramirez and owned by the defendant Habberstad BMW, incorrectly sued herein as Habberstaud BMW. In addition, the plaintiff alleges that the vehicles operated by Ms. Minicozzi, Ms. Levine, or Ms. Ramirez stopped short, causing the accident.

The defendants now move separately for summary judgment dismissing the complaint and all cross claims against them. Ms. Ramirez and Habberstad BMW contend that Ms. Ramirez's vehicle was stopped for a red traffic light when it was hit in the rear by a vehicle operated by Ms. Levine. In addition, Habberstad BMW contends that it can only be held liable for the accident if Ms. Ramirez was negligent in the happening of the accident, and that, if the Court finds in favor of Ms. Levine, it must find in favor of Ms. Ramirez, as well. Ms. Levine argues that her vehicle was struck in the rear by Ms. Minicozzi's vehicle, which propelled her vehicle forward into Ms. Ramirez's vehicle.

In support of her motion, Ms. Ramirez submits, among other things, an uncertified police accident report and her own affidavit. In opposition to Ms. Ramirez's motion, Ms. Minicozzi submits her own affidavit and an affirmation of her attorney. In support of its motion, Habberstad BMW submits, among other things, an affirmation of its attorney and an affidavit of Ms. Minicozzi. In opposition to Habberstad BMW's motion, Ms. Minicozzi submits an affirmation of her attorney. In support of her motion, Ms. Levine submits an affirmation of her attorney, and she relies upon the affidavits of Ms. Ramirez and Ms. Minicozzi in support of the other defendants' motions (*see* NYSCEF Doc. Nos. 37 and 50). In opposition to Ms. Levine's motion, Ms. Minicozzi and Ms. Ramirez submit affirmations of their attorneys. In opposition to all the motions, the plaintiff submits an affirmation of his attorney, arguing, among other things, that the motions are premature and there are questions of fact as the happening of the accident. In reply to all the motions, the movants submit affirmations of their attorneys.

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 (*see Choo v Virginia Transp. Corp.*, 204 AD3d 743, 744, 164 NYS3d 473 [2d Dept 2022] [internal citations omitted]).

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While there can be more than one proximate cause of an accident and it is generally for the trier of fact to determine, the issue of proximate cause may be decided as a matter of law where only one conclusion may be drawn from the established facts (*see Riddell v City of New York*, 209 AD3d 891, 893, 177 NYS3d 95 [2d Dept 2022] [internal citations omitted]; *Kalland v Hungry Harbor Assoc., LLC*, 84 AD3d 889, 922 NYS2d 550 [2d Dept 2011] [internal citations omitted]).

When the driver of an automobile approaches another automobile from the rear, he or she is bound to maintain a reasonably safe rate of speed and control over his or her vehicle, and to exercise reasonable care to avoid colliding with the other vehicle (*see Vehicle and Traffic Law § 1129 [a]; Mahmud v Feng Ouyang*, 208 AD3d 861, 861, 174 NYS3d 721 [2d Dept 2022] [internal citations omitted]). Accordingly, a rear-end collision establishes a prima facie case of negligence on the part of the operator of the rear vehicle, thereby requiring that operator to rebut the inference of negligence by providing a non-negligent explanation for the collision (*see Tutrani v County of Suffolk*, 10 NY3d 906, 908, 861 NYS2d 610 [2008] [internal citations omitted]; *Buchanan v Keller*, 169 AD3d 989, 991, 95 NYS3d 252 [2d Dept 2019] [internal citations omitted]). 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 (*see Hartfield v Seenarraine*, 138 AD3d 1060, 30 NYS3d 316 [2d Dept 2016] [internal citations omitted]). Thus, 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 it was struck from behind by the rear vehicle and propelled into the lead vehicle (*see Chuk Hwa Shin v Correale*, 142 AD3d 518, 36 NYS3d 213 [2d Dept 2016] [internal citations omitted]).

At the outset, the police accident report submitted by the parties in support of their motions constitutes inadmissible hearsay, as it is uncertified and a proper foundation has not been laid; as the report is inadmissible, all of the police officers' observations contained therein are also inadmissible, precluding the Court from considering any of the report in its determination (*see CPLR 4518 [a], [c]; Yassin v Blackman*, 188 AD3d 62, 65-67, 131 NYS3d 53 [2d Dept 2020]).

Here, by her affidavit, Ms. Ramirez has established her prima facie entitlement to summary judgment dismissing the complaint and cross claims as asserted against her by demonstrating that she was not at fault in the happening of the subject accident (*see Riddell v City of New York, supra; Choo v Virginia Transp. Corp., supra; Kalland v Hungry Harbor Assoc., LLC, supra*). By her affidavit, Ms. Ramirez avers, among other things, that, while traveling eastbound on Route 58, her vehicle was stopped at a red traffic light for about one minute when it was struck in the rear by a vehicle operated by Ms. Levine, creating a prima facie case of negligence (*see Vehicle and Traffic Law § 1129 [a]; Mahmud v Feng Ouyang, supra*). In opposition, by her affidavit, Ms. Minicozzi avers, among other things, that she was slowing her vehicle for a red traffic light and traveling at no more than 5 miles per hour when her vehicle was struck from behind by a "Chevrolet pickup truck," which was operated by the plaintiff, and this impact propelled her vehicle forward into "a Mazda," which was operated by Ms. Levine. As Ms. Minicozzi has proffered evidence in admissible form that her vehicle was struck in the rear and propelled into Ms. Levine's vehicle, which then struck Ms. Ramirez's vehicle, she has provided a sufficient non-negligent explanation for the accident (*see Chuk Hwa Shin v Correale, supra; Hartfield v Seenarraine, supra*), and, in searching the record (*see CPLR 3212 [b]*), the Court awards Ms. Minicozzi summary judgment in her favor, and the complaint and cross claims as asserted against her

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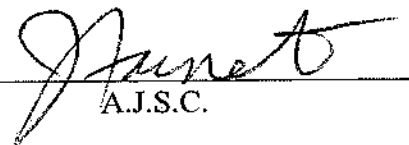
are dismissed. Moreover, as the plaintiff only submits an affirmation of his attorney in opposition to Ms. Ramirez's motion, who has no personal knowledge of the facts, this submission is without evidentiary value, and, thus, is insufficient to raise a triable issue of fact (*see Zuckerman v City of New York*, 49 NY2d 557, 427 NYS2d 595 [1980]). As such, Ms. Ramirez's motion is granted.

In addition, Habberstad's BMW's submissions also establish its entitlement to summary judgment, as it was the owner of Ms. Ramirez's vehicle and, as she has found to be not negligent in the happening of the accident, it cannot be held vicariously liable for the plaintiff's alleged injuries (*see Vehicle and Traffic Law § 388 [1]; Heins v Vanbourgondien*, 180 AD3d 1019, 1024, 119 NYS3d 158 [2d Dept 2020] [internal citations omitted]). In opposition, the plaintiff and Ms. Minicozzi submit affirmations of their attorneys, which is insufficient to raise a triable issue of fact (*see Zuckerman v City of New York, supra*). Accordingly, Habberstad BMW's motion is granted.

Ms. Levine's motion is denied. Although Ms. Levine relies upon the affidavits of Ms. Ramirez and Ms. Minicozzi to sustain her burden of demonstrating that she was not at fault in the happening of the accident, these affidavits fail to provide facts as to Ms. Levine's actions or inactions in the happening of the accident (*cf. Choo v Virginia Transp. Corp., supra*). As Ms. Levine's submissions fail to meet her initial burden on the motion, her application is denied, regardless of the sufficiency of the opposing papers (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853, 487 NYS2d 316 [1985]).

Accordingly, Ms. Ramirez's and Habberstad BMW's motions are granted, Ms. Levine's motion is denied, and the Court awards summary judgment in favor of Ms. Minicozzi.

Dated: 7/9/2024


 A.J.S.C.

 FINAL DISPOSITION X NON-FINAL DISPOSITION

TO: AHMUTY, DEMERS & MCMANUS
 Attorney for Defendant Ramirez
 200 I.U. Willets Road
 Albertson, New York 11507

LAW OFFICE OF KEITH J. CONWAY
 Attorney for Habberstad BMW
 4 World Trade Center
 150 Greenwich Street, 52nd Floor
 New York, New York 10007