

Dorcelus v Galazka-Duba
2024 NY Slip Op 35568(U)
February 23, 2024
Supreme Court, Queens County
Docket Number: Index No. 725546/2021
Judge: Robert I. Caloras
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SUPREME COURT OF THE STATE OF NEW YORK QUEENS
COUNTYPRESENT: HON. ROBERT I. CALORAS

PART 36 MOTIONS

Justice

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JORDAN DORCELUS,

Plaintiff,

- v -

NICOLAS GALAZKA-DUBA, ANDRZEJ DUBA,
YUK SHEUNG CHONG, ALAN CHONG,
FRANCISCO CABRAL, VICTOR HERRERA,
Defendants.INDEX NO. 725546/2021
MOTION SEQ.
NO. 005 006DECISION + ORDER ON
MOTION

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The following e-filed documents, listed by NYSCEF document number (Motion 005) 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 127, 129, 130, 143, 144, 147, 148, 149

were read on this motion to/for

JUDGMENT - SUMMARY

The following e-filed documents, listed by NYSCEF document number (Motion 006) 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 131, 132, 133, 135, 136, 140, 141, 142

were read on this motion to/for

JUDGMENT - SUMMARY

Upon the foregoing papers, it is ordered that Motions 005 and 006 are decided as follows:

According to the Complaint, on March 17, 2021, five vehicles were involved in a collision at or near the intersection of Queens Boulevard and Skillman Avenue, in Queens County, New York. As alleged in the Complaint, these vehicles included: a Honda sedan, operated by defendant FRANCISCO CABRAL ("Cabral"); a Volkswagen sedan, owned by ANDRZEJ DUBA and operated by defendant NICOLAS GALAZKA-DUBA (driver referred to individually as "Galazka-Duba," driver and owner referred to collectively as "Dubas"); a Honda sedan, owned by defendant ALAN CHONG and operated by defendant YUK SHEUNG CHONG (driver referred to individually as "Chong", driver and owner referred to collectively as "Chongs"); a Mitsubishi SW/SUV owned and operated by VICTOR HERRERA ("Herrera"); and a Toyota sedan, owned and operated by Plaintiff.

This Court will initially address Motion 005, wherein the Dubas move for summary judgement pursuant to CPLR § 3212, seeking dismissal of Plaintiff's complaint and any and all cross claims against them on the basis that there are no triable issues of fact regarding their liability. In support of their arguments, the Dubas submit, among other things, the deposition transcripts of drivers Herrera, Chong, Galazka-Duba, and Plaintiff. According to the submitted depositions, traffic ran in two directions on Queens Boulevard, divided by a double yellow line, with multiple lanes in either direction, with a three-phase traffic light controlling the intersection. Additionally, according to Herrera's deposition, among others' depositions, the Chongs' vehicle had been travelling eastbound on Queens Boulevard, in front of the vehicles driven by defendants Herrera and Cabral, while the vehicles operated by Galazka-Duba and Plaintiff were travelling westbound (towards Manhattan) on Queens Boulevard. Driver Chong stated in his deposition that at the time of the collision:

- He was travelling in the left-most lane on Queens Boulevard, and as he approached the intersection, the traffic light controlling his direction of travel was green.

- Chong brought his car to a stop as he approached the intersection. He looked both ways for oncoming traffic. He was able to see approximately one block in each direction but did not see any vehicles approaching.
- After making the left turn onto Skillman Avenue and crossing two lanes of traffic travelling in the opposite direction (on Queens Boulevard), Chong saw a pedestrian attempting to cross the street on Skillman Avenue in the pedestrian crosswalk. Chong brought his vehicle to a stop just before the crosswalk to allow the pedestrian to cross the street.
- Chong's vehicle had been stopped for two or three seconds when it was struck on the passenger side by the vehicle driven by Galazka-Duba.
- There was one impact to Chong's vehicle.

Galazka-Duba stated in his deposition, among other things, that just before the collision, Plaintiff was moving fast. Galazka-Duba also stated that his own vehicle had been stopped for "[a]bout 4 to 5 seconds" for the "late yellow" traffic light when Plaintiff's vehicle hit him and pushed his car into the Chongs' car in the intersection. (E81.)

Plaintiff, in his deposition, stated, among other things, that as he approached the intersection from the left-most lane, the traffic light was green. He also stated that the Chong vehicle made a "quick turn," then stopped in the intersection. Plaintiff stated that because of the Chongs' vehicle, Galazka-Duba "didn't have time to react . . . to avoid going straight [into the Chongs' vehicle] . . . and [Galazka-Duba] swerved into [Plaintiff] in the left lane." (E83) According to Plaintiff's deposition, the initial collision between his car and the Galazka-Duba vehicle caused Plaintiff's vehicle to flip and collide with the vehicles of Cabral and Herrera (who were travelling in the other direction), while the Galazka-Duba car subsequently collided with the turning Chong vehicle.

Based on the submitted deposition testimony, among other things, the Dubas argue that they were not the proximate cause of the collision, and instead the proximate cause of accident was the speed and negligence of Plaintiff. Dubas contend that they could not reasonably have anticipated that Plaintiff's vehicle would strike their stationary vehicle, which was stopped in the neighboring lane for a traffic light, changing from yellow to red. Additionally, the Dubas argue that "[i]f the Court were to consider [Plaintiff's] self-serving statements, the proximate cause of accident was Codefendant Chong's vehicle." The Dubas' attorney acknowledges that Plaintiff's account of the accident "diverge[s]" from the statements of all other defendants. Nonetheless, the Dubas argue that regardless of which account of the accident is taken to be true, they are not liable for the happening of the collision.

Plaintiff opposes and argues the Dubas' motion should be denied in all respects, because, among other reasons, the Dubas have not met their prima facie burden. Plaintiff's attorney in his supporting affirmation, states that a video of the collision has been submitted to the Court. However, the Court notes that the Dubas did not submit said video in support of their motion (Sequence 005), nor has Plaintiff submitted said video with his opposition papers. In fact, the video was submitted for consideration under Motion Sequence 6. Therefore, in the interest of judicial economy and fairness, the Court will give no further attention to Plaintiff's arguments in this motion regarding video footage of the collision. Regardless, as the Court indicates below, the video does not support Plaintiff's arguments.

The Chongs also oppose the Dubas' motion, arguing, among other things, that issues of fact remain regarding the dismissal of their cross-claims.

The proponent of a summary judgment motion must tender evidentiary proof in admissible form eliminating any material issues of fact from the case (see Alvarez v Prospect Hosp., 68 NY2d 320 [1986]). Once this showing has been made, the burden shifts to the non-moving party to produce

evidentiary proof in admissible form sufficient to establish the existence of material issues of fact that require a trial for resolution (see Alvarez v Prospect Hosp., supra; Zuckerman v City of New York, 49 NY2d 557 [1980]). Failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers (see Winegrad v New York Univ. Med. Ctr., 64 NY2d 851, 853 [1985]).

Vehicle and Traffic Law § 1141 provides that the “driver of a vehicle intending to turn to the left within an intersection ... shall yield the right of way to any vehicle approaching from the opposite direction which is within the intersection or so close as to constitute an immediate hazard.” Vehicle and Traffic Law § 1163 provides that “[n]o person shall turn a vehicle at an intersection unless the vehicle is in proper position upon the roadway . . . or otherwise turn a vehicle from a direct course or move right or left upon a roadway unless and until such movement can be made with reasonable safety. No person shall so turn any vehicle without giving an appropriate signal in the manner hereinafter provided.” That is, “[a] signal of intention to turn right or left when required shall be given continuously during not less than the last one hundred feet traveled by the vehicle before turning.” (See NY VEH & TRAF § 1163.) Additionally, Vehicle and Traffic Law § 1146(a) provides, in pertinent part, that “every driver of a vehicle shall exercise due care to avoid colliding with any . . . pedestrian....” “A violation of the Vehicle and Traffic Law constitutes negligence as a matter of law” (Smalls v Adams, 118 AD3d 693 [2d Dept. 2014]; Adobea v Junel, 114 AD3d 818 [2d Dept. 2014]). In addition, “[a] driver is bound to see what is there to be seen with the proper use of his or her senses” (Higesh v M&R Scarsdale Rest., LLC, 176 AD3d 788 [2d Dept. 2019]), and is negligent for the failure to do so (Shui-Kwan Ki v Serrone, 103 AD3d 620 [2d Dept. 2013]).

“Generally, it is for the trier of fact to determine the issue of proximate cause. However, the issue of proximate cause may be decided as a matter of law where only one conclusion may be drawn from the established facts. Additionally, there may be more than one proximate cause of an accident.” (Internal citations omitted.) (Kalland v Hungry Harbor Assoc., LLC, 84 AD3d 889, 889 [2d Dept 2011])

Here, however, the Court finds that the Dubas have not met their prima facie burden. “[O]nly one conclusion” may not be drawn from the facts presented here. Rather, several key facts are in dispute. By the Dubas’ attorney’s own admission in her affirmation, Plaintiff’s “testimony is inconsistent with the other deposition testimony provided by the other vehicles involved.” (E91.) Specifically, there is conflicting deposition testimony about whether the Dubas’ vehicle was stationary and stopped solely in its lane when the first collision occurred. Therefore, it is not clear from the evidence presented whether the actions of Plaintiff, Galazka-Duba, Chong, or some combination of the three were the catalysts of this multi-car collision. Accordingly, the motion by the Dubas for summary judgement against Plaintiff, dismissing all cross-claims is denied.

The Court notes that it received and reviewed Plaintiff’s attorney’s letter requesting leave to interpose a limited sur-reply, in response to an argument presented by the Dubas that was not mentioned previously in their initial motion papers. However, as the Dubas’ motion is denied in full, Plaintiff’s attorney’s request is denied as moot.

As to Motion Sequence 006, defendant Cabral requests an order granting him summary judgment, dismissing the Verified Complaint and any and all cross claims against him. In support of his motion, Cabral submits, among other things, his own deposition and the deposition testimony of the four other drivers (detailed above and also submitted by under motion Sequences 004 and 005). Of particular significance to Cabral’s motion, is Cabral’s deposition testimony that at the time of the collision he had been proceeding eastbound (away from Manhattan) in the left-most lane when he approached the

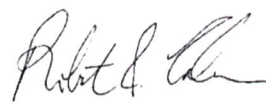
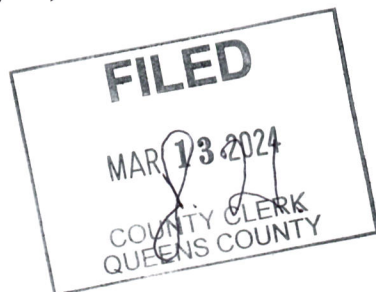
intersection under a green traffic light. He further stated that he had to 'stop and start' driving due to the heavy traffic. Additionally, Cabral stated in his deposition that when the collision occurred he had stopped his vehicle just "passed [*sic*] the intersection," and that a car in the neighboring lane (travelling in the opposite direction towards Manhattan), collided with his car, then collided with another car (the Herrera vehicle) stopped at the red light (facing east) behind him. Cabral argues based on the foregoing that he is entitled to summary judgment as he was not negligent as a matter of law.

Plaintiff opposes and argues, among other things, that Cabral cannot meet his prima facie burden "because [Cabral] was clearly not keeping a lookout, and, in light of the subject video, it is clear that [Cabral] was not on the correct side of the double Yellow line, because he was obviously stopped in the intersection where there were no double yellow lines" in violation of Vehicle & Traffic Law § 1202 (1)(c). Chongs and Dubas also oppose Cabral's motion. However, it seems to the Court that the Chongs and the Dubas opposed Cabral's motion only to the extent that they respectively request summary judgment not be granted as to their own liability.

Here, the Court finds Cabral has demonstrated his prima facie entitlement to summary judgment on the issue of liability. The evidence indicates that Cabral was not negligent as a matter of law as he was proceeding under a green light, in his own lane, when Plaintiff's vehicle hit Cabral's vehicle from the neighboring lane – which was proceeding in the opposite direction. Additionally, the video of the collision does not contradict Cabral's account of the accident, nor does it raise issues of fact as to Cabral's involvement in the accident.

In opposition Plaintiff and defendants, the Chongs and the Dubas, fail to raise an issue of fact. Regardless of whether Cabral had proceeded all the way through the intersection or only mostly through it, it is clear to the Court that Cabral did not cause or contribute to the accident in any way. Furthermore, despite Plaintiff's attorney's claims, the video footage does not show Cabral's vehicle blocking the intersection, and Plaintiff's attorney does not indicate a place in the video that indicates such. Additionally, Plaintiff's attorney has not submitted an affidavit and does not indicate he has any personal knowledge of the facts. Therefore, Plaintiff has failed to set forth any evidence disputing the claims set forth by Cabral through deposition testimony and surveillance video. Accordingly, Cabral's motion is granted in its entirety, and Plaintiff's Verified Complaint and any and all crossclaims against Cabral are dismissed.

DATED: February 23, 2024



ROBERT I. CALORAS, J.S.C.