

Whelan v Butta

2025 NY Slip Op 35082(U)

September 11, 2025

Supreme Court, Kings County

Docket Number: Index No. 502003/2023

Judge: Francois A. Rivera

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At an IAS Term, Part 52 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 11th day of September 2025

HONORABLE FRANCOIS A. RIVERA

CHRISTOPHER WHELAN
and VISHWANI RAGHUNATH

Plaintiffs,

- against -

JOSEPH A. BUTTA, IMPORTS OF WANTAGH
and ERICK RAMIREZ,

Defendants.

DECISION & ORDER

Index No.: 502003/2023

Oral Argument: 9/5/2025

Cal. No.: 57

Ms. Seq. No.: 2

Recitation in accordance with CPLR 2219 (a) of the papers considered on the notice of motion filed on February 3, 2025, under motion sequence number two, by plaintiffs Christopher Whelan and Vishwani Raghunath for an Order: (1) pursuant to CPLR 3212 (b) and (c) granting the plaintiffs summary judgment on the issue of liability against the defendants Imports of Wantagh and Erick Ramirez, (2) striking the affirmative defense of comparative negligence, (3) allowing this matter to proceed with discovery as to damages only, (4) together with such other, further, and different relief as this Court may deem just and proper. The motion is unopposed.

- Notice of motion
- Affirmation in support
Exhibits 1-3
- Affidavit in support

BACKGROUND

On January 19, 2023, the plaintiffs commenced the instant action for damages for personal injury by filing a summons and verified complaint with the Kings County Clerk's office (KCCO). On March 6, 2023, defendants Imports of Wantagh and Erick

Ramirez joined issue by interposing and filing an answer with cross claims with the KCCO. On December 12, 2023, defendant Joseph Butta joined issue by interposing and filing an answer with cross claims with the KCCO.

By notice of motion filed on November 19, 2024, under motion sequence number one, defendant Joseph Butta sought an order pursuant to CPLR 3212 granting Joseph Butta summary judgment on the issue of liability and dismissing the complaint and the cross claims of the defendants Imports of Wantagh and Erick Ramirez.

By decision and order dated February 6, 2025, the Court granted the motion of defendant Joseph Butta and dismissed the complaint and the cross claims of the defendants Imports of Wantagh and Erick Ramirez. The Court found that Joseph Butta made a prima facie showing that he was hit in the rear while stopped.

LAW AND APPLICATION

It is well established that summary judgment may be granted only when no triable issue of fact exists (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). The burden is upon the moving party to make a prima facie showing that he or she is entitled to summary judgment as a matter of law by presenting evidence in admissible form demonstrating the absence of material facts (*Giuffrida v Citibank Corp.*, 100 NY2d 72, 81 [2003]).

A failure to make that showing requires the denial of the summary judgment motion, regardless of the adequacy of the opposing papers (*Ayotte v Gervasio*, 81 NY2d 1062, 1063 [1993], citing *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). If a

prima facie showing has been made, the burden shifts to the opposing party to produce evidentiary proof sufficient to establish the existence of material issues of fact (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]).

Pursuant to CPLR 3212 (b) a court will grant a motion for summary judgment upon a determination that the movant's papers justify holding, as a matter of law, “that there is no defense to the cause of action or that the cause of action or defense has no merit” (CPLR 3212 [b]). “Further, all the evidence must be viewed in the light most favorable to the opponent of the motion” (*People v Grasso*, 50 AD3d 535, 544 [1st Dept 2008], citing *Marine Midland Bank v Dino & Artie's Automatic Transmission Co.*, 168 AD2d 610, 610 [2d Dept 1990]).

“A driver of a vehicle approaching another vehicle from the rear is required to maintain a reasonably safe distance and rate of speed under the prevailing conditions to avoid colliding with the other vehicle” (*Bello v Masters Auto Collision of Long Is., Inc.*, 216 AD3d 726, 727 [2d Dept 2023]; see Vehicle and Traffic Law § 1129 [a]). Thus, “[a] rear-end collision with a stopped or stopping vehicle creates a prima facie case of negligence with respect to the operator of the rearmost vehicle, thereby requiring that operator to rebut the inference of negligence by providing a non-negligent explanation for the collision” (*Edgerton v City of New York*, 160 AD3d 809, 810 [2d Dept 2018]; see *Tutrani v County of Suffolk*, 10 NY3d 906, 908 [2008]).

“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 for the collision” (*McPhaul-Guerrier v Leppla*, 201 AD3d 920 [2d Dept 2022]). “Thus, in a three-

vehicle chain-collision accident, the defendant operator/owner 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’” (*id.*).

Here, the plaintiffs’ evidentiary submission, which included their verified bill of particulars and the deposition transcript of Christopher Whelan, established the following facts. On May 31, 2022, plaintiff Christopher Whelan was operating a motor vehicle with plaintiff Vishwani Raghunath as a passenger. The plaintiffs were traveling on Beach Channel Drive, at or near its intersection with Beach 140th Street, a public street and thoroughfare, in the County Queens, State of New York. At that location, defendant Erick Ramirez while operating the motor vehicle owned by defendant Imports of Wantagh, struck plaintiffs’ vehicle in the rear. Due to the impact of the collision, the plaintiffs’ vehicle was propelled into and struck the rear of the motor vehicle traveling ahead, which was owned and operated by defendant Josepha Butta.

The plaintiffs made a prima facie showing that that Erick Ramirez violated Vehicle and Traffic Law § 1129 (a) when he struck the plaintiffs’ vehicle in the rear while they were stopped. Erick Ramirez and Imports of Wantagh did not oppose the motion and therefore did not raise a triable issue of fact. The plaintiffs also made a prima facie showing that they were propelled into the rear of the Joseph Butta vehicle and were free of comparative fault.

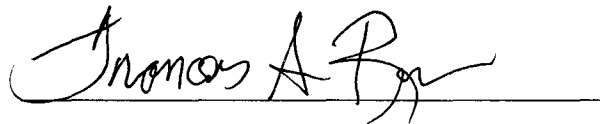
CONCLUSION

The branch of the motion by plaintiffs Christopher Whelan and Vishwani Raghunath for an order pursuant to CPLR 3212 granting them summary judgment on the issue of liability against the defendants Imports of Wantagh and Erick Ramirez is granted.

The branch of the motion by plaintiffs Christopher Whelan and Vishwani Raghunath for an order striking the affirmative defense of comparative negligence asserted by defendants Imports of Wantagh and Erick Ramirez is granted.

The foregoing constitutes the decision and order of this Court.

ENTER:



J.S.C.

HON. FRANCOIS A. RIVERA