

Golubchik v Das Trading Corp.

2008 NY Slip Op 33656(U)

November 13, 2008

Supreme Court, Bronx County

Docket Number: 7602/07

Judge: Cynthia S. Kern

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NEW YORK SUPREME COURT - COUNTY OF BRONX

PART 29

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX:

- Case Disposed
- Settle Order
- Schedule Appearance

GOLUBCHIK, LYUDMILA

Index No. 0007602/2007

-against-

Hon. CYNTHIA S. KERN, Justice.

DAS TRADING CORP.,

Justice.

The following papers numbered 1 to _____ Read on this motion, SUMMARY JUDGEMENT DEFENDANT
Noticed on September 02 2008 and duly submitted as No. _____ on the Motion Calendar of _____

	<u>PAPERS NUMBERED</u>	
Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed		
Answering Affidavit and Exhibits		
Replying Affidavit and Exhibits		
_____ Affidavits and Exhibits		
Pleadings - Exhibit		
Stipulation(s) - Referee's Report - Minutes		
Filed Papers		
Memoranda of Law		

Upon the foregoing papers this *motion is decided in accordance with the annexed decision.*

Motion is Respectfully Referred to:
Justice: _____
Dated: _____

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Hon. CK
CYNTHIA S. KERN, J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: Part IA-29

-----X
LYUDMILA GOLUBCHIK,

Plaintiff,

Index No. 7602/07

-against-

DECISION/ORDER

DAS TRADING CORP., WEI PAN, NEW YORK
CITY AMBULETTE and ARKADY NEYSHTAT,

Defendants.

-----X
HON. CYNTHIA S. KERN, J.S.C.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion
for : _____

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	<u>1</u>
Cross-Motion and Affidavits Annexed	<u> </u>
Answering Affidavits.....	<u>2, 3</u>
Replying Affidavits on Motion.....	<u>4</u>

Plaintiff Lyudmila Golubchik commenced this personal injury action against defendants to recover for injuries she allegedly sustained when the motor vehicle in which she was a passenger was struck in the rear by a second vehicle on June 29, 2004. The vehicle plaintiff was in was owned by defendant New York City Ambulette (“Ambulette”) and operated by defendant Arkady Neyshtat (“Neyshtat”). It was struck by the second vehicle owned by defendant Das Trading Corp. (“Das”) and operated by defendant Wei Pan. Defendants Ambulette and Neyshtat now move for summary judgment dismissing the complaint against them on the grounds that the collision was due solely to the negligence of defendant Wei Pan. For the reasons set forth below, the motion for summary judgment is denied.

* 3]

The relevant facts are as follows. On June 29, 2004, plaintiff was a passenger in defendant Ambulette's vehicle traveling on the Brooklyn-Queens Expressway. The Ambulette vehicle was stopping for traffic ahead when the Das vehicle struck it. Ambulette and Neyshtat allege that Wei Pan was negligent in striking the Ambulette vehicle when it was stopped or stopping. Plaintiff and defendants Das and Wei Pan dispute this claim alleging that there is a question of fact as to whether the ambulette vehicle made a sudden stop providing an alternative cause for the rear-end collision other than Wei Pan's negligence.

On a motion for summary judgment, the movant bears the burden of presenting sufficient evidence to demonstrate the absence of any material issues of fact. *See Wayburn v. Madison Land Ltd. Partnership*, 282 A.D.2d 301 (1st Dept 2001). Summary judgment should not be granted where there is any doubt as to the existence of a material issue of fact. *See Zuckerman v. City of New York*, 49 N.Y.2d 557, 562 (1980). Once the movant establishes a *prima facie* right to judgment as a matter of law, the burden shifts to the party opposing the motion to "produce evidentiary proof in admissible form sufficient to require a trial of material questions of fact on which he rests his claim." *Id.*

Defendants Ambulette and Neyshtat have made out a *prima facie* claim for summary judgment by establishing that their vehicle was stopped or stopping at the time of the accident and was struck in the rear by the Das vehicle. A rear-end collision with a stopped or stopping vehicle creates a *prima facie* case of liability with respect to the operator of the moving vehicle, imposing a duty of explanation on the operator to excuse the collision either through a mechanical failure, a sudden stop of the vehicle ahead, an unavoidable skidding on a wet pavement or any other reasonable cause. *See Power v. Hupart*, 260 A.D.2d 458 (2d Dept 1999).

[* 4]

If the operator cannot come forward with any evidence to rebut the inference of negligence, the party in the stopped vehicle may properly be awarded summary judgment as a matter of law. *See Mankiewicz v. Excellent*, 25 A.D.3d 591 (2nd Dept 2006); *Hurley v. Izzo*, 248 A.D.2d 674 (2nd Dept 1998). Defendants Ambulette and Neyshtat have established that their vehicle was stopped or stopping at the time of the accident by submitting the deposition testimony of plaintiff and Neyshtat to this effect.

Nevertheless, in the instant case, defendants Das and Wei Pan have raised a question of fact as to whether Wei Pan, the driver of the moving vehicle, was negligent in causing the accident. A “driver of a motor vehicle has a duty to keep proper control of his vehicle, and to not stop suddenly or slow down without proper signaling so as to avoid a collision.” *Niemiec v. Jones*, 237 A.D.2d 267 (2d Dept. 1997). Moreover, in a rear-end collision, where a question is raised whether the forward vehicle was driving too fast or too close behind a vehicle in front, it would be erroneous to grant summary judgment and determine credibility as a matter of law. *See Depena v. Metropolitan Ambulance and First Aid Corp.*, 1 Misc.3d 13, 14 (2d Dept. 2003); *see also Darmento v. Pacific Molasses Co.*, 81 N.Y.2d 985 (1993). In *Depena*, plaintiff was a passenger in a vehicle that stopped short and was rear-ended by a second vehicle. Plaintiff testified that the vehicle in which she was riding was driving approximately 40 miles per hour and only ten feet behind the forward vehicle which necessitated the sudden stop. On these facts, the court determined that there were triable issues of fact as to whether the unreasonable conduct of the forward vehicle’s driver was a proximate cause of the collision.

In the instant case, Wei Pan testified at his deposition that the Ambulette vehicle was more than ten meters ahead of him and that it came to a “sudden stop” before he made contact

