Buscema v Anam
2022 NY Slip Op 34209(U)
December 9, 2022
Supreme Court, New York County
Docket Number: Index No. 450131/2018
Judge: Leslie A. Stroth

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. LESLIE A. STROTH** **PART** **52**

Justice

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JOSEPH BUSCEMA,

Plaintiff,

- v -

HADI S. ANAM, METROPOLITAN HOSPITAL CENTER, THE CITY OF NEW YORK, THE HEALTH AND HOSPITALS CORPORATION, JORGE L. FIGUEROA, DAWSHAWN C. MORGAN, V. R. RIZZO-NIKOU,

Defendant.

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INDEX NO. 450131/2018

MOTION DATE 08/11/2022

MOTION SEQ. NO. 004

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 004) 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 106

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

Plaintiff Joseph Buscema (plaintiff) commenced this action seeking damages for personal injuries allegedly sustained on September 27, 2016, when his vehicle was involved in a six-vehicle rear-end chain collision. Defendants Metropolitan Hospital Center, the City of New York, the Health and Hospitals Corporation, and Jorge Figueroa (together, the City defendants) move for an order granting summary judgment in their favor and dismissing the complaint and all cross-claims against them. Neither plaintiff nor the remaining co-defendants Dawshan Morgan or V.R. Rizzo-Nikou submit opposition to the motion.

According to the police report provided by the City defendants, Hadi Anam's vehicle rear-ended the City-owned vehicle, which then rear-ended Morgan's vehicle, which then rear-ended Rizzo-Nikou's vehicle, and which then rear-ended plaintiff's vehicle. *See* Exhibit J, NYSCEF doc. no. 86. Mr. Anam testified at his examination before trial (EBT) that he was traveling 30-40 miles per hour while leaving 10-15 feet between his vehicle and the City-owned vehicle, that the City-owned vehicle in front of him had its brake lights on as it came to a complete stop, and that only a couple of seconds passed between

when Mr. Anam applied his brakes and when he made contact with the City-owned vehicle. *See* Exhibit K, Hadi Anam EBT Transcript, NYSCEF doc. no. 87 at 28:3-6, 32:4, 34:3-6, 46:2-13, 47:22-25, and 48:8-11.

It is a well-established principle that the "function of summary judgment is issue finding, not issue determination." *Assaf v Ropog Cab Corp.*, 153 AD2d 520 (1st Dept 1989), quoting *Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404 (1957). As such, the proponent of a motion for summary judgment must tender sufficient evidence to show the absence of any material issue of fact and the right to entitlement to judgment as a matter of law. *See Alvarez v Prospect Hospital*, 68 NY2d 320 (1986); *see also Winegrad v New York University Medical Center*, 64 NY2d 851 (1985). Summary judgment is a drastic remedy that should not be granted where there is any doubt as to the existence of issues of fact. *See Sillman,* 3 NY2d at 404. Therefore, the party opposing a motion for summary judgment is entitled to all favorable inferences that can be drawn from the evidence submitted. *See Dauman Displays, Inc. v Masturzo*, 168 AD2d 204 (1st Dept 1990), citing *Assaf,* 153 AD2d at 521.

Vehicle and Traffic Law § 1129 (a) requires that drivers maintain a reasonably safe rate of speed, maintain control over the vehicle, and maintain a safe distance from the vehicle in front of them. The Appellate Division, First Department has held that a rear-end collision with a stopped vehicle creates a prima facie case of negligence on the part of the rear vehicle unless the driver of the colliding vehicle presents evidence sufficient to rebut the inference of negligence. *See De La Cruz v Ock Wee Leong,* 16 AD3d 199 (1st Dept 2005). A presumption of liability lies with the rearmost driver in a chain-reaction collision. *See Ferguson v Honda Lease Trust*, 34 AD3d 356 (1st Dept 2006). "A claim that the lead vehicle stopped suddenly is generally insufficient to rebut the presumption of non-negligence on the part of the lead vehicle." *Woodley v Ramirez*, 25 AD3d 451, 452 (1st Dept 2006) (internal citations omitted).

The City argues that it is not liable for plaintiff's injuries, because the City-owned vehicle was not the rearmost vehicle in the chain-reaction. The City defendants argue that plaintiff's deposition establishes that the City-owned vehicle was not the vehicle directly behind plaintiff's vehicle and that the City-owned vehicle did not make any direct contact with plaintiff's vehicle. *See* Exhibit L, Plaintiff's EBT Transcript, NYSCEF doc. no. 88 at 24-25.

The City maintains that Mr. Anam is the party liable for plaintiff's injuries.[1] In support of its arguments, the City cites to a decision rendered by the Honorable Dakota Ramseur involving the same accident. *See Troy Cornelius v Joseph Buscema, et al.*, Index No. 452251/2020, NYSCEF doc. no. 85 at 2. In that decision, Justice Ramseur dismissed the complaint as against co-defendants Morgan, Rizzo-Nikou, and Buscema, because their vehicles were in front of Mr. Cornelius's vehicle at the time of the accident. *See id.* Justice Ramseur also granted Mr. Cornelius summary judgment as against Mr. Anam on the issue of liability, finding that all vehicles except for his were stopped at the time of the collision, that he was the rearmost driver who triggered the chain reaction of the vehicles, and that he failed to offer a non-negligent explanation for the collision. *See id.*

Here, the City defendants have tendered sufficient evidence to show the absence of any material issue of fact as to their liability and have established their entitlement to judgment as a matter of law. The evidence sufficiently establishes that that the City-owned vehicle did not make contact with the plaintiff's vehicle, that the rear-most vehicle was Mr. Anam's, and that Mr. Anam has not provided a non-negligent reason for the rear-end collision. Such evidence warrants summary judgment in favor of the City defendants, as per Vehicle and Traffic Law § 1129 (a).

Accordingly, it is hereby

[1] The action was discontinued as to Mr. Anam as per stipulation dated July 23, 2022. *See* NYSCEF doc. no. 107.

ORDERED that co-defendants Metropolitan Hospital Center, the City of New York, the Health and Hospitals Corporation, and Jorge Figueroa's unopposed motion for summary judgment is granted in their favor, and that the complaint and any cross-claims are dismissed as against those co-defendants; 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 with the names of the City defendants removed; and it is further

ORDERED that this action, including any pending motions, is transferred to a general IAS Part, as corporation counsel no longer represents any parties to this action; and it is further

ORDERED that counsel for the moving parties shall serve a copy of this order with notice of entry upon the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk's Office (60 Centre Street, Room 119), 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 at the address www.nycourts.gov/supctmanh).

This constitutes the decision and order of the Court.

12/9/2022
DATE

LESLIE A. STROTH, J.S.C.

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION	
	X	GRANTED		DENIED		GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT		REFERENCE

450131/2018 BUSCEMA, JOSEPH vs. ANAM, HADI S.
Motion No. 004