

Yong v Gokhul

2013 NY Slip Op 33163(U)

December 13, 2013

Sup Ct, Queens County

Docket Number: 700324/2012

Judge: Robert J. McDonald

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0 SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK
CIVIL TERM - IAS PART 34 - QUEENS COUNTY
25-10 COURT SQUARE, LONG ISLAND CITY, N.Y. 11101

P R E S E N T : HON. ROBERT J. MCDONALD
Justice

- - - - - x

KIL Y. YONG, PAUL R. YANG and YONG
JUNG LEE,

Plaintiffs,

- against -

KAMLA GOKHUL and CHONG N. YANG,

Defendants.

- - - - - x

The following papers numbered 1 to 13 were read on the motion by plaintiff on the counterclaim, KIL Y. YONG, for an order pursuant to CPLR 3212(b) granting summary judgment dismissing the counterclaims of the defendants CHONG N. YANG and KAMLA GOKHUL on the ground that no liability exists for the for the occurrence of the accident against plaintiff on the counterclaim, KIL Y. YONG:

	<u>Papers Numbered</u>
Yong Notice of Motion-Affidavits-Exhibits.....	1 - 5
Defendant Gokhul Affirmation in Opposition.....	6 - 8
Defendant Yang Affirmation in Opposition.....	9 - 11
Yong Reply Affirmation.....	12 - 13

In this action for negligence, plaintiffs KIL Y. YONG, PAUL R. YANG and YONG JUNG LEE, seek to recover damages for personal injuries they each allegedly sustained as a result of a four-vehicle chain reaction accident that occurred on September 22, 2011, at approximately 2:30 p.m. on the northbound lanes of the Van Wyck Expressway near ITS intersection with Grand Central Parkway.

In his affidavit in support of the motion dated March 21, 2013, plaintiff on the counterclaim, KIL Y. YONG, states that on the date of the accident he was operating a 2003 Chevrolet with New Jersey

license plates and was traveling in the right lane of the northbound Van Wyck Expressway. He states that he was at a complete stop behind a construction vehicle in the right lane when his vehicle was struck in the rear by the vehicle being operated by defendant Chong N. Yang. Kil Y. Yong states his vehicle never came into contact with the construction vehicle in front of him. Kil Yong states that he later learned that the vehicle behind him was subsequently struck in the rear by the vehicle operated by Kamla Gokhul. As a result of the accident, plaintiff Kil Y. Yong allegedly sustained injuries as did his two passengers, plaintiffs Paul R. Yang and Yong Jung Lee.

Plaintiffs Kil Y. Yong, Paul R. Yang and Yong Jung Lee commenced an action against the drivers of the two vehicles behind his Chong N. Yang in vehicle No. 2 and Kamla Gokhul in Vehicle No. 3 by filing a summons and complaint on February 24, 2012.

Issue was joined by defendant Chong N. Yang by service of a verified answer with counterclaim dated May 17, 2012. Plaintiff on the counterclaim, Kil Y. Yong, appeared in this action with the filing of a Notice of Appearance and Verified Reply to Counterclaim dated July 10, 2012. Pursuant to a stipulation of the parties dated January 14, 2013, defendant Gokhul served a late answer with counterclaims.

Plaintiff on the counterclaim, Kil Y. Yong, the driver of the lead vehicle, moves prior to depositions, for summary judgment dismissing the defendants' counterclaims against him on the ground that his vehicle, the first vehicle in the chain, was completely stopped behind a construction vehicle when it was struck in the rear by the Chong N. Yang vehicle and, as such, the defendants' counterclaim must be dismissed as the evidence shows that he could not be liable for the injuries sustained by the co-plaintiffs.

In support of his motion for summary judgment, plaintiff on the counterclaim submits an affirmation from counsel, Won J. Sohng, Esq; a copy of the pleadings; a copy of the police accident report; and a copy of an affidavit of facts from Kil Y. Yong dated March 21, 2013.

The police accident report provides in the accident description section,

"At t/p/o, veh #1(Kil Yong) was headed N/B on the Van Wyck Expressway in the right lane and had to brake due to a stopped construction vehicle in the right lane when Veh #2 (Chong Yang) did strike vehicle #1; and vehicle # 3(Kamla Gokhul) did strike vehicle #2; and veh #4 did strike Veh #3 and left the scene. Officer did not witness."

Plaintiff on the counterclaim contends that the evidence submitted in support of his motion for summary judgment, including his affidavit and the police report, demonstrate that his vehicle, the lead vehicle of the four cars, was lawfully stopped behind a stopped construction vehicle when his car was suddenly rear-ended by the Yang vehicle. After that collision, the Yang vehicle was struck in the rear by the Gokhul vehicle. The fourth vehicle in the chain which then struck Ms. Gokhul's vehicle, left the scene of the accident without leaving any identification. Counsel contends that the counterclaims brought against Kil Yong by Mr. Yang and Ms. Gokhul should be dismissed because the evidence shows that he was lawfully stopped at the time of the accident and further, there is no evidence in the record that Kil Yong, who was stopped prior to the impact, was negligent in any manner

In opposition to the motion, counsel for defendant Chong N. Yang submits an affidavit dated June 12, 2013, stating that at approximately 2:30 p.m. on September 22, 2011 he was the operator of a 2006 Lincoln and was traveling northbound on the Van Wyck Expressway. He states that "suddenly, without warning the vehicle in front of me, a 2003 Chevrolet owned by Paul R. Yang and operated by plaintiff Kil Y. Yong stopped short. Because the Yong vehicle stopped short I was unable to avoid contact with the Yong vehicle. After I collided with the Yong vehicle, a 2005 Chevrolet owned and operated by defendant Kamla Gokhul collided with the rear of my vehicle. After that collision an unidentified fourth vehicle collided with the rear of the Gokhul vehicle." Chong Yang states that it was only because the Kil Yong vehicle suddenly stopped short that the accident occurred. He states that although he was maintaining a safe distance behind the Yang vehicle there was nothing he could have done to prevent the accident from occurring.

Counsel for Chong Yang, Matthew A.D. Canzoneri, Esq. opposes the motion on the ground that the motion is premature, relies on inadmissible evidence (the police report), and moreover he asserts that based upon the affidavit of Chong Yang there are questions of fact regarding how the accident occurred and whether plaintiff on the counterclaim may be liable in whole or in part.

Defendant Kamla Gokhul also opposes the motion on the ground that the police report is inadmissible evidence, that the motion is premature as depositions of all of the parties have yet to be conducted, and there are substantial and material questions of fact and questions of comparative negligence on the part of the plaintiff on the counterclaim, Kil Y. Yong. Ms. Gokhul submits an affidavit dated August 18, 2013, stating that on the date in question she was operating her 2005 Chevy Monte Carlo proceeding northbound on the Wan Wyck Expressway approaching the White Stone Expressway. She stated that she observed construction vehicles stopped in the

roadway for unknown reasons without hazardous lights or emergency lights on. As she went around the construction vehicles she noticed vehicle number 2 (Yang) stopped in the roadway and she was unable to avoid hitting vehicle 2. Immediately after striking Vehicle 2 her vehicle was struck in the rear by a fourth vehicle which fled the scene of the accident. She states that she believes that if the construction vehicles had their emergency lights on she may have been able to avoid the accident.

Counsel for defendant Kamla Gokhul, Charles J. Campo, Esq, asserts that the construction vehicles which were stopped without having engaged their emergency lights created an emergency situation in that the defendant was confronted with a sudden and unanticipated situation that was not of defendant's own making.

Upon review and consideration of the motion by the plaintiff on the counterclaim, the affirmations in opposition and the movant's reply thereto this court finds as follows:

The proponent of a summary judgment motion must tender evidentiary proof in admissible form eliminating any material issues of fact from the case. If the proponent succeeds, the burden shifts to the party opposing the motion, who then must show the existence of material issues of fact by producing evidentiary proof in admissible form in support of his position (see Zuckerman v. City of New York, 49 NY2d 557[1980]).

"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" (Macauley v ELRAC, Inc., 6 AD3d 584 [2d Dept. 2003]; also see Vavoulis v Adler, 43 AD3d 1154 [2d Dept. 2007]). It is well established law that a rear-end collision creates a prima facie case of negligence on the part of the driver of the rearmost vehicle, requiring the operator of that vehicle to proffer an adequate, non-negligent explanation for the accident (see Hearn v Manzolillo, 103 AD3d 689[2d Dept 2013]; Taing v Drewery, 100 AD3d 740; Balducci v Velasquez, 92 A.D.3d 626 [2d Dept. 2012]; Kastritsios v Marcello, 84 AD3d 1174[2d Dept. 2011]; Klopchin v Masri, 45 AD3d 737 [2d Dept. 2007]; Hakakian v McCabe, 38 AD3d 493 [2d Dept. 2007]; Velazquez v Denton Limo, Inc., 7 AD3d 787 [2d Dept. 2004]).

Here, plaintiff on the counterclaim, Kil Y. Yong, submitted an affidavit stating that his vehicle was at a complete stop behind stopped construction vehicles on the Van Wyck Expressway when it was suddenly struck from behind by the vehicle operated by defendant Chong N. Yang. Thus, Mr. Yong satisfied his prima facie

burden of establishing entitlement to judgment as a matter of law on the issue of liability (see Volpe v Limoncelli, 74 AD3d 795 [2d Dept. 2010]; Vavoulis v Adler, 43 AD3d 1154 [2d Dept. 2007]; Levine v Taylor, 268 AD2d 566 [2000]).

Having made the requisite prima facie showing of entitlement to summary judgment, the burden then shifted to defendants Gokhul and Yang, both of whom asserted counterclaims, to raise a triable issue of fact as to whether Kil Yong was also negligent, and if so, whether that negligence contributed to the happening of the accident (see Goemans v County of Suffolk, 57 AD3d 478 [2d Dept. 2007]). This Court finds that defendants Gokhul and Yang failed to provide evidence as to a non-negligent explanation for the accident sufficient to raise a triable question of fact (see Lampkin v Chan, 68 AD3d 727 [2d Dept. 2009]; Cavitch v Mateo, 58 AD3d 592 [2d Dept. 2009]; Garner v Chevalier Transp. Corp., 58 AD3d 802 [2d Dept. 2009]; Kimyagarov v Nixon Taxi Corp., 45 AD3d 736 [2d Dept. 2007]).

Defendant Yang submitted an affidavit conceding that he struck Yong's vehicle in the rear and was unable to prevent the accident from occurring. Although Yang maintains that the accident was the result of the lead car's braking or stopping suddenly, this does not explain his failure to maintain a safe distance from the vehicle in front of him [see Dicturel v Dukureh, 71 AD3d 558 [1st Dept. 2010]; Shirman v Lawal, 69 AD3d 838 [2d Dept. 2010]; Lampkin v Chan, 68 AD3d 727 [2d Dept. 2009]; Zdenek v Safety Consultants, Inc., 63 AD3d 918 [2d Dept. 2009]). Defendant Yang's argument that the plaintiff's vehicle stopped short is not sufficient to provide a non-negligent explanation for the rear-end collision (see Plummer v Nourddine, 82 AD3d 1069 [2d Dept. 2011][the mere assertion that the respondents' vehicle came to a sudden stop was insufficient to raise a triable issue of fact]; Staton v Ilic, 69 AD3d 606 [2d Dept. 2010]; Ramirez v Konstanzer, 61 AD3d 837 [2d Dept. 2009]). A bare claim that the driver of the lead vehicle suddenly stopped, standing alone, is insufficient to rebut the presumption of negligence (see Ramirez v Konstanzer, 61 AD3d 837 [2d Dept. 2009]; Jumandeo v Franks, 56 AD3d 614 [2d Dept. 2008]).

Gokhul's explanation that she did not observe any warnings or signal on the Yong vehicle or the construction vehicles is insufficient to support the emergency doctrine or to rebut the presumption of negligence created by the rear-end collision or to raise a triable issue of fact to defeat summary judgment (see Vespe v Kazi, 62 AD3d 408 [1st Dept. 2009]; Maccauley v ELRAC, Inc., 6 AD3d 584 [2d Dept. 2004][defendant's testimony that she did not recall seeing brake lights or tail lights illuminated on the

plaintiff's vehicle before the collision did not adequately rebut the inference of negligence]; Gross v Marc, 2 AD3d 681 [2d Dept. 2003][the defendant failed to provide evidence sufficient to raise a triable question of fact as to whether the alleged malfunctioning brake lights on the plaintiff's vehicle proximately caused the accident]; Waters v City of New York, 278 AD2d[2d Dept. 2000][defendant's statement that he did not observe any illuminated brake lights indicating that the truck was stopped is insufficient to establish a genuine issue of material fact precluding summary judgment]).

The defendants' contention that the plaintiff's motion for summary judgment is premature is without merit. The defendants failed to offer any evidentiary basis to suggest that discovery may lead to relevant evidence. The mere hope and speculation that evidence sufficient to defeat the motion might be uncovered during discovery is an insufficient basis upon which to deny the motion (see CPLR 3212[f]; Hanover Ins. Co. v Prakin, 81 AD3d 778 [2d Dept. 2011]; Essex Ins. Co. v Michael Cunningham Carpentry, 74 AD3d 733 [2d Dept. 2010]; Peerless Ins. Co. v Micro Fibertek, Inc., 67 AD3d 978 [2d Dept. 2009]; Gross v Marc, 2 AD3d 681 [2d Dept. 2003]).

Therefore, as the evidence in the record demonstrates that defendants failed to provide a non-negligent explanation for the collision and as no triable issues of fact have been put forth as to whether plaintiff on the counterclaim may have borne comparative fault for the causation of the accident, and based on the foregoing, it is hereby,

ORDERED, that the motion by the plaintiff on the counterclaim is granted, and the counterclaims contained in the answers of defendants Gokhul and Yang against plaintiff Kil Y. Yong are dismissed, and the Clerk of Court is authorized to enter judgment accordingly.

Dated: December 13, 2013
Long Island City, N.Y.

ROBERT J. MCDONALD
J.S.C.