White v Jackson
2016 NY Slip Op 32447(U)
November 14, 2016
Supreme Court, Bronx County
Docket Number: 301313/14
Judge: Barry Salman
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX
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NATALIE WHITE,

Plaintiff(s),

- against -

MARY R. JACKSON, THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY, SURAPON KUMWONG, MD RAFEL TALUKDER, AND MOHAMMED HANNAN,

Defendant(s).
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DECISION AND ORDER

Index No: 301313/14

In this action for the negligent operation of a motor vehicle, defendant MARY R. JACKSON (Jackson) moves seeking an order granting her summary judgment thereby dismissing the complaint and cross-claims asserted against her on grounds that she was neither negligent nor the proximate cause of the instant accident. Specifically, Jackson alleges that while plaintiff was a passenger in her vehicle at the time of the accident, the accident occurred while Jackson was stopped and impacted in the rear by the vehicle owned by defendant THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY (PANYNJ) and operated by defendant SURAPON KUMWONG (Kumwong). Defendants MD RAFEL TALUKDER (Talukder) and MOHAMMED HANNAN (Hannan) also move for summary judgment seeking dismissal of the complaint and cross-claims on grounds that they were not involved in the instant accident. Plaintiff, PANYNJ, and Kumwong oppose the instant motions asserting that questions of fact with respect to Jackson and Hannan's negligence preclude summary judgment.

For the reasons that follow hereinafter, Jackson's motion is granted and Talukder and Hanna's motion is denied.

Standard of Review

The proponent of a motion for summary judgment carries the initial burden of tendering sufficient admissible evidence to demonstrate the absence of a material issue of fact as a matter of law (*Alvarez v Prospect Hospital*, 68 NY2d 320, 324 [1986]; *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). Thus, a defendant seeking summary judgment must establish prima facie entitlement to such relief as a matter of law by affirmatively demonstrating, with evidence, the merits of the claim or defense, and not merely by pointing to gaps in plaintiff's proof (*Mondello v DiStefano*, 16 AD3d 637, 638 [2d Dept 2005]; *Peskin v New York City Transit Authority*, 304 AD2d 634, 634 [2d Dept 2003]). Once movant meets the initial burden on summary judgment, the burden shifts to the opponent who must then produce sufficient evidence, generally also in admissible form, to establish the existence of a triable issue of fact (*Zuckerman* at 562).

Jackson's Motion

Jackson's motion is granted insofar as she establishes that she was neither negligent nor the proximate cause of the instant accident. Significantly, the uncontroverted and admissible evidence establishes that Jackson's vehicle - within which plaintiff was a passenger - was impacted in the rear while Jackson was at a complete stop. Thus, on this record, if anyone bears liability it is the remaining defendants since the evidence demonstrates that the PANYNJ/Kumwong vehicle impacted Jackson's vehicle while it was stopped and did so either because the PANYNJ/Kumwong vehicle failed to timely stop or because it was propelled

forward after being impacted in the rear by the Talukder/Hannan vehicle.

A defendant who establishes that he was not negligent in the operation of his motor vehicle is entitled to summary judgment (*Dinham v Wagner*, 48 AD3d 349, 350 [1st Dept 2008]; *Cerda v Parsley*, 273 AD2d 339, 339 [2d Dept 2000]). A defendant can also establish prima facie entitlement to summary judgment by negating proximate causation (*Espinoza v Loor*, 299 AD2d 167, 168 [2d Dept 2002]; *Borges v Zukowski*, 22 AD3d 439, 439 [2d Dept 2005]).

Here, Jackson testified that the instant accident occurred as she was impacted in the rear by a white Ford SUV after being stopped for a red light for approximately 15 minutes in heavy stop and go traffic. Based on the foregoing, Jackson establishes prima facie entitlement to summary judgment insofar as her testimony establishes that she was not negligent in the operation of her vehicle, within which plaintiff was a passenger (*Dinham* at 350; *Cerda* at 339) and that she was also not the proximate cause of the instant accident.

Nothing submitted by plaintiff or PANYNJ/Kumwong raises an issue of fact sufficient to preclude summary judgment. To be sure, the police report submitted by plaintiff purporting to establish that Jackson's vehicle stopped short and was, thus, negligent and the proximate cause of the instant accident is in submitted in inadmissible form and absent an excuse, not present here, cannot be considered (*Johnson v Phillips*, 261 AD2d 269, 270 [1st Dept 1999]). Second, even if Jackson stopped short, it does not cast Jackson in liability nor negate the presumption that PANYNJ/Kumwong were negligent.

It is well settled that a rear-end collision with a stopped vehicle is prima facie evidence of negligence on the part of the operator of the second, offending, and rear-ending vehicle (*Carhuayano v J & R Hacking*, 28 AD3d 413, 414 [2d Dept 2006]; *Mitchell v Gonzalez*, 269 AD2d 250, 251 [1st Dept 2000]; *Johnson v Phillips*, 261 AD2d 269, 271 [1st Dept 1999]; *Danza v Longieliere*, 256 AD2d 434, 435 [1st Dept 1998]). In order to rebut the presumption of negligence, the operator of the rear-ending vehicle is required provide a cognizable non-negligent excuse (*Carhuayano* at 414; Johnson at 271; Mitchell at 251). Accordingly, a rear-end collision, when one of the vehicles is stopped, creates a prima facie case of liability with respect to the operator of the rear-ending vehicle[1] (*Edney v Metropolitan Suburban Bus Authority*, 178 AD2d 398, 399 [2d Dept 1991]). A failure by the operator of the offending vehicle to rebut the finding of negligence with admissible evidence requires judgment in favor of the other vehicle (*Grimes-Carrion v Carroll*, 13 AD3d 125, 126 [1st Dept 2004]; Bendiik v. Dybowski, 227 AD2d 228, 228 [1st Dept 1996]). Notably, in a chain reaction collision, the rear-most driver bears the rebuttable presumption of responsibility (*Ferguson v Honda Lease Trust*, 34 AD3d 356, 357 [1st Dept 2006]; *De La Cruz v Leong*, 16 AD3d 199, 200 [1st Dept 2005]; *Mustafaj v Driscoll*, 5 AD3d 138, 138 [1st Dept 2004]). However, the fact that the rear most vehicle was negligent does not absolve or negate the liability of the lead vehicle if the lead vehicle was negligent and a proximate cause of the accident (*Tutrani v County of*

[1] The same is true when an accident occurs as a vehicle, coming to stop and slowing, is struck in the rear (*Chepel v Meyers*, 306 AD2d 235, 237 [2d Dept 2003]; *Power v Hupart*, 260 AD2d 458 [2d Dept 1999]).

Suffolk, 10 NY3d 906, 908 [2008]). In the First Department, that a vehicle stopped short is insufficient to rebut the foregoing presumption of negligence (*Mitchell* at 251 ["It is not a sufficient defense to claim that plaintiffs' vehicle stopped short"]; *Danza* at 435 ["We find that the defendant's testimony to the effect that the accident was caused by the plaintiffs' sudden stop was insufficient to rebut the presumption that he was negligent"])

Thus, here, any claim that Jackson stopped short is insufficient to cast Jackson as negligent insofar as it is insufficient to rebut the presumption of negligence accorded against a rear-ending vehicle (*Mitchell* at 251; *Danza* at 435).

Nor does the fact, as averred by PANYNJ/Kumwong, that their version of the facts - namely that their vehicle was propelled into the rear of plaintiff's vehicle by an impact in the rear by the Talukder/Hannan vehicle - preclude summary judgment in Jackson's favor. At best, since in a chain reaction collision, the rear-most driver bears the rebuttable presumption of responsibility (*Ferguson* at 357; *De La Cruz* at 200; *Mustafaj* at 138), the foregoing evidence could absolve PANYNJ/Kumwong of liability. The foregoing, however, raises no issues of fact as to Jackson's liability or lack thereof.

Talukder/Hannan's Motion

Talukder/Hannan's motion for summary judgment is denied. While both Jackson and Hannan's testimony establish that Hannan's vehicle had no involvement in the instant accident, thereby warranting summary judgment

in Talukder and Hannan's favor, Kumwong's testimony - that the PANYNJ/Kumwong vehicle was impacted by the Talukder/Hannan vehicle and propelled into the rear of Jackson's vehicle - raises an issue of fact relative to Hannan's negligence thereby precluding summary judgment.

Here, Jackson testified that only the PANYNJ/Kumwong vehicle was involved in her accident and that while the PANYNJ/Kumwong vehicle was involved in a second accident with a third vehicle, the same did not occur until 45 minutes after the first accident. Moreover, Hannan testified while he was operating a yellow taxi on the date of the instant accident at the location of the same, he was never involved in an accident and was instead merely accused of impacting one of the vehicles at the scene. While the foregoing, is sufficient to establish prima facie entitlement to summary judgment in Talukder/Hannan's favor, since it negates any nexus between plaintiff's accident and/or any accident between an accident with Taklukder/Hannan's vehicle, PANYNJ and Kumwong's opposition, raises an issue of fact sufficient to preclude summary judgment.

Specifically, at his deposition, Kumwong - whose transcript PANYNJ and Kumwong submit - testified that on the date of this accident, while operating his white Ford SUV on Roosevelt Avenue, he was involved in an accident with two vehicles. Specifically, Kumwong testified that he was impacted in the rear by the Talukder/Hannan vehicle while he was stopped and wound-up hitting the rear of Jackson's vehicle. Accordingly, the foregoing raises an issue of fact as to whether the Talukder/Hannan vehicle was involved in an accident and whether said vehicle was the last

vehicle in a chain reaction collision, where as the rear-most vehicle, Talukder/Hannan would bear the rebuttable presumption of responsibility (*Ferguson* at 357; *De La Cruz* at 200; *Mustafaj* at 138). It is hereby

ORDERED that the complaint and all cross-claims as against Jackson be dismissed with prejudice. It is further

ORDERED that Jackson serve a copy of this Decision and Order with Notice of Entry upon all parties within thirty (30) days hereof

Dated : November 14, 2016
Bronx, New York

Barry Salman, JSC