

**Moody v Collazos-Ramos**

2016 NY Slip Op 33196(U)

September 13, 2016

Supreme Court, Westchester County

Docket Number: Index No. 68638/15

Judge: David F. Everett

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This opinion is uncorrected and not selected for official publication.

To commence the 30-day statutory time period for appeals as of right under CPLR 5513 (a), you are advised to serve a copy of this order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

-----X  
WILLIAM MOODY,

Plaintiff,

-against-

DANIEL COLLAZOS-RAMOS and JORGE  
COLLAZOS,

Defendants.

-----X  
EVERETT, J.

Index No. 68638/15  
Motion Sequence No. 001  
Decision and Order

The following papers were read on the motion:  
Notice of Motion/Affirmation in Supp/Exhibits 1-3  
Aff in Opp

Upon the forgoing papers, the motion is granted.

Plaintiff William Moody (Moody) moves for an order, pursuant to CPLR 3212, granting summary judgment against defendants Daniel Collazos-Ramos (Collazos-Ramos) and Jorge Collazos (J. Collazos) on the issue of liability. Defendants oppose the motion.

The following facts are taken from the motion papers, pleadings, deposition transcripts, documentary evidence and the record, and are undisputed unless otherwise indicated.

Plaintiff commenced this action by filing a summons and complaint in the Office of the Westchester County Clerk on or about October 26, 2015, to recover damages for the serious physical injuries he allegedly sustained as a result of an automobile accident, which occurred on September 13, 2013. According to Moody, the accident occurred that afternoon at approximately 3:27 p.m., when, while driving a motor vehicle on Tarrytown Road in the Town of Greenburgh,

New York, and stopped in traffic, his vehicle was rear ended by a vehicle owned by J. Collazos and operated by Collazas-Ramos. The complaint sounds in negligence.

Defendants joined issue by service of their joint answer on or about November 16, 2015, after which the parties pursued discovery pursuant to the terms of a preliminary conference order, and plaintiff served the instant motion for summary judgment.

As the proponent of the motion for summary judgment, Moody must tender evidentiary proof in admissible form sufficient to warrant the court to direct judgment in their favor as a matter of law (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; CPLR 3212 [b]). To make this showing, Moody submits copies of the requisite pleadings, the notice to admit, and his own affidavit attesting to the facts underlying the complaint.

It is well settled that, with respect to collisions between moving vehicles, or between a moving vehicle and a stopped vehicle, “[w]hen 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” (*Taing v Drewery*, 100 AD3d 740, 741 [2d Dept 2012]). Furthermore, “vehicle stops which are foreseeable under the prevailing traffic conditions, even if sudden and frequent, must be anticipated by the driver who follows, since he or she is under a duty to maintain a safe distance between his or her car and the car ahead” (*Robayo v Aghaabdul*, 109 AD3d 892, 893 [2d Dept 2013] [internal quotation marks and citation omitted]).

It is also well settled law that “[a] rear-end collision with a stopped or stopping vehicle creates a prima facie case of negligence with respect to the operator of the moving vehicle and imposes a duty on that operator to rebut the inference of negligence by providing a non-negligent

explanation for the collision” (*Chiok v Kouridakis*, 57 AD3d 706, 706 [2d Dept 2008] [internal quotation marks and citations omitted]). Finally, Vehicle and Traffic Law § 1129 provides, at subsection (a), that “[t]he driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon and the condition of the highway.”

Here, Moody has satisfied his prima facie burden of establishing negligence on the part of defendant as a matter of law on the issue of liability, shifting the burden to defendants to submit, in admissible form, a non negligent explanation either for the collision, or for the failure of Collazos-Ramos to maintain a reasonably safe distance under the prevailing traffic conditions between his vehicle and the vehicle in front of him (*Robayo v Aghaabdul*, 109 AD3d at 893; *Taing v Drewery*, 100 AD3d at 741). Defendants have done neither. Other than reiterate the propositions that summary judgment should not be granted where there is any doubt as to the existence of a triable issue of fact, and that the motion court should not resolve issue of credibility, defendants offer no evidence, competent or otherwise, in opposition to the motion.

Accordingly, it appearing to the Court that plaintiff is entitled to judgment on liability, it is

ORDERED that the motion for summary judgment is granted as to liability; and it is further

ORDERED that the parties are directed to appear with counsel in the Hon. Richard J. Daronco Westchester County Courthouse, 111 Dr. Martin Luther King, Jr. Blvd., White Plains, New York, at the Settlement Conference Part, Courtroom 1600, on Tuesday, October 25, 2016, at 9:15 a.m.

This constitutes the decision and order of the Court.

Dated: White Plains, New York  
September 13, 2016

ENTER:

  
HON. DAVID F. EVERETT, A.J.S.C.

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