Felder v Cani
2018 NY Slip Op 30316(U)
January 2, 2018
Supreme Court, Bronx County
Docket Number: 305698/2014
Judge: Howard H. Sherman

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

----------x *Decision and Order*

Desiree Felder ,

Plaintiff

Index No. 305698/2014

-against-

Howard H. Sherman

Envek Cani , and **Marlon Felder,** *J.S.C.*

Defendants

----------x

The following papers numbered 1-3 read on motions by :1) DEFENDANT MARLON FELDER , and 2) DEFENDANT ENVEK CANI for summary judgment dismissing the complaint and cross-claims as asserted against them submitted October 12, 2017

Notice of Motion , Affirmation , Exhibits A-F [Felder]	1
Notice of Motion , Affirmation , Exhibits A-D [Cani]	2
Affirmation in Partial Opposition [Felder]	3

In this action Plaintiff Desiree Felder seeks recovery for personal injuries alleged to have been sustained in a three-vehicle chain collision occurring on July 13, 2014 at the intersection of Bruckner Boulevard and East 138th Street , Bronx, New York. At the time, Felder was the backseat passenger in a motor vehicle driven by her husband , Marlon Felder, which while stopped at the intersection , was impacted in the rear by a vehicle operated by Fernando Torres. [1] The force of the impact propelled the Felder car forward into that of Envek Cani that was also stopped at the intersection's red light.

[1]The complaint as against Torres has been discontinued per stipulation dated 09/11/17.

To date, no Note of Issue has been filed.

Motions

The following motions are consolidated for disposition.

1) Defendant **Marlon Felder** now moves for an order pursuant to CPLR 3212 granting summary judgment dismissing the complaint and any cross-claims as asserted against him on the grounds that there is no issue of fact concerning his non-negligent explanation for the rear-end collision with the lead vehicle, nor to rebut the presumption of the causative negligence of the rearmost driver . The motion is supported by copies of the pleadings, and a certified copy of the police accident report , as well as copies of the transcripts of the deposition testimony of the plaintiff, and the moving defendant.

No opposition is interposed.

2) Defendant **Envek Cani** also moves for summary judgment on the grounds that there is no triable issue of fact that his conduct caused or in any measure contributed to the underlying motor vehicle accident. The motion is supported by copies of the pleadings, and an uncertified copy of the police accident report[2] , as well as copies of the transcripts of the deposition testimony of the plaintiff, and that of co-defendant Marlon Felder.

Felder opposes the motion only to the extent that it would serve to assign

---

[2] The uncertified police report is not considered as inadmissible hearsay (see Figueroa v. Luna, 281 A.D.2d 204, 206, 721 N.Y.S.2d 635 [1st Dept. 2001])

any liability to him.

Discussion and Conclusions

It is by now well settled that the proponent of a motion for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law , tendering sufficient evidence to demonstrate the absence of a material issues of fact (Zuckerman v. City of New York, 49 N.Y.2d 557, 404 N.E.2d 718 [1980]). To support the granting of such a motion , it must clearly appear that no material and triable issue of fact is presented , as the "drastic remedy should not be granted where there is any doubt as to the existence of such issues (*Braun v. Carey*, 280 App.Div. 1019) or where the issue is 'arguable' (*Barrett v. Jacobs*, 255 N.Y. 520, 522); 'issue-finding, rather than issue-determination, is the key to the procedure' (*Esteve v. Avad*, 271 App. Div. 725, 727). " Sillman v. Twentieth Century-Fox Film Corp., 3 NY2d 395, 404, 144 N.E.2d 387 [1957].

It is also settled that drivers must maintain safe distances between their cars and cars in front of them (Vehicle and Traffic Law § 1129 [a]) , and that a rear-end collision with a stopped or stopping vehicle establishes a prima facie case of negligence on the part of the driver of the rear vehicle, "unless the driver of the following vehicle can provide a non-negligent explanation, in evidentiary form, for the collision [citations omitted]." Johnson v. Phillips, 261 A.D.2d 269, 271, 690 N.Y.S.2d 545 [1st Dept. 1999]). In addition,

as here, in the circumstances of a chain-reaction rear-end collision, responsibility presumptively rests with the rearmost driver, Torres (see, Chang v Rodriguez, 57 AD3d 295 ,869 N.Y.S.2d 427 [1st Dept 2008], Mustafaj v Driscoll, 5 AD3d 138, 773 N.Y.S.2d 26 [1st Dept. 2004], Bendik v. Dybowski, 139 227 A.D.2d 228, 642 N.Y.S.2d 284 [1st Dept. 1996], Rue v. Stokes, 191 A.D.2d 245, 246, 594 N.Y.S.2d 749 [1st Dept. 1993]).

Upon consideration of the record here, the court finds that defendant Felder has met his burden to prove as a matter of law a non-negligent explanation for the collision , and that defendant Cani has demonstrated as a matter of law, that his conduct neither caused nor contributed to the collision.

Accordingly, it is

ORDERED that the motion of Defendant MARLON FELDER be and hereby is granted on default and pursuant to CPLR 3212, and it is

ORDERED that summary judgment be entered in favor of Defendant MARLON FELDER as against plaintiff and co-defendant dismissing the complaint and the cross-claim asserted against him in the above-entitled action, and it is

ORDERED that the motion of Defendant ENVEK CANI be and hereby is granted, and it is

ORDERED that summary judgment be entered in favor of Defendant ENVEK CANI as against plaintiff and co-defendant dismissing the complaint and the cross-claim asserted

against him in the above-entitled action.

This shall constitute the decision and order of this court.

Dated: January 2, 2018

Howard H. Sherman