

Corbo v Novelli

2018 NY Slip Op 34199(U)

July 27, 2018

Supreme Court, Westchester County

Docket Number: Index No. 50807/17

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
MICHAEL A. CORBO,

Plaintiff,

-against-

Index No. 50807/17
Motion Sequence No. 001
Decision and Order

STEVEN M. NOVELLI,

Defendant.

-----X
EVERETT, J.

The following papers were read on the motion:

Notice of Motion/Affirmation in Supp/Memorandum of Law/Exhibits A-E/
Electronic Filing Authorization (docs 22-26)

In this action arising from a motor vehicle collision, plaintiff Michael A. Corbo (Corbo) moves for an order, pursuant to CPLR 3212, granting summary judgment against defendant Steven M. Novelli (Novelli) on the issue of liability. Upon the foregoing papers, the unopposed motion is granted.

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

Plaintiff commenced the instant action by filing a summons and complaint in the Office of the Westchester County Clerk on January 18, 2017, to recover damages he allegedly sustained on February 7, 2015, when, while riding as a passenger in a motor vehicle that he owned, but was being operated by non party Michael Colquhoun, his motor vehicle was struck from behind by a motor vehicle owned and operated by Novelli. The complaint sounds in negligence and alleges that Corbo sustained a serious injury, as defined under Insurance Law § 5102 (d). Issue was

joined by service of Novelli's answer with affirmative defenses on or about March 28, 2017, after which the parties conducted discovery pursuant to the preliminary conference and follow-up compliance conference orders. The note of issue and certificate of readiness were filed on April 11, 2018, and before the Court is Corbo's timely motion for summary judgment.

As the proponent of the motion for summary judgment, Corbo must tender evidentiary proof in admissible form sufficient to warrant the court to direct judgment in his favor as a matter of law (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; CPLR 3212 [b]). Should Corbo make the requisite showing, the burden would shift to Novelli to produce evidentiary proof in admissible form sufficient to require a trial on one or more issues of fact (*id.*).

Here, Corbo supports his motion with a copy of the pleadings, together with copies of, among other things, the pleadings, his sworn deposition transcript, and an affidavit of service with respect to the motion. During his deposition, Corbo testified that, on the day of the accident, he was a restrained passenger riding in the front passenger seat of his 2000 Honda Civic (Civic) that was being operated by Colquhoun with his permission and authority. They were traveling southbound on Interstate 87 (I-87), as they headed from their home in Mahopac, New York, to a location in Yonkers, New York. According to Corbo's testimony, after they exited I-87 at Exit 1, they, along with the seven or eight cars on the exit ramp directly ahead of them, came to a complete stop while they waited for the traffic light at the end of the ramp to change. It was while they were stopped that the Civic was suddenly struck in the rear by the vehicle (truck) owned and operated by Novelli (Corbo tr at 46-49). Corbo testified that, upon impact, his body moved forward and backwards, causing him to feel pain in the areas of his neck, shoulder and back (*id.* at 53, 85).

With respect to collisions between moving vehicles, or between a moving vehicle and a stopped vehicle, it is well settled that, “[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]). It is also well settled law that, “any rear-end collision establishes a prima facie case of negligence on the part of the rear-ending driver” (*De La Cruz v Ock Wee Leong*, 16 AD3d 199, 200 [1st Dept 2005]), and that, when “a rear-end collision occurs, the occupants of the front vehicle are entitled to summary judgment on liability, unless the driver of the following vehicle can provide a non negligent explanation, in evidentiary form, for the collision” (*Johnson v Phillips*, 261 AD2d 269, 271 [1st Dept 1999]). 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, Corbo satisfied his prima facie burden of establishing negligence on the part of Novelli as a matter of law on the issue of liability, by submitting evidence that the motor vehicle he was riding in was struck in the rear by the motor vehicle (truck) driven by Novelli. Novelli does not challenge Corbo’s evidence, or his prima facie showing.

Given the lack of opposition, Corbo’s motion is granted, as it is well settled that a party’s failure to oppose or contest a movant’s factual assertions “is, in effect, a concession that no question of fact exists” (*Kuehne & Nagel v Baiden*, 36 NY2d 539, 544 [1975]; see also *Admiral Ins. Co. v Marriott Intl., Inc.*, 79 AD3d 572, 577 [1st Dept 2010]).

It appearing to the Court that Corbo is entitled to judgment on liability and that any triable

issues of fact arising on his motion for summary judgment relate to the amount of damages to which he is entitled, it is accordingly


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

ORDERED that counsel for the parties are directed to appear at the Westchester County Courthouse, 111 Dr. Martin Luther King, Jr. Blvd., White Plains, New York, at the Settlement Conference Part, Courtroom 1600, on Tuesday, August 21, 2018, at 9:15 a.m., to schedule a trial on damages.

This constitutes the decision and order of the Court.

Dated: White Plains, New York
July 27 2018

ENTER:



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

Electronically Filed.

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