Carbuccia v Orellana
2018 NY Slip Op 34277(U)
September 17, 2018
Supreme Court, Nassau County
Docket Number: Index No. 609751/2016
Judge: Leonard D. Steinman

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

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ROBERT CARBUCCIA,

Plaintiff,

-against-

GERSON ORELLANA,

Defendant.

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HENRY VILLEDA,

Plaintiff,

-against-

GERSON ORELLANA,

Defendant.

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LEONARD D. STEINMAN, J.

IAS Part 17
Index No. 609751/2016
Mot. Seq. No. 002

Index No. 603200/2018
Motion Seq. No. 001

DECISION AND ORDER

The following papers, in addition to any memoranda of law, were reviewed in preparing this Decision and Order:

Motion Seq. No. 002 (Index No. 609751/2016)

Plaintiff's (Robert Carbuccia) Notice of Motion, Affirmation, Affidavit & Exhibits 1
Defendant's (Gerson Orellana) Affirmation in Opposition, Affidavit & Exhibits 2
Plaintiff's (Robert Carbuccia) Reply Affirmation 3

Motion Seq. No. 001 (Index No. 603200/2018)

Plaintiff's (Henry Villeda) Notice of Motion, Affirmation, Affidavit & Exhibits ...1
Defendant's (Gerson Orellana) Affirmation in Opposition, Affidavit & Exhibits 2

Before the court are two actions (Index Nos. 609751/2016 and 603200/2018), joined for purposes of discovery and trial, against Gerson Orellana. Both actions arise from a multi-vehicle accident that occurred on September 18, 2016. The accident occurred on the Nassau Expressway near the intersection with South Conduit Avenue in Queens, New York. Plaintiff Robert Carabuccia alleges that Orellana struck his vehicle from behind. Plaintiff Henry Villeda was a passenger in Orellana's vehicle. Both plaintiffs allege injuries and move for summary judgment on the issue of liability.

It is the movant who has the burden to establish an entitlement to summary judgment as a matter of law. *Ferrante v. American Lung Assn.,* 90 N.Y.2d 623 (1997). "CPLR 3212(b) requires the proponent of a motion for summary judgment to demonstrate the absence of genuine issues of material facts on every relevant issue raised by the pleadings, including any affirmative defenses." *Stone v. Continental Ins. Co.*, 234 A.D.2d 282, 284 (2d Dept. 1996). Where the movant fails to meet its initial burden, the motion for summary judgment should be denied. *U.S. Bank N.A. v. Weinman*, 123 A.D.3d 1108 (2d Dept. 2014). The drastic remedy of summary judgment should be granted only if there are no material issues of fact. *Andre v. Pomeroy,* 35 N.Y.2d 361, 364 (1974).

Motion Seq. No. 001 (Index No. 609751/2016)

Carbuccia attests that he was traveling at a slow speed "in bumper to bumper, stop and go traffic," when Orellana's vehicle struck his from behind.

"A driver of a vehicle approaching another vehicle from the rear is required to maintain a reasonably safe distance and rate of speed under the prevailing conditions to avoid colliding with the other vehicle." *Scheker v. Brown*, 85 A.D.3d 1007 (2d Dept. 2011). "Accordingly, a rear-end collision establishes a *prima facie* case of negligence on the part of the operator of the rear vehicle, thereby requiring that operator to rebut the inference of negligence by providing a non-negligent explanation for the collision." *Gleason v. Villegas,* 81 A.D.3d 889 (2d Dept. 2011). Thus, Orellana is required to rebut the inference of negligence created by this rear-end collision. *Id.; See also Cortes v. Whelan*, 83 A.D.3d 763 (2d Dept. 2011); *Mallen v. Su*, 67 A.D.3d 974 (2d Dept. 2009).

When an operator of the moving vehicle cannot or does not come forward with evidence to rebut the inference of negligence, the moving party may be awarded judgment. *Ortiz v. Fate USA Corp.*, 69 A.D.3d 914 (2d Dept. 2010); *Abramov v. Campbell,* 303 A.D.2d 697 (2d Dept. 2003).

In opposition, Orellana contends that the application is premature because discovery is necessary; he also argues that his actions were not the sole proximate cause of the accident. Orellana contends that immediately after changing lanes he struck Carbuccia's vehicle because Carbuccia's vehicle came to a sudden stop after striking the vehicle in front of him. Orellana states that he was unable to stop and struck plaintiff in the rear.

Orellana's assertion that Carbuccia stopped short thus causing him to strike his car is insufficient to rebut the inference of negligence created in a rear end collision. *See Cortes v. Whelan*, 83 A.D.3d 763 (2d Dept. 2011); *Mallen v. Su*, 67 A.D.3d 974 (2d Dept. 2009). This is not a case in which Carbuccia's vehicle allegedly made a sudden lane change in front of Orellana—it was Orellana who changed lanes and he had an obligation to do so safely while keeping a safe distance behind Carbuccia. *Cf., Ortiz v. Hub Truck Rental Corp.*, 82 A.D.3d 725 (2d Dept. 2011).

Orellana's contention that Carbuccia's motion is premature is without merit. *Rungoo v. Leary*, 110 A.D.3d 781 (2d Dept. 2013); *Cortes v. Whelan*, 83 A.D.3d at 764. The mere hope or speculation that evidence sufficient to defeat a motion for summary judgment may be uncovered during discovery is insufficient to deny the motion. *Id.* Orellana has failed to provide an evidentiary basis to suggest that discovery may lead to relevant evidence that would permit him to raise an issue of fact or that any party has exclusive knowledge of facts essential to opposing the motion. *See Hewitt v. Gordon-Fleetwood*, 163 A.D.3d 536 (2d Dept. 2018).

For the foregoing reasons, Carbuccia's application for summary judgment, pursuant to CPLR § 3212, on the issue of liability is granted. The issue of damages is reserved for trial.

Motion Seq. No. 001 (Index No. 603200/2018)

As a passenger in Orellana's vehicle, Villeda must "meet the twofold burden of establishing that he or she was free from comparative fault and was, instead, an innocent passenger, and separately, that the operator of the rear vehicle was at fault. If the plaintiff fails to demonstrate, *prima facie*, that the operator of the offending vehicle was at fault, or if triable issues of fact are raised by the defendants in opposition…summary judgment on the issue of liability must be denied, even if the moving plaintiff was an innocent passenger." *Phillip v. D & D Carting Co., Inc.*, 136 A.D.3d 18, 23 (2d Dept. 2015).

Villeda has sufficiently established that he did not cause the accident and that Orellana struck Carbuccia's vehicle in the rear; Villeda therefore was not at fault. *See Philip v. D & D Carting Co., Inc.*, 136 A.D.3d 18 (2d Dept. 2015). As discussed above, Orellana has failed to provide sufficient evidence to rebut the inference of his negligence. And, once again, the motion is not premature.

Accordingly, Villeda's application for summary judgment on the issue of liability is granted. The issue of damages is reserved for trial.

All other requested relief, not specifically addressed herein, is hereby denied.

This constitutes the Decision and Order of this court.

Dated: September 17, 2018
Mineola, New York

ENTER:

LEONARD D. STEINMAN, J.S.C.

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NASSAU COUNTY
COUNTY CLERK'S OFFICE