

Alvarez-Grullon v City Leasing Servs., Inc.
2019 NY Slip Op 31851(U)
June 19, 2019
Supreme Court, New York County
Docket Number: 153719/2018
Judge: Adam Silvera
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ADAM SILVERA PART IAS MOTION 22

Justice

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INDEX NO. 153719/2018

MELINA ALVAREZ-GRULLON,

MOTION DATE 12/07/2018

Plaintiff,

MOTION SEQ. NO. 001

- v -

CITY LEASING SERVICES, INC., FRANCISCO LUIS-LIMA,
ARCADIO FRET, TIME WARNER ENTERTAINMENT COMPANY,
L.P., THELIS BROWN

DECISION AND ORDER

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82

were read on this motion to/for

JUDGMENT - SUMMARY

Before the Court is defendants Time Warner Entertainment Company, L.P. (hereinafter "Time Warner") and Thelis A. Brown's motion to dismiss all claims against them, pursuant to CPLR 3211, and to dismiss all cross claims against them on the grounds that such moving defendants are not liable for the accident at issue. Co-defendants City Leasing Services, Inc. and Francisco Luis-Lima cross-move for a motion to dismiss all claims against said Co-defendants on the grounds that Co-defendants are not liable for the accident at issue.

Defendant alleges that the accident at issue occurred on July 24, 2015, northbound on the Harlem River Drive, at or near the intersection of Dyckman Street, in the County, City and State of New York, when a vehicle owned by co-defendant City Leasing, operated by co-defendant Francisco Luis-Lima, and transporting passenger plaintiff Melina Alvarez-Grullon (the "Lima vehicle") was struck in the rear by a vehicle operated by co-defendant Arcadio Fret, Jr.(the "Fret vehicle") after the Fret vehicle struck a vehicle operated by defendant Brown and owned by co-defendant Time Warner (the "Brown vehicle").

Defendants' motion contends that the Brown vehicle never came into contact with the Lima vehicle and such defendants Time Warner and Brown are not liable for the accident at issue. In support of their motion, defendants submit the July 13, 2017 New York Supreme Court Queens County Decision/Order of the Honorable Marguerite A. Grays, the affidavit of defendant Brown, the affidavit of non-party witness Stephen Smith and the police report from the accident at issue (Mot, Exh I, J, K, & L). Defendants aver that their vehicle was stationary when it was struck by a Honda SUV (the Fret vehicle) and that the Brown vehicle never came in contact with any other vehicle (*id.*, Exh I, ¶ 5 & 8). Non-party witness Stephen Smith observed the accident and stated in his affidavit that the Fret vehicle abruptly turned, struck the Brown vehicle, and then went on to strike the Lima vehicle. (*id.*, Exh L, ¶ 4). Smith further stated that the Brown vehicle did not strike any other vehicle after it was struck by the Fret vehicle (*id.*, ¶ 5).

Defendants note that Justice Grays July 13, 2017 Decision/Order held that no evidence was submitted to rebut defendants' contention that the Brown vehicle did not come in contact with the Lima vehicle (*id.*, Exh I). The Queens County Supreme Court found that defendants were not liable for the accident at issue and dismissed the complaint as against defendants Time Warner and Brown (*id.*).

Here, defendants argue that the instant matter must be dismissed as a matter of law under the doctrine of collateral estoppel. "The doctrine of collateral estoppel precludes a party from relitigating 'an issue which has previously been decided against him in a proceeding in which he had a fair opportunity to fully litigate the point'" (*Kaufman v Eli Lilly and Co.*, 65 NY2d 449, 455 [1985] quoting *Gilberg v Barbieri*, 53 NY2d 285, 291 [1981]). A party seeking to defeat the application of collateral estoppel "has the burden of establishing the absence of a full and fair

opportunity to litigate the issue in the prior action” (see *id.* citing *Ryan v New York Telephone Co.*, 62 NY2d 494, 502 ([1984])).

In the instant matter, Fret and Lima were named parties in the action, were afforded the opportunity to interpose responses, and Justice Grays did not find Co-defendant Fret’s opposition to the motion for summary judgment on liability persuasive. Further, plaintiff has not proffered any evidence to rebut the prior finding that the Brown vehicle did not strike plaintiff’s vehicle. Co-defendants fail to demonstrate that they were not afforded a full and fair opportunity to litigate the issue of liability. Thus, plaintiff’s claim is collaterally estopped based on the July 13, 2017 Order, and defendants Time Warner and Brown’s motion to dismiss is granted.

Co-defendants City Leasing Services, Inc. and Francisco Luis-Lima’s Cross-motion to dismiss all claims against said Co-defendants on the grounds that Co-defendants are not liable for the accident at issue is also granted. Co-defendants aver that their vehicle was stopped at a red light when it was struck in the rear by the Fret vehicle.

“The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case” (*Winegrad v New York University Medical Center*, 64 NY2d 851, 853 [1985]). Once such entitlement has been demonstrated by the moving party, the burden shifts to the party opposing the motion to “demonstrate by admissible evidence the existence of a factual issue requiring a trial of the action or tender an acceptable excuse for his failure ... to do [so]” (*Zuckerman v City of New York*, 49 NY2d 557, 560 [1980]).

“A rear-end collision with a stopped vehicle, or a vehicle slowing down, establishes a prima facie case of negligence on the part of the operator of the rear-ending vehicle, which may be rebutted if that driver can provide a non-negligent explanation for the accident” (*Baez v MM*

Truck and Body Repair, Inc., 151 AD3d 473, 476 [1st Dep't 2017]). Summary judgment in favor of the plaintiff is warranted where the defendant's own conduct inculcates him (*Uragrizza v Schmieder*, 46 NY2d 471 [1979]).

Co-defendants submit the affidavit of Co-defendant Francisco Luis-Lima whose sworn affidavit states that he was stopped at a red light when his vehicle was rear-ended (Cross-Mot, Exh D). Thus, Co-defendants have made a prima facie showing of entitlement to summary judgment and the burden shifts to the opposing party. In opposition, Co-defendant Arcadio Fret, Jr. argues that Co-defendant's vehicle stopped short and caused the incident. The Court notes that the law is clear that a claim that the vehicle in front stopped suddenly, standing alone, is insufficient to raise a triable issue of fact (*Cruz v Lise*, 123 AD3d 514 [1st Dept 2014]). Co-defendant Fret has failed to raise an issue of fact or non-negligent explanation for the rear-end collision, and has further failed to provide any explanation as to why he failed to keep a reasonably safe distance from the Lima vehicle. As such, co-defendants City Leasing Services, Inc. and Francisco Luis-Lima are entitled to summary judgment on the issue of liability.

Accordingly, it is

ORDERED that the motion of defendants Time Warner Entertainment Company, L.P. and Thelis A. Brown to dismiss the complaint and all claims and cross-claims herein is granted and the complaint is dismissed in its entirety as against said defendants, with costs and disbursements to said defendant as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of said defendants; and it further

ORDERED that Codefendants City Leasing Services, Inc. and Francisco Luis-Lima's Cross-motion to dismiss all claims against said Co-defendants on the grounds that Co-defendants are not liable for the accident at issue is granted; and it is further

ORDERED that the action is severed and continued against the remaining defendant Arcadio Fret, Jr.; and it is further

ORDERED that the caption be amended to reflect the dismissal and that all future papers filed with the court bear the amended caption; and it is further

ORDERED that counsel for defendants Time Warner Entertainment Company, L.P. and Thelis A. Brown shall serve a copy of this order with notice of entry upon the County Clerk (Room 141B) and the Clerk of the Trial Support Office (Room 158), who are directed to mark the court's records to reflect the change in the caption herein; and it is further

ORDERED that within 30 days of entry, counsel for defendants Time Warner Entertainment Company, L.P. and Thelis A. Brown shall serve a copy of this decision/order upon all parties with notice of entry.

This constitutes the Decision/Order of the Court.

6/19/2019

DATE

ADAM SILVERA, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE