

Rivera v Hierro

2019 NY Slip Op 33321(U)

November 8, 2019

Supreme Court, New York County

Docket Number: 153659/2017

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. 153659/2017

REBECCA RIVERA,

Plaintiff,

MOTION DATE 07/03/2019, 07/10/2019, 08/09/2019

- v -

MOTION SEQ. NO. 001 002 003

FRANCISCO HIERRO, PORFILIO DIAZ,

Defendant.

DECISION + ORDER ON MOTION

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FRANCISCO HIERRO

Plaintiff,

Third-Party Index No. 595533/2018

-against-

ERICA LUI, NICHOLAS LUI, SHAY DALAL

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 59, 60, 61

were read on this motion to/for JUDGMENT - SUMMARY

The following e-filed documents, listed by NYSCEF document number (Motion 002) 50, 51, 52, 53, 54, 55, 56, 57, 58

were read on this motion to/for JUDGMENT - SUMMARY

The following e-filed documents, listed by NYSCEF document number (Motion 003) 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 75, 76, 77

were read on this motion to/for JUDGMENT - SUMMARY

Before the Court is third-party defendants Nicholas Lui and Erica Lui's motion, motion sequence 001, for an Order to dismiss plaintiff's Complaint, the Third-Party Complaint and all Cross-Claims; Defendant/Third-Party plaintiff Francisco Hierro's motion, motion sequence 002, for an order to dismiss plaintiff's Complaint and all cross claims against defendant Hierro; and

defendant Shay Dalal's motion, motion sequence 003, for an Order to dismiss plaintiff's complaint. Motion sequence 001, 002, and 003 are all granted for the reasons noted below:

This actions stems from a four-car motor vehicle accident that occurred on December 18, 2016, southbound on the FDR Drive at the Brooklyn Bridge Exit, in the County, City, and State of New York, when a vehicle operated by Porforio M. Diaz rear-ended a vehicle operated by defendant Shay Dalal which then struck Co-Defendants' vehicle which was caused to propel forward and strike the Hierro vehicle which was carrying plaintiff and led to her alleged serious injury.

"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]).

Being propelled forward in a chain reaction collision is a non-negligent explanation for a rear-end motor vehicle accident (Arrastia v Sbordone, 225 AD2d 375 [1st Dept 1996] finding that "Inasmuch as there is no dispute that defendant brought her vehicle to a complete stop prior to the accident and was thereafter unexpectedly forced into plaintiff's car by a third, unrelated

vehicle, plaintiff has raised no basis for an inference that defendant was negligent or the proximate cause of plaintiff's purported injuries in this matter").

In motion sequence 001, Co-Defendants Nicholas Lui and Erica Lui successfully argue that Diaz caused a chain collision when the Diaz vehicle struck the Dalal vehicle which then struck the Lui vehicle. Co-Defendants attach the affidavit of defendant Nicholas Lui in support of their motion (Mot, Exh 1). The motion is unopposed. Thus, Co-Defendants have demonstrated freedom from any liability for the accident at issue. Co-Defendants motion to dismiss the Complaint and any and all Cross-Claims against the Co-Defendants in the above action as no basis for liability exists against said defendants is granted.

In motion sequence 002, Defendant/Third-Party plaintiff Francisco Hierro successfully argues that Diaz initiated the chain collision in which the Hierro vehicle was the last vehicle to be struck in the rear by the Lui vehicle. Defendant attaches his deposition in which he testified to being the lead vehicle that was struck in the rear by the Lui vehicle (Mot 002, Exh D). Defendant also attaches defendant Lui's deposition in which Liu testified to having been pushed into the rear of the Hierro vehicle (*id.*, Exh E). The motion is unopposed. Thus, defendant Hierro has demonstrated freedom from any liability for the accident at issue. Defendant's motion to dismiss the Complaint and any and all Cross-Claims against the defendant in the above action as no basis for liability exists against said defendant is granted.

In motion sequence 003, defendant Dalal successfully demonstrates that there are no triable issues of fact as to defendant's liability. Defendant Dalal has demonstrated that his vehicle was struck by the Diaz vehicle and is thus not liable for the chain collision. Defendant attaches his own deposition, the deposition of defendant Nicholas Lui, the deposition of plaintiff, the deposition of defendant Hierro, and the deposition of defendant Diaz (Mot 003, Exh

F,G,H,I,K). The motion is unopposed. Thus, defendant Dalal has demonstrated freedom from any liability for the accident at issue. Defendant's motion to dismiss the Complaint and any and all Cross-Claims against the defendant in the above action as no basis for liability exists against said defendant is granted.

Accordingly, it is

ORDERED that defendants Nicholas Lui and Erica Lui's motion for summary judgment for an Order to dismiss plaintiff's Complaint, the Third-Party Complaint and any and all Cross-Claims against said defendants in the above action as no basis for liability exists against said defendants is granted; and it is further

ORDERED that defendant Hierro's motion for summary judgment for an Order to dismiss the Complaint and any and all Cross-Claims against the defendant in the above action as no basis for liability exists against said defendant is granted; and it is further

ORDERED that defendant Dalal's motion for summary judgment for an Order to dismiss the Complaint and any and all Cross-Claims against the defendant in the above action as no basis for liability exists against said defendant is granted; and it is further

ORDERED that the complaint is dismissed in its entirety as against Nicholas Lui, Erica Lui, Francisco Hierro and Shay Dalal with costs and disbursements to said defendants as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of said defendants; and it is further

ORDERED that the action is severed and continued against the remaining defendant Porfilio Diaz; 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 Nicholas Lui and Erica Lui 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 20 days of entry, counsel for defendants Nicholas Lui and Erica Lui shall serve a copy of this Decision/Order upon all parties with notice of entry.

This constitutes the Decision/Order of the Court.

11/8/19

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