Chang Fei Lin v Qin Chen
2020 NY Slip Op 30525(U)
February 5, 2020
Supreme Court, Kings County
Docket Number: 516424/2019
Judge: Bruce M. Balter

At IAS Part 13 of the Supreme Court of the State of New York, Kings County, 320 Jay Street, Brooklyn, New York 11201, on the 5th day of February 2020.

PRESENT:

HON. BRUCE M. BALTER,
J.S.C.

_____X

CHANG FEI LIN,

Plaintiff

-against-

QIN CHEN, HONG CHEN and QI GUO LIN,

Defendants.

_____X

DECISION /ORDER

Index No.: 516424/2019

Motion Date: 02/04/2020
Motion Cal. No: 22
Motion Sequence: 1

Defendant Qi Guo Lin's motion for summary judgment for an Order pursuant to CPLR§ 3212 dismissing the Complaint and all Cross-Claims against him on the ground that the undisputed evidence establishes that no liability for the accident which gave rise to this action exists as against him.

Plaintiff Chang Fei Lin opposes the motion.
Co-defendants Qin Chen and Hong Chen oppose the motion.

FACTS AND PROCEDURAL HISTORY

This action arises from a three car chain collision which occurred in the far right lane of 4th Avenue near 66th Street, northeast, in the County of Kings on November 15, 2017 at approximately 12:11 am. The vehicle owned and operated by Qi Guo Lin (the "Q. Lin vehicle") was stopped due to a red light when it was struck in the rear by the vehicle operated by the defendant, Hong Chen (Chen vehicle), and as a result of being struck in the rear by the Chen vehicle, the Q. Lin vehicle was propelled forward into the rear of the vehicle operated by the plaintiff, Chang F. Lin, The plaintiff, Chang Fei Lin, commenced this action by the filing of a Summons and Verified Complaint dated July 25, 2019. Defendant, Qi Guo Lin appeared in this action by service of a Verified Answer and Cross-Claim dated August 20, 2019.

Defendant Qi Guo Lin maintains that he cannot be found liable for the occurrence of this accident. In his sworn affidavit, dated November 27, 2018 he averred that his vehicle was stopped for a red light for seven to eight seconds when his vehicle was struck in the rear and propelled three feet forward into the rear of the vehicle plaintiff was operating. He further testified at his deposition on July 19, 2019. Co-defendants and Plaintiff, both, in opposition to the motion, point to the discrepancy in the affidavit and EBT testimony, specifically, regarding the time stopped in his vehicle before being hit in the rear. They point to the discrepancy in the "approximately 7-8 seconds" and a "couple of seconds" as the basis for their foundation that there are issues of fact which preclude summary judgment.

STATUTORY AUTHORITY AND APPLICABLE CASE LAW

New York Vehicle and Traffic Law §1129(a) provides: "The 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 conditions upon the highway." Furthermore, "when 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." See *Chepel v. Meyers*, 306 A.D.2d 235, at 236, 762 N.Y.S.2d 95 at 97 (2nd Dept. 2003); See also *Abramowicz v. Roberto,* 220 A.D.2d 374, 375, 631 N.Y.S.2d 442, 443 (2nd Dept. 1995).

It is well established that a rear-end collision with a stopped or moving vehicle creates a *prima facie* case of negligence against the operator of the rear vehicle and shifts the burden to said operator requiring him to rebut the inference of negligence by offering a non-negligent explanation for the collision. See *Reitz v. Seagate Trucking, Inc.*. 71 A.D.3d 975, 898 10N.Y.S.2d 173 (2nd Dept. 2010); See further *Carman v. Arthur J, Edwards Mason,* 71 A.D.3d 813, 897N.Y.S.2d 191(2nd Dept. 2010); *Rebecchi v. Whitmore*. 172 A.D.2d 600, 568 N.Y.S.2d 423 (2nd Dept. 1991). It is the co-defendants duty to come forward with a non-negligent explanation for the rear-end collision. See *Geschwind v.Hoffman,* 285 A.D.2d 448, 727 N.Y.S.2d 155 (2nd Dept. 2001). See also *Tam v, Magironoulos*. 247 A.D.2d 533, 669 N.Y.S.2d 296 (2nd Dept. 1998). Unless defendants, Hong Chen and Qin Chen, can come forward with admissible proof to establish an adequate, non-negligent explanation for striking the Q. Lin vehicle in the rear and propelling it into the plaintiffs vehicle, they must be found solely liable for the accident as a matter of law. See *Vavoulis v. Adler,* 43 A.D.3d 1154, 842 N.Y.S.2d 526 (2nd Dept. 2007); See further *Piltser v. Donna Lee Management Corp,*. 29 A.D.3d 973, 816 N.Y.S.2d 543 (2nd Dept. 2006); *Vecchio v.Hildenbrand*, 304 A.D.2d 749, 758 N.Y,S.2d 666 (2nd Dept. 2003) *Ditranani v, Marciante.* 10 A.D.3d 628, 781 N.S.2d 611 (2nd Dept. 2004)

The failure to come forward with evidentiary proof in admissible .form to establish entitlement to a trial on liability warrants summary judgment. See *Escobar v. Rodriguez*, 243 A.D.2d 676, 664 N.Y.S.2d 568 (2nd Dept. 1997); See also *Barba v. Best Security Com*, 652 N.Y.S.2d at 71. Inasmuch as defendant, Qi Guo Lin, has made a prima facie showing to demonstrate his entitlement to summary judgment, the burden now shifts to the other parties to produce sufficient evidentiary proof rebutting the movant's assertions and establishing their entitlement to trial on the issue of liability. See *Zuckerman v. City of New York*, 49 N.Y.2d 557, 562, 427 N.Y.S.2d 595, 598, 404 N.E.2d 718 (1980). See also *Friends of the Animals v. Associated Fur Manufacturers. Inc.*. 46 N.Y.2d 1065, 1067, 416 N.Y.S.2d 790, 792, 390 N.E.2d 298 (1979); See further *Capelin Associates. Inc, v. Globe Manufacturing Corp.*. 34 N.Y.2d 338, 357 N.Y.S.2d 478, 481, 313 N.E.2d 776 (1974).

The evidentiary proof presented to rebut the movant's assertions as to the absence of any genuine issue of material fact must be in admissible form and "mere conclusions, expressions of hope, or broad conclusory assertions are insufficient" to defeat the motion for summary judgment. See *National Bank of North America v. Alizio,* 103 A.D.2d 690, 477 N.Y.S.2d 356, 357 (1st Dept. 1984); *Zuckerman v. City of New York*, supra. 49 N.Y.2d at 562. See also *Ehrlich v. American Moniger Greenhouse Manufacturing Corp.*. 26 N.Y.2d 255, 259, 309 N.Y.S.2d 341, 257 N.E.2d 890 (1970); *Spearmon v. Times Square Stores Corp.*, 96 A.D.2d 552, 465 N.Y.S.2d 230, 232 (2nd Dept. 1983).

ANALYSIS

Co-defendants and Plaintiff, both, in opposition to the motion, point to the discrepancy in the affidavit and EBT testimony, specifically, regarding the time stopped in the vehicle before being hit in the rear. They point to "approximately 7-8 seconds" and a "couple of seconds" as the basis for their foundation that there are issues of fact. Here, it is clear to the Court that Defendant Hong Chen failed to exercise reasonable care to avoid colliding with Qi Guo Lin's vehicle as he approached it from the rear. Thus, Hong Chen and Qin Chen must be found solely liable for the occurrence of the accident. Thus, liability for the accident lies with Hong Chen and Qin Chen for the negligent operation of the rear-most car. Given the undisputed evidence that the Q. Lin vehicle was stopped for a red light for 7-8 seconds when it was struck in the rear by the vehicle operated by defendant Hong Chen, and propelled forward into plaintiffs' vehicle. Irregardless of whether defendants, Hong Chen and Qin Chen have an adequate non-negligent excuse for the accident, which they do not purport, Qi Guo Lin cannot be found at fault for the accident, as he was completely stopped for 7-8 seconds due to a red traffic light before he was struck in the rear. Where, as here, the movant has made a *prima facie* showing of his entitlement to summary judgment, and the opponents fail to set forth in rebuttal credible evidence to the contrary, "the case should be summarily decided" so as not to "deny to other litigants the right to have their claims promptly adjudicated", the Court should direct judgment in favor of Qi Guo Lin. See *Andre v. Pomeroy,* 35 N.Y.2d 361, 364, 362 N.Y.S.2d 131 (1974). See *McDaniel v. Bonizzi*, 143 A.D.2d 980, 533 N.Y.S.2d 589, 590 (2nd Dept. 1988); *Royal v. Brooklyn Union Gas Co.*, 122 A.D.2d 132, 504 N.Y.S.2d 519 (2nd Dept. 1986).

CONCLUSION

After oral argument and a careful review of the motion, exhibits and opposition presented to the Court, the Court finds that Defendant has established his entitlement to the relief requested as a matter of law. Accordingly, defendant, Qi Guo Lin's motion for summary judgment and Order dismissing the Complaint and all Cross-Claims against him as a matter of law is GRANTED. This constitutes the Decision and Order of this Court.

February 5, 2020

BRUCE M. BALTER, J.S.C.

HON. BRUCE M. BALTER
JUSTICE SUPREME COURT

KINGS COUNTY CLERK
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