

Waters v Shana Taxi LLC
2020 NY Slip Op 33193(U)
September 25, 2020
Supreme Court, New York County
Docket Number: 157178/2018
Judge: Adam Silvera
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART IAS MOTION 22

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STEPHANIE WATERS

Plaintiff,

- v -

SHANA TAXI LLC, ELA B MBAYE, PETERSON TRUST, and
ANTHONY N. KOCOLATOS

Defendants.

INDEX NO. 157178/2018

MOTION DATE 08/05/2020

MOTION SEQ. NO. 002 + 003

DECISION AND ORDER

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HON. ADAM SILVERA:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 36, 37, 38, 39, 40, 41, 42, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60

were read on this motion to/for STRIKE/SUMMARY JUDGMENT.

Before the Court is defendants Peterson Trust and Anthony N. Kocolatos’ (hereinafter referred to as “Moving Defendants”) motion sequences 002 and 003. Motion Sequence 002 seeks an Order to strike the above-entitled action from the trial calendar and to vacate the note of issue; or in the alternative to extend the parties’ time to move for summary judgment until 60 days after the completion of all outstanding discovery. Motion Sequence 003 seeks an Order for summary judgment in favor of Moving Defendants on the issue of liability and to dismiss the complaint as against Moving Defendants on the ground that they are not liable for the subject motor vehicle accident.

Upon the forgoing documents, it is ORDERED that Moving Defendants motion to dismiss is granted and it is ORDERED that Moving Defendants motion to strike is denied as moot.

Moving Defendants' motion, contends that on March 26, 2018, plaintiff was allegedly injured as a result of a motor vehicle incident in which the taxi transporting plaintiff that was operated by defendant Ela B Mbaye and owned by defendant Shana Taxi LLC (hereinafter referred to as "Co-Defendants") struck the rear of Moving Defendants 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]).

Here, Moving Defendants have demonstrated that their vehicle was struck in the rear by Co-Defendants vehicle. In support of their motion Moving Defendants attach the Police Accident Report the deposition of plaintiff Stephanie Waters and the deposition of defendant Kocolatos (Mot 003, Exh F, G, & H). The Police Accident Report contains a statement against interest made by defendant Mbaye that he rear ended Moving Defendants vehicle (*id.*, Exh F). Plaintiff testified that Co-Defendants Vehicle struck

Moving Defendants vehicle (*id.*, Exh G at 21, ¶ 20-22). Defendant Kocolatos testified that he was stopped at a traffic light when his vehicle was struck from behind (*id.* Exh H at 15, ¶ 3-24). Thus, Moving Defendants and plaintiff have made a prima facie showing of entitlement to summary judgment on the issue of liability and the burden shifts to opposing defendants to raise an issue of fact or non-negligent explanation for the accident.

In opposition Co-Defendants allege that Moving Defendants' vehicle stopped short and that plaintiff is at fault for the underlying accident. 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]). Thus, Co-Defendants' argument that plaintiff's vehicle stopped short is devoid of merit. Co-defendants have failed to raise an issue of fact and/or provide a non-negligent explanation for the rear-end incident. As such, Moving Defendants motion to strike the note of issue is denied as moot.

Accordingly, it is

ORDERED that Moving Defendants' motion to strike the above-entitled action from the trial calendar and to vacate the note of issue is denied as moot; and it is further

ORDERED that Moving Defendants' motion for summary judgment to dismiss the complaint and all cross-claims against defendants Peterson Trust and Anthony N. Kocolatos as no basis for liability exists against said defendants is granted; and it is further

ORDERED that the complaint is dismissed in its entirety as against defendants Peterson Trust and Anthony N. Kocolatos 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 defendants; 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 read as follows:

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 STEPHANIE WATERS,

 Plaintiff,
 -against- Index No. 157178/2018

 SHANA TAXI LLC and ELA B. MBAYE
 Defendant.
 -----X

and it is further;

ORDERED that within 30 days of entry, counsel for Moving Defendants serve a copy of this decision/order upon all parties with notice of entry.

This constitutes the Decision/Order of the Court.

9/25/2020

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