

Lafleur v Boatswain-Bailey

2021 NY Slip Op 31632(U)

January 29, 2021

Supreme Court, Kings County

Docket Number: 520996/2018

Judge: Francois A. Rivera

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 52 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 29th day of January 2021

HONORABLE FRANCOIS A. RIVERA

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JOSEPH LAFLEUR,

Plaintiff,

- against -

DECISION & ORDER

Index No. 520996/2018

Oral Argument: 1-28-21

Cal. No. 29-32

Mot. Seq. 1-4

CHARLENE BOATSWAIN-BAILEY, JONATHAN SILAS ADAMS and TIFFANY L. MAYNARD,

Defendants.

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By notice of motion filed on July 30, 2020, under motion sequence one, plaintiff Joseph Lafleur seeks an order pursuant to CPLR 3212 granting summary judgment in his favor on the issue of liability.

By notice of motion filed on August 30, 2020, under motion sequence two, defendants Tiffany Maynard and Silas Adams seek an order pursuant to CPLR 3212 granting summary judgment in their favor and dismissing the complaint on the basis that the plaintiff did not sustain a serious injury as defined in Insurance Law 5102 (d).

By notice of cross motion filed on January 21, 2021, under motion sequence three, defendant Charlene Boatswain-Bailey (hereinafter Boatswain-Bailey) seeks an order pursuant to CPLR 3212 granting summary judgment in her favor and dismissing the

complaint on the basis that the plaintiff did not sustain a serious injury as defined in Insurance Law 5102 (d).

By notice of cross motion filed on January 22, 2021, under motion sequence four, defendant Boatswain-Bailey seeks an order pursuant to CPLR 3212 granting summary judgment in her favor on the issue of liability and dismissing the complaint.

Following a three-vehicle chain collision, the plaintiff brought an action against the two rear drivers. Plaintiff's motion for summary judgment on liability is supported by, among other things, his own deposition transcript and the deposition transcript of Boatswain-Bailey. Plaintiff's deposition transcript establishes the following facts. On February 19, 2018 at approximately 5:10 p.m., plaintiff was driving his 2002 Kia southbound on Nostrand Avenue near its intersection with Avenue D in Brooklyn, New York. While proceeding slowly due to traffic conditions he was struck in the rear by a Lexus vehicle operated by Boatswain-Bailey. He only felt one impact. He learned that the Lexus was struck in the rear by a Nissan operated by Jonathan Silas Adams and owned by Tiffany Maynard.

Boatswain-Bailey's deposition transcript establishes the following facts. On February 19, 2018 at approximately 5:10 p.m., Boatswain-Bailey was driving on Nostrand Avenue just past the intersection of Avenue D. She was two car lengths from the vehicle in front of her at the time of the accident. She was involved in two impacts one to two seconds apart. The first impact was to her rear. The second impact was to her front. She never saw the car that hit her from behind. She later learned that the

automobile that struck her from behind was operated by Jonathan Silas Adams and owned by Tiffany Maynard.

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 (*Sooklall v L. Morisseav-Lafague*, 185 AD3d 1079, 1081 [2nd Dept 2020]). A rear-end collision with a stopped or stopping vehicle creates a prima facie case of negligence with respect to the operator of the rearmost vehicle, thereby requiring that operator to rebut the inference of negligence by providing a non-negligent explanation for the collision (*Sooklall*, 185 AD3d at 1081).

In chain collision accidents, the operator of the middle vehicle may establish prima facie entitlement to judgment as a matter of law by demonstrating that the middle vehicle was struck from behind by the rear vehicle and propelled into the lead vehicle (*Kuris v El Sol Contracting & Const. Corp.*, 116 AD3d 675, 676 [2nd Dept 2014]).

Plaintiff's motion was not opposed by Jonathan Silas Adams or Tiffany Maynard. Boatswain-Bailey's cross motion also served as opposition to plaintiff's motion. It was not opposed by either the plaintiff nor by Jonathan Silas Adams or Tiffany Maynard. Boatswain-Bailey's cross motion under motion sequence four was also supported by, among other things, her own deposition transcript and the deposition transcript of the plaintiff.

The evidentiary submissions of the plaintiff established his prima facie entitlement to judgment in his favor on liability as against Boatswain-Bailey and against Jonathan Silas Adams or Tiffany Maynard. The evidentiary submission of Boatswain-Bailey


established a non-negligent explanation for the collision with plaintiff's vehicle. It also established prima facie that she was free of negligence. Neither Jonathan Silas Adams nor Tiffany Maynard raised a triable issue of fact.

Accordingly, the plaintiff's motion for summary judgment on the issue of liability in his favor is granted. Defendant Boatswain-Bailey's cross motion for summary judgment in her favor on the issue of liability and dismissal of the complaint is granted. Based on this ruling, Boatswain-Bailey withdrew, with the permission of the Court, her cross motion filed on January 21, 2021 under motion sequence three.

The motion of the defendants, Jonathan Silas Adams and Tiffany Maynard, seeking summary judgment on threshold grounds is denied because Dr. Passick, although conducting straight leg testing did not compare his findings to normal findings (*see Shirman v Lawall*, 69 AD3d 838 [2nd Dept 2010]). Consequently, there is no need to address the sufficiency of the opposition (*see Winegrad v NYU Medical Center*, 64 NY2d 851 [1985]).

The foregoing constitutes the decision and order of this Court.

ENTER:



J.S.C.