

Munro v Williams

2021 NY Slip Op 32851(U)

December 31, 2021

Supreme Court, Kings County

Docket Number: Index No. 503839/2020

Judge: Peter P. Sweeney

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: PART 73

Index No.: 503839/2020
Motion Date: 10-4-21
Mot. Seq. Nos.: 1, 2

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RONALD MUNRO,

Plaintiff,

-against-

DECISION/ORDER

EDMOND W. WILLIAMS and ABDULLAEV F. FARRUKH,

Defendants.

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Upon the following e-filed documents, listed by NYSCEF as item numbers 9-38, the motion and cross-motion are decided as follows:

In this action to recover damages for personal injuries, defendant ABDULLAEV F. FARRUKH moves for an Order pursuant to CPLR §3212 granting him summary judgment dismissing the plaintiff's complaint insofar as alleged against him, together with all cross-claims and counterclaims, on the ground that he is not liable for the subject accident as a matter of law (**Mot. Seq. # 1**).

The plaintiff RONALD MUNRO cross-moves for an Order pursuant to CPLR §3212 granting plaintiff summary judgment on the issue of liability as against defendant EDMOND W. WILLIAMS and finding that said defendant was totally liable for the accident without there being any comparative negligence on the part of the plaintiff (**Mot. Seq. # 2**).

The motion and cross-motion are consolidated for disposition.

In support of Mot. Seq. # 1, defendant Abdullaev F. Farrukh submitted, among other things, an affidavit stating that the accident occurred on May 28, 2017, on the Grand Central Parkway. At the time of the accident, he was traveling in the left lane and plaintiff, Ronald Murno, was travelling in the right lane. Just prior to the accident, he maintained that he was travelling at a speed between 15 to 20 miles per hour and was slowing down due to traffic. He

averred that while his vehicle was slowing down, a vehicle operated by defendant Edmond W. Williams rear ended of both his and the plaintiff's vehicles. At no time did his vehicle come into contact with plaintiff's vehicle.

In support of Mot. Seq. # 2, plaintiff submitted his own affidavit stating that the accident occurred on the westbound side of the Grand Central Parkway, which he described as a one-way roadway with two lanes for moving traffic separated by broken white lines. He stated that at the time of the accident, he was operating his 1997 Ford in the right lane when a 2013 Chevrolet owned and operated by defendant Edmond W. Williams collided into the rear of his vehicle as he was slowing down due to traffic. At the time of the impact, his vehicle was completely within the right lane and no part of his vehicle was in any other lane. Plaintiff further stated that the Williams vehicle also collided into the rear of the Farrukh vehicle which was also slowing down for traffic conditions ahead. He maintained that the Farrukh vehicle was completely within the left lane.

The proponent of a motion for summary judgment has the initial burden of making a prima facie showing of entitlement to judgment as a matter of law by tendering sufficient proof eliminating any material issues of fact (see, *Winegrad v. New York Univ. Med. Ctr.*, 64 N.Y.2d 851, 853; *Zuckerman v. City of New York*, 49 N.Y.2d 557, 562; *Sillman v. Twentieth Century-Fox Film Corp.*, 3 N.Y.2d 395, 404). If the proponent meets this burden, the burden shifts to any party opposing the motion to come forward with proof in admissible form raising a triable issue of fact (see *Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324; *Zuckerman*, 49 N.Y.2d at 562; *Friends of Animals v. Associated Fur Mfrs.*, 46 N.Y.2d at 1068).

“ ‘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’ ” (*Jimenez v. Ramirez*, 171 A.D.3d 902, 903, 98 N.Y.S.3d 131, quoting *Nsiah–Ababio v. Hunter*, 78 A.D.3d 672, 672, 913 N.Y.S.2d 659; see Vehicle and Traffic Law § 1129[a]). Hence, a rear-end collision with a stopped or stopping vehicle establishes a prima facie case of negligence on the part of the operator of the rear vehicle, thereby requiring that operator to rebut the inference of negligence by providing a nonnegligent explanation for the collision (see *Tutrani v. County of Suffolk*,

10 N.Y.3d 906, 861 N.Y.S.2d 610, 891 N.E.2d 726; *Mihalatos v. Barnett*, 175 A.D.3d 492, 106 N.Y.S.3d 165).

Here, both defendant Farrukh and the plaintiff established their prima facie entitlement to summary judgment. Their affidavits established that the accident was solely the result of the negligence of defendant Williams in following their vehicles too closely. Defendant Farrukh and the plaintiff also established their freedom from negligence as a matter of law (see *Breton v. Adler*, 281 A.D.2d 380, 380–81, 721 N.Y.S.2d 280, *Hoffman v. Eastern Long Island Transp. Enterprise, Inc.*, 266 A.D.2d 509, 698 N.Y.S.2d 552; *Lopez v. Dobbins*, 164 A.D.3d at 777, 79 N.Y.S.3d 566; *Nikolic v. City-Wide Sewer & Drain Serv. Corp.*, 150 A.D.3d 754, 755, 53 N.Y.S.3d 684; see also *Rodriguez v. City of New York*, 31 N.Y.3d 312, 76 N.Y.S.3d 898, 101 N.E.3d 366).

In opposition, the defendant Williams failed to set forth a nonnegligent explanation for the rear-end collision or raise a triable issue of fact as to whether the plaintiff's or defendant Farrukh's negligence contributed to the accident.

The motion were not premature. Defendant Williams failed to demonstrate how further discovery might reveal or lead to relevant evidence, or that facts essential to oppose the motion were exclusively within the plaintiff's control (see CPLR 3212[f]; *Yiming Zhou v. 828 Hamilton, Inc.*, 173 A.D.3d 943, 103 N.Y.S.3d 472). The court has considered defendants' remaining arguments in opposition to the motion and find them to be without merit.

Accordingly, it is hereby

ORDRED that branch of plaintiff's motion for partial summary judgment on the issue of liability against defendant Williams is **GRANTED**. That branch of plaintiff's motion for an order striking all affirmative defenses raised by defendant Williams to the effect that the plaintiff's negligence contributed to the accident is also **GRANTED**; and it is further

ORDRED that defendant Farrukh's motion for summary judgment dismissing all claims against him, including all cross-claims and counterclaims, is **GRANTED**.

This constitutes the decision and order of the Court.

Dated: December 31, 2021

PPS

PETER P. SWEENEY, J.S.C.

Note: This signature was generated electronically pursuant to Administrative Order 86/20 dated April 20, 2020