Shuler v Qing Lin
2021 NY Slip Op 33129(U)
November 18, 2021
Supreme Court, Queens County
Docket Number: Index No. 713937/2019
Judge: Donna-Marie Golia

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

PRESENT: Donna-Marie E. Golia, JSC Part 21

EDDIE SHULER, JR.,

Plaintiff,

v

Index No. 713937/2019
Motion Date: 6/21/2021
Motion Seq. No.: 004

DECISION & ORDER

QING LIN, XINXI LIN, TREVOR P. CHARLES, KEITH M. EKBOM, JONAS BRUN, LITTLE RICHIE BUS SERVICE INC., AND RICARDO L. PERRY,

Defendants.

The following electronically filed papers numbered EF71 to EF80, EF82 to EF84 and EF86 to EF97 read on this motion by defendant for summary judgment:

	Papers Numbered
Notice of Motion, Affirmation, Exhibits.....	EF71 – EF80
Affirmation in Opposition, Exhibits.....	EF82 – EF84
Notice of Cross-Motion, Affirmation, Statement of Material Facts, Exhibits.....	EF86 – EF93
Affirmation in Opposition, Statement of Material Facts, Exhibits.....	EF94 – EF97

Defendant Jonas Brun ("Brun") moves, pursuant to New York Civil Practice Law and Rules ("CPLR") 3212, for summary judgment on liability dismissing the complaint and crossclaims against him. Co-defendants Little Richie Bus Service, Inc. ("Little Richie") and Ricardo L. Perry ("Perry") cross-move for summary judgment on liability dismissing the complaint and crossclaims against them.[1] Plaintiff Eddie Shuler, Jr. ("plaintiff") opposes the motion and cross-motion. Upon the papers submitted, the motion and cross-motion are denied, as discussed more fully below.[2]

This action arises out of an eight-car motor vehicle accident that occurred on September 10, 2018 at the intersection of the Van Wyck Expressway and the Grand Central Parkway in Queens, New York.

In his motion, Brun avers that in this alleged eight-vehicle chain collision, where his vehicle was seventh in line, his vehicle was struck in the rear by the eighth vehicle,

[1] While Little Richie and Perry e-filed their cross-motion under Motion Seq. No. 003, this appears to be an error as the cross-motion should have been filed under Motion Seq. No. 004.
[2] By stipulation dated November 19, 2019, this action was discontinued against defendant Keith Ekbom ("Ekbom"). Subsequently, by order dated November 10, 2020, the court granted summary judgment on liability as to defendants Xinxi Lin ("Lin") and Trevor P. Charles ("Charles").

which was owned by Little Richie and operated by Perry. However, Brun avers that his vehicle and the vehicle operated by Perry did not make contact with any other vehicle in the alleged chain collision. Specifically, Brun asserts that plaintiff was caught in a collision between the vehicles operated by Lin and Ekbom and that these three vehicles were ahead of him in the alleged collision. Brun also notes that there were damages to the rear of his vehicle but not to the front, and therefore, there is no question of fact that he came to a complete stop without striking any other vehicle involved in the alleged accident. In that regard, Brun contends that because his vehicle was rear-ended by the vehicle operated by Perry in a "separate collision," he did not cause the alleged accident or cause or contribute to plaintiff's alleged injuries.

In opposition, plaintiff argues that at the time of the alleged accident, he felt impacts to both the front and rear of his vehicle and because there are conflicting versions of how the alleged accident occurred, there are questions of fact to be assessed by a jury.

In their cross-motion, Little Richie and Perry assert that although they made contact with Brun's vehicle as Brun stopped short in front of them, neither their vehicle nor Brun's vehicle made contact with any other vehicle in the alleged chain collision. Specifically, Little Richie and Perry note that Brun's vehicle sustained damages to its rear bumper but not to the front and that plaintiff testified as to only one impact to the rear when Ekbom struck him. In that regard, Little Richie and Perry argue that plaintiff was involved in a collision with only Lin and Ekbom and that they did not make contact with any vehicle other than Brun's vehicle and that Brun did not make contact with any of the vehicles in front of him. Rather, Little Richie and Perry state that they did not cause or contribute to the alleged accident or plaintiff's alleged injuries as they were involved in a separate collision with the vehicle operated by Brun.

In opposition to Little Richie and Perry's cross-motion, plaintiff argues that the cross-motion is premature since the depositions of Little Richie, Perry and Brun were outstanding as of the filing of the motion and cross-motion. Plaintiff also contends that as of the time of the alleged accident, he felt impacts to both the front and rear of his vehicle and because Perry denied coming into contact with any vehicle other than Brun's vehicle, there are conflicting versions of how the alleged accident occurred and how many impacts were made to his vehicle. Therefore, plaintiff avers that there are credibility issues to be assessed by a jury.

Summary judgment pursuant to CPLR 3212 provides a mechanism for the prompt disposition, prior to trial, of civil actions which can be decided as a matter of law (see generally, Brill v City of New York, 2 NY3d 648, 650 [2004]). On a motion for summary judgment, the moving party must make out a *prima facie* case by submitting evidence in admissible form which establishes its entitlement to judgment as a matter of law (see, Marshall v Arias, 12 AD3d 423, 424 [2d Dept 2004]). Upon such a showing, the burden shifts to the non-moving party to present admissible evidence which demonstrates the necessity of a trial as to an issue of fact (see, Zolin v Roslyn Synagogue, 154 AD2d 369, 369 [2d Dept 1989]). The non-moving party must be afforded every favorable inference that can be drawn from the evidentiary facts established (see, McArdle v M & M Farms,

90 AD2d 538 [2d Dept 1982]). However, conclusory, unsupported allegations or general denials are insufficient to defeat a motion for summary judgment (see, William Iselin & Co., Inc. v Landau, 71 NY2d 420, 427 [1988]).

As a preliminary matter, defendants' motion and cross-motion for summary judgment are not premature (see, Gonzalez v Goudiaby, 177 AD3d 656, 658 [2d Dept 2019]). Indeed, the Appellate Division, Second Department has held that, "[t]he purported need to conduct discovery [does] not warrant denial" of a motion for summary judgment where "[t]he opponents of the motion had personal knowledge of the relevant facts" (see id.; Martinez v Kuhl, 165 AD3d 774, 775 [2d Dept 2018]; Emil Norsic & Son, Inc. v L.P. Transp., Inc., 30 AD3d 368, 369 [2d Dept 2006]; Niyazov v Bradford, 13 AD3d 501, 502 [2d Dept 2004]; Morissaint v Raemar Corp., 271 AD2d 586, 587 [2d Dept 2000]). Here, the relevant facts underlying the alleged accident would be within plaintiff's personal knowledge as he was the driver of the vehicle that was allegedly involved in this multiple-vehicle chain collision. Accordingly, plaintiff's "purported need to conduct discovery does not warrant denial" of the motion or cross-motion (see, Gonzalez, 177 AD3d at 658, supra).

The Court next addresses the substance of defendants' motion and cross-motion for summary judgment on liability. In a multiple-vehicle collision, "'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 properly stopped behind the lead vehicle when it was struck from behind by the rear vehicle and propelled into the lead vehicle'" (D'Avilar v Bao H. Lu, 184 AD3d 774 [2d Dept 2020]; Krutul v Tanner, 139 AD3d 1015 [2d Dept 2016]). Therefore, the defendant "'has the burden of establishing, prima facie, that he or she was not at fault in the happening of the subject accident'" (Daniel v Ian-Michael, 188 AD3d 1155, 1156 [2d Dept 2020]).

Here, Brun contends that in this multiple-vehicle chain collision, where his vehicle was seventh in line, he was hit in the rear by the eighth vehicle owned by Little Richie and operated by Perry. In support of his *prima facie* showing, defendant Brun has submitted an affidavit in which he attests that he was driving on the entrance ramp from the Van Wyck Expressway to the Grand Central Parkway when he observed the vehicles in front of him slowing down and stopping (see, Def. Exh. B). Brun stated that he "applied [his] brakes and came to a complete stop" and "did not make contact with any of the vehicles in front of [him]" (see, id.). Brun also attested that "[a]fter [he] came to a complete stop, the bus which had been traveling behind [him] struck the rear of [his] vehicle" and that "[n]either [his] vehicle nor the bus . . . came into contact with any of the vehicles in front of [him] (see, id.; Clements v Giatas, 178 AD3d 894, 895 [2d Dept 2019]; Skura v Wojtlowski, 165 AD3d 1196, 1199 [2d Dept 2018]).

Similarly, Little Richie and Perry have established their *prima facie* entitlement to summary judgment on liability. Indeed, Little Richie and Perry submits the affidavit of Perry in which he states that he "was traveling in the left lane when [he] observed a vehicle in front of [him] slowing down and stopping" and that the "vehicle . . . came to a very short stop after which [he] made contact with that vehicle" (see, Def. Exh. B). Perry further attested that "[n]either the vehicle in front of the bus, which was contacted, nor the bus

came into contact with any of the vehicles in front of [the vehicle] operated by co-defendant [Jonas Brun]" (see, id.).

In response to Brun, Perry and Little Richie's *prima facie* showing, there are triable issues of fact as to the sequence of the alleged collision, which driver or drivers, if any, proximately caused the alleged chain collision and which driver or drivers, if any, struck plaintiff's vehicle thereby causing his claimed injuries (see, Vavoulis v Adler, 43 AD3d 1154, 1156 [2d Dept 2007]). Indeed, during his deposition, plaintiff testified that the first contact that he felt was between his car and the car that was in front of him and that there was a second collision from the "rear" that occurred a "couple of seconds" after the first collision (see, Pl. Dep. 31-32, 36-37). While defendants argue that the vehicles operated by Brun and Perry only collided with each other in an accident separate and apart from the alleged eight-vehicle chain collision, and did not make contact with any other vehicle involved in the alleged collision, there is conflicting evidence as to which driver or drivers collided with plaintiff's vehicle, including evidence to suggest that there were multiple impacts to plaintiff's vehicle (see, Mahieddine-Benziane v O'Connor, 140 AD3d 1125, 1126 [2d Dept 2016]; Polanco-Espinal v City of New York, 84 AD3d 914, 915 [2d Dept 2011]). Indeed, as plaintiff notes, at the time of the alleged accident, "there were several chain collisions involving the vehicles owned and operated by the parties" and it is unclear which vehicle or vehicles collided with that of plaintiff's (see, Pl. Affirm. p. 2). To be sure, plaintiff testified that he did not remember what the vehicles in front of him or behind him looked like or what the vehicle(s) that struck him in the rear looked like (see, Pl. Dep. P. 31, 37; Mahieddine-Benziane, 140 AD3d at 1126, supra; Polanco-Espinal, 84 AD3d at 915, supra). Therefore, because there are questions of fact as to which driver(s), if any, caused each impact to plaintiff's vehicle and which driver(s), if any, proximately caused or contributed to the happening of the alleged chain collision, defendant Jonas Brun's motion for summary judgment dismissing the complaint and all crossclaims asserted against him is denied. Similarly, co-defendants Little Richie Bus Service, Inc. and Ricardo L. Perry's cross-motion for summary judgment on liability dismissing the complaint and crossclaims against them is denied (see, Williams v Sala, 152 AD3d 729, 730 [2d Dept 2017]; Polanco-Espinal, 84 AD3d at 915, supra; Vavoulis, 43 AD3d at 1156, supra; Krutul, 139 AD3d at 1015, supra).

This constitutes the Decision and Order of the Court.

Dated: November 18, 2021

Donna-Marie E. Golia, JSC