

Jimenez v Lazzari

2021 NY Slip Op 33159(U)

December 16, 2021

Supreme Court, Queens County

Docket Number: Index No. 719952/2018

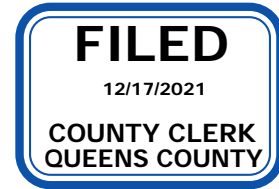
Judge: Robert J. McDonald

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This opinion is uncorrected and not selected for official publication.

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK
CIVIL TERM - IAS PART 34 - QUEENS COUNTY
25-10 COURT SQUARE, LONG ISLAND CITY, N.Y. 11101



P R E S E N T : HON. ROBERT J. MCDONALD
Justice

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RENZO JIMENEZ, Index No.: 719952/2018

Plaintiff, Motion Date: 12/16/21

- against - Motion Nos.: 23 & 24

KIRSTEN LAZZARI, AS ADMINISTRATRIX OF THE ESTATE OF RICHARD D. LAZZARI and MARIA L. GONZALEZ, Motion Seqs.: 3 & 4

Defendants.

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The following electronically filed documents read on this motion by plaintiff RENZO JIMENEZ (seq. no. 3) for an Order pursuant to CPLR 3212, granting summary judgment on the issue of liability in favor of plaintiff and against defendant KIRSTEN LAZZARI, AS ADMINISTRATRIX OF THE ESTATE OF RICHARD D. LAZZARI (hereinafter Lazzari); and on this motion by defendant MARIA L. GONZALEZ (hereinafter Gonzalez) (seq. no. 4) for an Order pursuant to CPLR 3212, granting summary judgment in favor of Gonzalez and dismissing the complaint and all cross-claims against her:

Table with 2 columns: Document Name and Papers Numbered. Includes entries for Notice of Motion (seq. no. 3), Gonzalez's Affirmation, Lazzari's Affirmation in Opposition, Reply Affirmation, Notice of Motion (seq. no. 4), Lazzari's Affirmation in Opposition, Plaintiff's Aff. in Partial Opposition & Support, and Reply Affirmations.

This is an action to recover damages for personal injuries allegedly sustained by plaintiff as a result of a three car accident that occurred on September 4, 2018 at or on the Major Deegan Expressway and Macombs Dam Bridge overpass, in Bronx County, New York.

Plaintiff commenced this action by filing a summons and complaint on December 31, 2018. Lazzari joined issue by service of a verified answer with cross-claim on February 5, 2019. Gonzalez joined issue by service of a verified answer with cross-claim on September 4, 2019. Plaintiff and Gonzalez now each move for summary judgment.

In support of his motion, plaintiff submits an affidavit dated September 14, 2021, affirming that he was involved in the subject chain rear-end accident. At the time of the accident, the weather was clear, the roadway was dry, and traffic was heavy. The traffic ahead of him came to a stop, and he gradually brought his vehicle to a complete stop. After being stopped for approximately five to six minutes, he was rear-ended by the Lazzari vehicle. As a result, he was pushed into the Gonzalez vehicle. There was one impact to the rear of his vehicle, which was very heavy, causing his vehicle to be pushed forward and resulting in a second impact. At the moment of contact, his foot was on the brake pedal. He did not cause or contribute to the happening of the subject accident.

In support of her motion, Gonzalez submits an affidavit dated November 2, 2021, affirming that she was involved in the subject accident. Her vehicle had no operational or mechanical difficulties. Traffic was heavy. Her vehicle was stopped in traffic about one car length behind the vehicle traveling in front of her for approximately two to three minutes, when her vehicle was struck in the rear by plaintiff's vehicle. At the moment of impact, her foot was on the brake. There was only one impact to her vehicle in total. Her vehicle did not have contact with any vehicle other than when plaintiff struck her vehicle's rear. There was no action she could have take to avoid the collision.

Based on the submitted evidence, both plaintiff and Gonzalez contend that as their vehicles were stopped when they were struck in the rear, they are entitled to summary judgment.

In opposition, Lazzari submits an uncertified copy of the Police Accident Report (MV-104AN) to establish that issues of fact preclude summary judgment. However, a party's admission contained in an uncertified police accident report is inadmissible (see Yassin v Blackman, 188 AD3d 62 [2d Dept. 2020]). Lazzari further contends that the motions are in violation of the Compliance Conference Order, which stayed all parties from moving for summary judgment pending the filing of a Note of Issue.

The proponent of a summary judgment motion must tender evidentiary proof in admissible form eliminating any material issues of fact from the case. If the proponent succeeds, the burden shifts to the party opposing the motion, who then must show the existence of material issues of fact by producing evidentiary proof in admissible form in support of his or her position (see Zuckerman v City of New York, 49 NY2d 557[1980]).

"The rearmost driver in a chain-reaction collision bears a presumption of responsibility" (Ferguson v Honda Lease Trust, 34 AD3d 356 [1st Dept. 2006], quoting De La Cruz v Ock Wee Leong, 16 AD3d 199 [1st Dept. 2005]). In multiple-car, chain-reaction, accidents, the courts have recognized that the operator of a vehicle that has come to a complete stop and is propelled into the vehicle in front of it, as a result of being struck from behind, is not negligent inasmuch as the operator's actions cannot be said to be the proximate cause of the injuries resulting from the collision (see Mohamed v Town of Niskayuna, 267 AD2d 909 [3d Dept. 1999]). Thus, movants satisfied their prima facie burden of establishing their entitlement to judgment as a matter of law by demonstrating that their vehicles were stopped when struck in the rear (see Robayo v Aghaabdul, 109 AD3d 892 [2d Dept. 2013]; Sayed v Murray, 109 AD3d 464 [2d Dept. 2013]; Prosen v Mabella, 107 AD3d 870 [2d Dept. 2013]; Xian Hong Pan v Buglione, 101 AD3d 706 [2d Dept. 2012]).

Having made the requisite prima facie showing of entitlement to summary judgment, the burden then shifted to the non-moving party to raise a triable issue of fact as to whether movants were also negligent, and if so, whether that negligence contributed to the happening of the accident (see Goemans v County of Suffolk, 57 AD3d 478 [2d Dept. 2007]).

In opposition, Lazzari failed to provide evidence of a non-negligent explanation for the accident sufficient to raise a triable question of fact (see Bernier v Torres, 79 AD3d 776 [2d Dept. 2010]; Lampkin v Chan, 68 AD3d 727 [2d Dept. 2009]; Cavitch v Mateo, 58 AD3d 592 [2d Dept. 2009]; Garner v Chevalier Transp. Corp, 58 AD3d 802 [2d Dept. 2009]; Kimyaqarov v Nixon Taxi Corp, 45 AD3d 736 [2d Dept. 2007]; Gomez v Sammy's Transp., Inc., 19 AD3d 544 [2d Dept. 2005]). Lazzari submits only an attorney's affirmation which is insufficient to defeat a summary judgment motion (see Zuckerman, 49 NY2d at 563).

Additionally, Lazzari's contention that this motion for summary judgment is premature is without merit. Lazzari failed to establish that further discovery may lead to relevant evidence necessary to defend the summary judgment motion. The mere hope

and speculation that evidence sufficient to defeat the motion might be uncovered during discovery is an insufficient basis upon which to deny the motion (see CPLR 3212[f]; Medina v Rodriguez, 92 AD3d 850 [2d Dept. 2012]; Hanover Ins. Co. v Prakin, 81 AD3d 778 [2d Dept. 2011]; Essex Ins. Co. v Michael Cunningham Carpentry, 74 AD3d 733 [2d Dept. 2010]; Peerless Ins. Co. v Micro Fibertek, Inc., 67 AD3d 978 [2d Dept. 2009]; Gross v Marc, 2 AD3d 681 [2d Dept. 2003]).

Accordingly, and based the reasons stated above, it is hereby,

ORDERED, that the partial summary judgment motion by plaintiff RENZO JIMENEZ (**seq. no. 3**) is granted, summary judgment on the issue of liability is granted in favor of plaintiff and against defendant KIRSTEN LAZZARI, AS ADMINISTRATRIX OF THE ESTATE OF RICHARD D. LAZZARI (hereinafter Lazzari); and it is further

ORDERED, that upon completion of discovery on the issue of damages, filing a Note of Issue, and compliance with all the rules of the Court, this action shall be placed on the trial calendar of the Court for a trial on serious injury and damages; and it is further

ORDERED, that the summary judgment motion by defendant MARIA L. GONZALEZ (**seq. no. 4**) is granted, the complaint and all cross-claims are dismissed as against defendant MARIA L. GONZALEZ, and the Clerk of the Court shall enter Judgment accordingly.

Dated: December 16, 2021
Long Island City, N.Y.

Robert J. McDonald

ROBERT J. McDONALD
J.S.C.