Terrhopha v Rodriquez
2013 NY Slip Op 32609(U)
October 7, 2013
Supreme Court, Queens County
Docket Number: 701216/2012
Judge: Robert J. McDonald

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

- x

COLIN TERRHOPHA,

Plaintiff,

- against -

JORGE A. RODRIGUEZ,

Defendant.

- x

Index No.: 701216/2012

Motion Date: 08/05/2013

Motion No.: 116

Motion Seq.: 1

The following papers numbered 1 to 13 were read on this motion by plaintiff, COLIN TERRHOPHA, for an order pursuant to CPLR 3212, granting partial summary judgment in favor of the plaintiff against defendant, JORGE A. RODRIGUEZ, and setting the matter down for a trial on damages only:

	Papers Numbered
Notice of Motion-Affidavits-Exhibits	1 - 6
Affirmation in Opposition	7 - 10
Reply Affirmation	11 - 13

This is an action for damages for personal injuries arising out of a multi-vehicle accident which took place on May 3, 2011, between the vehicle operated by the plaintiff, the vehicle owned and operated by defendant, Jorge Rodriguez, and the vehicle owned and operated by Xiao Chang Yuan who is not named as a party to this action. The accident occurred in heavy stop and go traffic on the westbound Belt Parkway near the exit for 225th Street.

The plaintiff moves for partial summary judgment on the ground that his vehicle was lawfully stopped in traffic when Rodriguez's vehicle initiated the chain reaction collision when it struck Yuan's vehicle in the rear causing Yuan's vehicle to be propelled into the plaintiff's vehicle.

In support of the instant motion for summary judgment, the plaintiff submits a copy of the pleadings, a copy of the police accident report, and the affidavit of plaintiff Colin Terrhopha, dated April 19, 2013.

The accident description contained in the police report, which is based upon statements of the parties states:

At t/p/o/ while traveling eastbound on the Belt Parkway in heavy stop and go traffic Veh #3(Rodriguez) rear ended vehicle #2 (Yuan) and the force of the impact pushed Veh #2 onto Veh #1 (Terrhopha). Both airbags in Vehicles #3 and #2 did deploy. P.O. did not witness accident."

In his affidavit the plaintiff states that on May 3, 2011 he was the driver of a vehicle that was stopped for traffic on the Belt Parkway near its intersection with 225th Street in Queens County. After having been stopped for at least 30 seconds he felt a heavy impact to the rear of his vehicle. He states that the Rodriguez vehicle, the third car, hit the second vehicle that was behind plaintiff's vehicle causing the second vehicle to be propelled into plaintiff's vehicle.

Plaintiff's counsel contends that the evidence shows that the plaintiff was completely stopped in traffic at the time of the accident and the sole proximate cause of the accident was the negligence of Rodriguez in rear-ending the second vehicle and further, there is no evidence in the record that plaintiff, in the lead vehicle, was negligent in any manner. Counsel contends that the defendant, in the moving vehicle, was negligent and started the chain reaction accident because he failed to maintain a proper lookout, failed to maintain a proper speed and a safe distance from the vehicle in front of him in Violation of VTL § 1129(a).

Counsel asserts that the police report clearly states that plaintiff's vehicle was stopped when it was struck in a chain reaction collision initiated by Rodriguez who was following too closely and was unable to slow down in time to avoid striking the stopped vehicle in front of it.

In opposition to the plaintiff's motion the defendant counsel Timothy Tenke, Esq. submits that the motion is premature in that

discovery has not yet been completed. He states that a deposition of the driver of the middle car may relive his client of some of the liability for the accident. Counsel states that his client, Rodriguez has also not yet been deposed and his testimony will have a bearing on liability aspects in this matter. Counsel also submits a copy of the transcript of the plaintiff, Colin Terrhophia. Plaintiff, age 52, testified on April 10, 2013. He stated that on May 3, 2011 at 3:15 p.m. he was operating his brother's Dodge Caravan in the left lane of the eastbound Belt Parkway near the exit for 225th Street. His vehicle was stopped in heavy stop and go traffic. After 30 seconds his vehicle was struck in the rear by a Toyota Corolla. After the impact he exited his vehicle and observed a third vehicle also a Toyota Corolla that had struck the vehicle behind his.

Defendant Rodriguez, who has not yet been deposed has not submitted an affidavit of facts with respect to his version of the accident.

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 position (see Zuckerman v City of New York, 49 NY2d 557[1980]).

It is well established law that a rear-end collision creates a prima facie case of negligence on the part of the driver of the rearmost vehicle, requiring the operator of that vehicle to proffer an adequate, non-negligent explanation for the accident (see Kertesz v Jason Transp. Corp., 102 AD3d 658 [2d Dept. 2013]; Ramos v TC Paratransit, 96 AD3d 924 [2d Dept. 2012]; Pollard v Independent Beauty & Barber Supply Co., 94 AD3d 845 [2d Dept. 2012]; Klopchin v Masri, 45 AD3d 737 [2d Dept. 2007]).

Here, plaintiff, Terrhopha, states that his vehicle was at a complete stop when the third vehicle in the chain, operated by defendant Rodriguez, struck the middle vehicle in the rear causing the chain reaction accident. "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 which 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 [3rd Dept. 1999]).

Having made the requisite prima facie showing of his entitlement to summary judgment, the burden then shifted to the Rodriguez to raise a non-negligent explanation for the rear end collision or a triable issue of fact as to whether plaintiff was 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]).

This court finds that the defendant-driver failed to submit an affidavit in opposition to the motion and failed to provide any other evidence as to any negligence on the part of plaintiff or to provide a non-negligent explanation for the accident sufficient to raise a triable question of fact (see Grimm v Bailey, 105 AD3d 703 [2d Dept. 2013]; Lampkin v Chan, 68 AD3d 727 [2d Dept. 2009]; Gomez v Sammy's Transp., Inc., 19 AD3d 544 [2d Dept. 2005][the defendants failed to raise a triable issue of fact by only interposing an affirmation of their attorney who lacked knowledge of the facts]). If the operator of the moving vehicle cannot come forward with evidence to rebut the inference of negligence, the occupants and owner of the stationary vehicle are entitled to summary judgment on the issue of liability (see Kimyagarov v. Nixon Taxi Corp., 45 AD3d 736 [2d Dept. 2007]). The evidence demonstrated that the plaintiff was in a stopped vehicle, and no evidence was presented to show that his conduct was a proximate cause of the rear-end collision between his vehicle and the vehicles behind him (see Aikens-Hobson v. Bruno, 97 AD3d 709 [2d Dept. 2012]; Daramboukas v Samlidis, 84 AD3d 719 [2d Dept. 2011]; Plummer v Nourddine, 82 AD3d 1069 {2d Dept. 2011]; Parra v Hughes, 79 AD3d 1113 [2d Dept. 2011] Franco v Breceus, 70 AD3d 767[2d Dept. 2010]; Shirman v Lawal, 69 AD3d 838 [2d Dept. 2010]; Katz v Masada II Car & Limo Serv., Inc., 43 AD3d 876 [2d Dept. 2007]).

The defendant's contention that the plaintiff's motion for summary judgment is premature is without merit. Defendants failed to offer any evidentiary basis to suggest that discovery may lead to relevant evidence. 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]; 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]). Further, the lack of disclosure does not excuse the failure of the party with personal knowledge to submit an affidavit in opposition to the motion (see Rainford v Han, 18 AD3d 638 [2d Dept. 2005] citing Niyazov v Bradford, 13 AD3d 501 [2d Dept. 2004]).

Accordingly, as the evidence in the record demonstrates that the defendant failed to provide a non-negligent explanation for the collision and as no triable issues of fact have been put forth as to whether plaintiff driver may have borne comparative fault for the causation of the accident, and based on the foregoing, it is hereby

ORDERED that the motion by plaintiff, Colin Terrhopha for partial summary judgment on the issue of liability against defendant Rodriguez is granted and it is further,

ORDERED, that upon completion of discovery, 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 damages.

Dated: October 7, 2013
Long Island City, N.Y.

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ROBERT J. MCDONALD
J.S.C.