

Zhi Chen v Kwok Ng

2020 NY Slip Op 35724(U)

February 18, 2020

Supreme Court, New York County

Docket Number: Index No. 160846/2017

Judge: Adam Silvera

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ADAM SILVERA PART IAS MOTION 22

Justice

-----X

ZHI CHEN, KAI CHENG, SHAN ZHANG, XIU JIANG, WING LI, FANG LIN, JIN WANG,

Plaintiff,

- v -

KWOK NG,

Defendant.

-----X

KWOK NG

Plaintiff,

-against-

YAT CHAN

Defendant.

-----X

INDEX NO. 160846/2017
MOTION DATE 11/25/2019
MOTION SEQ. NO. 003

AMENDED DECISION + ORDER ON MOTION

Third-Party Index No. 595349/2018

The following e-filed documents, listed by NYSCEF document number (Motion 003) 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 96, 97, 98, 99, 100, 101

were read on this motion to/for JUDGMENT - SUMMARY

Upon the foregoing documents, it is ORDERED that third-party defendant Yat Ping Chan's motion for summary judgment for an Order to dismiss the Complaint and any and all Cross-Claims against the third-party defendant in the above action as no basis for liability exists against said defendant is granted.

This action stems from a three-car motor vehicle accident that occurred on August 2, 2017, on State Highway Route 31 in the State of New Jersey, when a vehicle operated by third party defendant was struck by a vehicle operated by defendant/third-party plaintiff Kwok H. Ng in the rear and struck the lead vehicle in front of it.

“The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case” (*Winegrad v New York University Medical Center*, 64 NY2d 851, 853 [1985]). Once such entitlement has been demonstrated by the moving party, the burden shifts to the party opposing the motion to “demonstrate by admissible evidence the existence of a factual issue requiring a trial of the action or tender an acceptable excuse for his failure ... to do [so]” (*Zuckerman v City of New York*, 49 NY2d 557, 560 [1980]).

“A rear-end collision with a stopped vehicle, or a vehicle slowing down, establishes a prima facie case of negligence on the part of the operator of the rear-ending vehicle, which may be rebutted if that driver can provide a non-negligent explanation for the accident” (*Baez v MM Truck and Body Repair, Inc.*, 151 AD3d 473, 476 [1st Dep’t 2017]).

Being propelled forward in a chain reaction collision is a non-negligent explanation for a rear-end motor vehicle accident (*Arrastia v Sbordone*, 225 AD2d 375 [1st Dept 1996] finding that “Inasmuch as there is no dispute that defendant brought her vehicle to a complete stop prior to the accident and was thereafter unexpectedly forced into plaintiff’s car by a third, unrelated vehicle, plaintiff has raised no basis for an inference that defendant was negligent or the proximate cause of plaintiff’s purported injuries in this matter”).

Third-party defendant Yat Ping Chan has demonstrated that his vehicle was rear-ended by third-party plaintiff Ng. Third Party defendant attaches his own deposition, the deposition of third-party plaintiff Ng, the deposition of plaintiff Jin Yun Wang, the deposition of plaintiff Shan Qin Zhang, the deposition of plaintiff Kai Nam Cheng, the deposition of plaintiff Wing Ying Li, the deposition of plaintiff Xiu Zhen Jiang, the deposition of plaintiff Zhi Min Chen, and the

deposition of plaintiff Fang Lin (Mot, Exh E-M). Thus, Third-party defendant Yat Ping Chan has demonstrated freedom from any liability for the accident at issue.

In opposition third-party plaintiff Ng fails to raise an issue of fact as to the sequence of the collisions. Ng testified that third-party defendant Chan stated to him that Chan struck the lead vehicle in the rear before Ng struck the rear of Chan's vehicle (Mot, Exh F at 26-28). The Court finds such a statement to be hearsay and notes that Ng testified that he was unsure whether Chan struck the lead vehicle and did not know if he propelled Chan's vehicle forward (*id.*, at 26, ¶ 4-7). Third-party defendant Chan has demonstrated freedom from any liability for the accident at issue and the motion to dismiss the Complaint and any and all Cross-Claims against third-party defendant Chan in the above action as no basis for liability exists against said defendant is granted.

Accordingly, it is

ORDERED that defendants Nicholas Lui and Erica Lui's motion for summary judgment for an Order to dismiss plaintiff Rebecca Rivera's Complaint and any and all Cross-Claims against said defendants in the above action as no basis for liability exists against said defendants is granted; and it is further

ORDERED that third-party defendant Yat Ping Chan's motion for summary judgment for an Order to dismiss the Complaint and any and all Cross-Claims against third-party defendant Yat Ping Chan in the above action as no basis for liability exists against third-party defendant Yat Ping Chan is granted; and it is further

ORDERED that the complaint is dismissed in its entirety as against third-party defendant Yat Ping Chan with costs and disbursements to said defendants as taxed by the Clerk of the

Court, and the Clerk is directed to enter judgment accordingly in favor of said defendants; and it is further

ORDERED that all remaining parties appear for a compliance conference on April 6, 2020 in room 106 of 80 Centre Street at 9:30 AM; and it is further

ORDERED that within 20 days of entry, counsel for third-party defendant Yat Ping Chan shall serve a copy of this Decision/Order upon all parties with notice of entry.

This Constitutes the AMENDED Decision/Order of the Court.

2/18/2020
DATE



ADAM SILVERA, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: