

Blackwell v Sparrow Taxi
2016 NY Slip Op 32437(U)
November 22, 2016
Supreme Court, Bronx County
Docket Number: 300025/2012
Judge: Lucindo Suarez
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: I.A.S. PART 19

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LATISHA BLACKWELL,

Plaintiff,

- against -

SPARROW TAXI, M, S, A, CHOWDHURY, a/k/a M, S,
A, CHOWD HURY, CARLOS MAISONET-ROSA and
GENE FALCONE,

Defendants.
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DECISION AND ORDER

Index No. 300025/2012

PRESENT: Hon. Lucindo Suarez

Upon the notice of motion dated September 2, 2016 of defendant Gene Falcone and the affirmation, exhibits, and memorandum of law submitted in support thereof; the affirmation in opposition dated October 18, 2016 of defendant Carlos Maisonet-Rosa and the exhibits submitted therewith; the affirmation in opposition dated October 27, 2013 [sic] of defendants Sparrow Taxi and M,S,A, Chowdhury a/k/a M,S,A, Chowd Hury and the exhibit submitted therewith; and due deliberation; the court finds:

This action arises out of a four-car motor vehicle accident that occurred on January 15, 2009 in the left northbound lane of the FDR Drive between the vehicles driven by plaintiff, defendant M, S, A, Chowdhury ("Chowdhury"), defendant Carlos Maisonet-Rosa ("Maisonet-Rosa"), and defendant Gene Falcone ("Falcone"). Falcone, the driver of the rearmost vehicle, moves for summary judgment dismissing the complaint and all cross-claims and counterclaims asserted against him on the ground that he was not at fault for causing the accident. Submitted on the motion are excerpts from the deposition transcripts for plaintiff, Falcone and Maisonet-Rosa. The uncertified copy of the MV-104AN police accident report is not in admissible form. *See Raposo v. Robinson*, 106 A.D.3d 593, 965 N.Y.S.2d 348

(1st Dep't 2012).

Plaintiff's testimony shows that her vehicle was at a complete stop when it was struck in the rear by a yellow taxi cab.¹ She felt a second rear-end impact less than five seconds later and then a third rear-end impact seconds after that. Maisonet-Sosa, the third driver, testified that he was involved in two collisions. His vehicle was struck in the rear by Falcone's vehicle, and the impact pushed his vehicle forward into the rear of Chowdhury's stopped taxi cab. Falcone testified that as he rounded a curve in the roadway, he saw that Maisonet-Sosa's vehicle was not moving. He applied the brakes but was unable to avoid skidding into the rear of Maisonet-Sosa's vehicle.

Generally, a driver traveling behind another vehicle has a duty to maintain a safe distance behind the front vehicle, whether it is moving or stopped, to avoid a rear end collision in the event the front vehicle slows down or stops, even suddenly, *see* New York Vehicle and Traffic Law §1129(a), and taking into account the weather and road conditions. *See Francisco v. Schoepfer*, 30 A.D.3d 275, 817 N.Y.S.2d 52 (1st Dep't 2006). A rear-end collision with a stopped or stopping vehicle constitutes a *prima facie* case of negligence on the part of the operator of the rear vehicle and imposes a duty upon that driver to provide a non-negligent explanation for the accident. *See Cabrera v. Rodriguez*, 72 A.D.3d 553, 900 N.Y.S.2d 29 (1st Dep't 2010). Ordinarily, the rear-most driver in a chain-reaction collision bears a presumption of responsibility. *See Ferguson v. Honda Lease Trust*, 34 A.D.3d 356, 826 N.Y.S.2d 10 (1st Dep't 2006).

Falcone's arguments that he did not cause or contribute to the accident are unpersuasive. *See Belziti v. Langford*, 105 A.D.3d 649, 963 N.Y.S.2d 654 (1st Dep't 2013). Plaintiff was unaware of which vehicle struck her from behind, but it is not disputed that Chowdhury's taxi cab was directly behind plaintiff's vehicle or that she felt three separate rear-end impacts that were seconds apart.

¹ It appears that taxi cab driver Chowdhury has been precluded from testifying at trial.

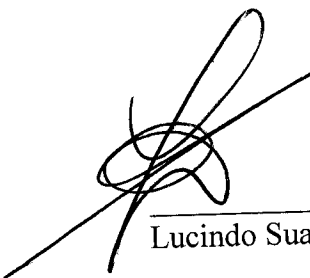
Maisonet-Sosa stated the rear-end impact from Falcone's vehicle propelled his vehicle forward into Chowdhury's vehicle, although he did not know if Chowdhury's vehicle then collided plaintiff's vehicle. Falcone admitted striking Maisonet-Sosa's vehicle in the rear. The testimony raises questions as to the sequence of the collisions. *See Passos v. MTA Bus Co.*, 129 A.D.3d 481, 13 N.Y.S.3d 4 (1st Dep't 2015). Falcone also failed to explain why he was unable to maintain a safe distance behind Maisonet-Sosa. He testified that traffic had been slowing down and nothing obstructed his view of the vehicle directly in front him. His claim the brake lights on Maisonet-Sosa's vehicle were not illuminated does not adequately rebut the inference of negligence. *See Farrington v. New York City Tr. Auth.*, 33 A.D.3d 332, 822 N.Y.S.2d 51 (1st Dep't 2006). His arguments attributing the accident in part to a wet roadway condition and the sudden stop of Maisonet-Sosa's vehicle are insufficient. *See Dicturel v. Dukureh*, 71 A.D.3d 558, 897 N.Y.S.2d 87 (1st Dep't 2010); *Mitchell v. Gonzalez*, 269 A.D.2d 250, 703 N.Y.S.2d 124 (1st Dep't 2000). Finally, Falcone moves to dismiss the cross-claims and counterclaims asserted against him but he failed to include copies of the pleadings containing those claims. *See CPLR 3212(b)*. Because Falcone failed to meet his burden on the summary judgment, the motion is denied without regard to the sufficiency of the opposing papers. *See Vega v. Restani Constr. Corp.*, 18 N.Y.3d 499, 965 N.E.2d 240, 942 N.Y.S.2d 13 (2012).

Accordingly, it is

ORDERED, that the motion of defendant Gene Falcone seeking summary judgment is denied.

This constitutes the decision and order of the court.

Dated: November 22, 2016



Lucindo Suarez, J.S.C.