Parker v Carrillo
2017 NY Slip Op 30764(U)
March 3, 2017
Supreme Court, Bronx County
Docket Number: 304037/2013
Judge: Alison Y. Tuitt
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NEW YORK SUPREME COURT----------COUNTY OF BRONX

PART IA - 5

JOSHUA PARKER,

Plaintiff,

-against-

LAURA CARRILLO, JUAN CASILLAS, ARLENE ORTIZ and MARIANNA LOUIS COLUMBUS,

Defendants.

INDEX NUMBER: **304037/2013**

Present:
HON. **ALISON Y.TUITT**
Justice

The following papers numbered 1 to 7

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On Calendar of **3/21/16**

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Upon the foregoing papers, defendants Arlene Ortiz (hereinafter "Ortiz") and Marianna Louis Colombus' (hereinafter "Columbus") motion and defendant Laura Carrillo's (hereinafter "Carrillo") motion for summary judgment are consolidated for purposes of this decision. For the reasons set forth herein, defendants' motion are granted.

The within action arises from a motor vehicle accident on May 26, 2013 on the Bruckner Expressway and Rosedale Avenue in the County of Bronx, State of New York. At the time of the accident, plaintiff was operating a motorcycle northbound on the Bruckner Expressway which had three lanes of traffic with a wall separating the northbound and southbound lanes. Plaintiff entered the expressway on the right lane then made his way into the middle lane and eventually the left lane which is where the accident happened. Plaintiff testified at his deposition that he was in the middle lane when a copper colored van in front of him

stopped abruptly causing him to move into the left lane and pass the van. A second or so after he entered the left lane, a gray car that was straddling the left and middle lanes struck his right leg with its rear driver's side door pushing him toward the divider. At that point he saw a black stationary car blocking three quarters of the left lane, three to four car lengths in front of him, with no illuminated hazard or brake lights. Two to three seconds later, he struck the rear of the stationary car and was ejected from his motorcycle.

Defendant Carrillo testified that she was traveling in the left lane on the Bruckner Expressway when without experiencing any mechanical issues or any warning, her vehicle simply came to a stop. She was completely within the left lane, activated her hazard lights and was unable to get the car restarted. She was stopped for about eight minutes before her vehicle was struck on the rear right side. Defendant Casillas testified that he was operating a black vehicle and as he was about six to seven car lengths from the accident scene he became aware of a disabled car in the left lane with the hazard lights engaged. There were two cars in front of him in the left lane which successfully merged in to the middle lane before the accident. He was able to merge into the middle lane before the accident and estimated that he was passing the disabled car's passenger door when the accident happened. He did not see the motorcycle before the accident but recalled hearing a motorcycle and the sound of an impact. He then saw the motorcycle flip in the air and land on the hood of his vehicle and saw the motorcyclist flying in the air. Defendant Ortiz testified that at the time of the accident, she was driving a vehicle owned by defendant Columbus. Ortiz first noticed a disabled vehicle in the left lane of the Bruckner Expressway when she was two car lengths away. She saw a car behind the disabled vehicle successfully merge into the middle lane in between two cars that were ahead of her in the middle lane. As the front of her vehicle was passing the disabled vehicle, a black vehicle by her driver's door attempted to merge into the middle lane from her left. She honked the horn and presumed the vehicle stayed in the left lane. When she was one car length passed the disabled car, something fell on her hood but she did not know what hit her vehicle because her windshield shattered and she was covered in glass.

Defendant Carrillo argues that she is entitled to summary judgment because she did not cause plaintiff's accident as she had no ability to control her vehicle's malfunction. Defendants Ortiz and Columbus argue that they are entitled to summary judgment as they played no part in plaintiff's accident as the impact occurred behind their vehicle and there was nothing that Ortiz could have done to prevent plaintiff from landing on her vehicle.

The court's function on this motion for summary judgment is issue finding rather than issue

determination. Sillman v. Twentieth Century Fox Film Corp., 3 N.Y.2d 395 (1957). Since summary judgment is a drastic remedy, it should not be granted where there is any doubt as to the existence of a triable issue. Rotuba Extruders v. Ceppos, 46 N.Y.2d 223 (1978). The movant must come forward with evidentiary proof in admissible form sufficient to direct judgment in its favor as a matter of law. Zuckerman v. City of New York, 49 N.Y.2d 557, 562 (1980). Thus, when the existence of an issue of fact is even arguable or debatable, summary judgment should be denied. Stone v. Goodson, 8 N.Y.2d 8, (1960); Sillman v. Twentieth Century Fox Film Corp., *supra*.

The proponent of a motion for summary judgment carries the initial burden of production of evidence as well as the burden of persuasion. Alvarez v. Prospect Hospital, 68 N.Y.2d 320 (1986). Thus, the moving party must tender sufficient evidence to demonstrate as a matter of law the absence of a material issue of fact. Once that initial burden has been satisfied, the "burden of production" (not the burden of persuasion) shifts to the opponent, who must now go forward and produce sufficient evidence in admissible form to establish the existence of a triable issue of fact. The burden of persuasion, however, always remains where it began, i.e., with the proponent of the issue. Thus, if evidence is equally balanced, the movant has failed to meet its burden. 300 East 34th Street Co. v. Habeeb, 683 N.Y.S.2d 175 (1st Dept. 1997).

In the instant matter, defendant Ortiz and Columbus' motion for summary judgment must be granted. There is no evidence that Ortiz was negligent in any manner in the happening of this accident. The accident had occurred behind her, after she had passed defendant Carrillo's stopped vehicle and after the collision between plaintiff and Carillo's vehicle, plaintiff ended up on her hood. There was no evidence that she could have done anything to avoid the accident. Accordingly, since Ortiz and Columbus' motion for summary judgment is granted and the complaint is dismissed as against them, the branch of the motion that seeks to amend their answer is denied as moot.

Defendant Carrillo's motion for summary judgment is also granted. Defendant argues that she was confronted with an emergency situation in that her vehicle stopped as a result of mechanical failure. Where defendant shows that she could not have avoided an accident as a result of her vehicle becoming disabled through no fault of her own, she makes a prima facie showing of entitlement to summary judgment. See, Paulino v. Guzman, 925 N.Y.S.2d 503 (1st Dept. 2011); Vespe v. Kazi, 878 N.Y.S.2d 46 (1st Dept. 2009); Blasso v. Parente, 913 N.Y.S.2d 306 (2d Dept. 2010); Mankiewicz v. Excellent, 807 N.Y.S.2d 643 (2d Dept. 2006). Here, in opposition, plaintiff and Casillas argue that Carrillo's vehicle stopping on the highway did not

result from an unforeseeable mechanical failure, but resulted from of defendant's own making, such as running out of fuel. Such contention, however, is purely speculative. Carrillo testified that she had put gas in her vehicle the day before the accident and that the tank was "little past the middle of full". This testimony is uncontradicted. Therefore, plaintiff and Casillas' contention that since Carrillo drove her car "a substantial time and distance" she must have run out of gas is mere speculation. Liability may not be imposed on ap arty who merely furnishes the condition or occasion for the occurrence of the event, but was not one of its causes. See, Roman v. Cabrera,979 N.Y.S.2d 310 (1st Dept. 2014) Renteria v. Simakov, 972 N.Y.S.2d 15 (1st Dept. 2013); Guacci v. Ogden Bros. Collision, Inc., 834 N.Y.S.2d 521 (1st Dept. 2007).

Additionally, it is well established that a rear-end collision with a stationary vehicle creates a prima facie case of negligence on the part of the operator of the offending vehicle and imposes a duty upon that operator to proffer a non-negligent explanation for his failure to maintain a safe distance between cars. Agramonte v. City of New York, 732 N.Y.S.2d 414 (1st Dept. 2001); Mitchell v. Gonzalez, 703 N.Y.S.2d 124 (1st Dept. 2000). "Drivers must maintain safe distances between their cars and cars in front of them and this rule imposes on them a duty to be aware of traffic conditions, including vehicle stoppages". Johnson v. Phillips, 690 N.Y.S.2d 545 (1st Dept. 1999). Here, plaintiff struck the rear of Carrillo's vehicle, thereby creating a prima facie case of liability against plaintiff. Therefore, plaintiff must proffer a non-negligent explanation for rear-ending Carrillo's vehicle. He fails to do so as plaintiff admits to only seeing Carrillo's stationary vehicle one to two seconds prior to the impact. In a case similar to the one here, plaintiff claimed that his view of defendants' disabled vehicle was blocked by a vehicle in front of him and that the collision occurred when the front vehicle suddenly made a lane change causing him to rear-end defendants' disabled vehicle. Russo v. Sabella Bus Co., 713 NY.S.2d 315 (1st Dept. 2000). The Court held that such circumstances create a presumption that the accident was due to the plaintiff's fault.

Accordingly, the motions for summary judgment by defendants Carrillo, Ortiz and Columbus are granted and the complaint is dismissed against them.

This constitutes the decision and Order of this Court.

Dated: 3/3/17

A. Y. Tuitt

Hon. Alison Y. Tuitt