

Blandino v Colaly Transp., Inc.
2013 NY Slip Op 34265(U)
September 23, 2013
Supreme Court, Bronx County
Docket Number: Index No 21965/12E
Judge: Lizbeth González
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: PART 10(e)

-----X
Miguel Blandino, Rosa Reynoso and
Junior Carty,

Plaintiffs,

-against-

Colaly Transportation, Inc. and Danny "Doe"
(last name unknown),

Defendants.

-----X

Recitation of the papers considered in reviewing the underlying motion for summary judgment as required by CPLR § 2219(a):

Notice of Motion and annexed Exhibits and Affidavits.....	1
Affirmation in Opposition and annexed Exhibits.....	2
Reply Affirmation.....	3

Plaintiffs Blandino, Reynoso and Carty claim that they sustained serious injuries as a result of the defendants' negligence. The plaintiffs allege that on 12/29/10 a taxicab owned by defendant Colaly Transportation Inc. ("Colaly") and operated by defendant Danny "Doe" rear-ended plaintiff Blandino's vehicle while stopped at a red light. Plaintiffs Reynoso and Carty were passengers in Mr. Blandino's vehicle. The plaintiffs move for summary judgment pursuant to CPLR 3212 on liability grounds and for an Order amending the caption to substitute defendant operator Danny "Doe" to Juan Perez-Guzman. The defendants partially oppose the plaintiffs' motion.

DISCUSSION

Summary judgment is a drastic remedy which "deprives the litigant of his day in court [and therefore] should only be employed when there is no doubt as to the absence of triable issues." (*Martin v Briggs*, 235 AD2d 192 [1st Dept 1997].)

In New York State, drivers are required to maintain a safe distance between their vehicles and any vehicles in front of them. (Vehicle and Traffic Law § 1129 [a]; *De La Cruz v Ock Wee Leong*, 16 AD3d 199 [1st Dept 2005].) In a rear-end collision, the rear-most driver is presumed to bear responsibility (*Mustafaj v Driscoll*, 5 AD3d 138 [1st Dept 2004]) and must rebut the inference of negligence by providing a non-negligent explanation for the collision. (*Garcia v. Bakemark Ingredients (East) Inc.*, 19 AD3d 224 [1st Dept 2005].) However, a triable issue of fact may be presented if the driver of the forward vehicle stopped or slowed suddenly. (*Sawhney v Bailey*, 13 AD3d 203 [1st Dept 2004].)

In support of their motion, the plaintiffs submit plaintiff Blandino's affidavit and the police report. Plaintiffs' counsel states in his affirmation that the original police report was lost by the police department. He states in part that "plaintiff Miguel Blandino came in [to the 34th Precinct] to re-create the lost report." The Court notes that a police accident report made by a police officer who was not an eyewitness containing hearsay, presumably self-serving, statements regarding the ultimate issues of fact may not be admitted into evidence for the purpose of establishing the cause of the accident in question. (*J. Fay III v Vargas*, 67 AD3d 568 [1st Dept 2009].) *Kajoshaj v Greenspan*, 88 AD2d 538 [1st Dept 1982].)

By affidavit dated 4/28/13, plaintiff Blandino states that on 12/29/10 at approximately 1:31PM, he was driving his vehicle on West 187th Street near the Wadsworth intersection.¹ The plaintiff states that a 2006 Lincoln rear-ended stopped his vehicle "as described on the attached police report."

¹ The accident site is in New York County. Plaintiff Blandino erroneously identifies the location as Bronx County.

The defendants partially oppose the plaintiffs' motion. The defendants do not oppose the amendment of the caption from "Danny Doe" to "Juan Guzman-Perez" to reflect the defendant driver's actual name. The defendants do oppose the plaintiffs' motion seeking summary judgment on liability grounds. The defendants contend that there are triable issues of fact and the motion is premature due to outstanding discovery. In support of their position, they proffer defendant Guzman-Perez's affidavit.

By affidavit dated 7/19/13, defendant Guzman-Perez states that plaintiff Blandino was traveling in front of him when he "stopped short, without warning, and double parked on West 187th Street in Manhattan, New York...in the middle of the block..." Mr. Guzman-Perez alleges that he stepped on his brakes, slid on snow/ice and tapped the rear-end of the plaintiff's vehicle.

CONCLUSION

The plaintiffs seek summary judgment on liability grounds. When deciding a motion for summary judgment, the Court's function is issue finding rather than issue determination. (*Sanchez v National Railroad Passenger Corp.*, 92 AD3d 600 [1st Dept 2012].) After a careful review and consideration of the evidence, the Court finds that there are triable issues of fact. Plaintiff driver Blandino states that he was stopped when rear-ended but fails to identify the accident location. Instead, he references the reconstructed police accident report, an uncertified and inadmissible document exclusively prepared with his post-accident statements. Defendant driver Guzman-Perez, who did not provide his version of events for the reconstructed police accident report, states that the plaintiff stopped short in front of him in the middle of the block. Where there are numerous inconsistencies as to how an accident occurred, the jury is in the best position to evaluate the credibility of the witnesses. (*James v Farhood*, 96 AD3d 503 [1st Dept 2012].) The plaintiffs'

motion is accordingly denied.

The plaintiffs' motion to amend the caption is granted. Defendant Guzman-Perez is deemed served since service was effected upon his counsel, McMahon, Martine & Gallagher, LLP, who answered and thus appeared in the action on Mr. Guzman-Perez's behalf.

The defendants shall serve the plaintiffs with a copy of this Decision and Order with notice of entry within 20 days.

This is the Decision and Order of the Court.

Dated: September 23, 2013

So ordered,



Hon. Lizbeth González, JSC