Cajigas v Wheels LT.
2014 NY Slip Op 34043(U)
January 29, 2014
Supreme Court, Bronx County
Docket Number: 22858/2013E
Judge: Mary Ann Brigantti

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SUPREME COURT STATE OF NEW YORK
COUNTY OF BRONX TRIAL TERM - PART 15

PRESENT: Honorable Mary Ann Brigantti-Hughes

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EUGENIA CAJIGAS and ELAINE NIEVES,

Plaintiffs,

-against-

DECISION / ORDER
Index No.22858/2013E

WHEELS LT., ENERSYS DELAWARE, INC., and FRANK CRUZ,

Defendants

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The following papers numbered 1 to 5 read on the below motion noticed on November 13, 2013 and duly submitted on the Part IA15 Motion calendar of **November 13, 2013**:

Papers Submitted	Numbered
Pl. Notice of Motion, Exhibits	1,2
Def. Aff. In Opp., Exhibits	3,4
Pl. Aff. In Reply	5

Upon the foregoing papers, the plaintiffs Eugenia Cajigas and Elaine Nieves ("Plaintiffs") moves for summary judgment on the issue of liability against the defendants Wheels, LT., Enersys Delaware, Inc., and Frank Cruz (collectively "Defendants"). Defendants oppose the motion.

Background

In an affidavit, plaintiff Cajigas states that on April 22, 2013, she was operating her vehicle northbound on the New England Thruway at approximately 10:00 AM. Plaintiff Nieves was a passenger in her vehicle. After leaving the highway at Exit 15, Plaintiffs' vehicle came to a complete stop at a stop sign located at the end of the exit ramp. Plaintiff Cajigas states that she was looking for traffic to clear so that she could make a right hand turn. As she was waiting for "about 20 seconds," Plaintiffs' vehicle was struck from behind by defendants' vehicle. Ms. Cajigas states that she did not hear the sound of any horn or have any warning that the accident was about to happen. Co-plaintiff Nieves also submits an affidavit. She also states that Plaintiffs' vehicle was struck from behind after waiting at a stop sign for about 20 seconds. After the impact, Ms. Nieves states that defendant driver "Mr. Cruz" came up to her and began cursing

at her. Mr. Cruz allegedly "wanted to leave the scene," but Ms. Nieves allegedly told him that he had to wait for police to arrive.

Plaintiffs also submit the police accident report. This report, however, must be disregarded since it was made by a non-eyewitness officer that contains hearsay statements of the parties regarding the ultimate issues of fact (*Quinones v. New England Motor Freight, Inc.*, 80 A.D.3d 514, 515 [1st Dept. 2011], citing *Figueroa v. Luna*, 281 A.D.2d 204, 205 [1st Dept. 2001]).

In opposition to the motion, Defendants submit an affidavit from their driver, Frank Cruz. He states, pertinently, that on the date of the accident, he was operating his vehicle on I-95 North and had exited that roadway to go to Boston Post Road. As he went down the exit ramp on the right side, Mr. Cruz alleges that he was the fourth vehicle from a yield sign. Each car in front of him stopped at the sign, "apparently looked left and turned right." Eventually, defendant's vehicle was second in line at the yield sign, with Plaintiffs' vehicle directly ahead of him, stopped. Plaintiffs' vehicle signaled right and started to turn. When the vehicle began to move, defendant states that he took his foot off of the brake and looked left for traffic. His truck was rolling forward at a minimum speed. Mr. Cruz then "glanced forward a second later" and Plaintiffs' vehicle "had made a short stop" in front of him. Defendant states that there was no reason to stop since there was no approaching traffic from the left. When he saw Plaintiffs' vehicle stop, defendants states that he hit his brake, but "still tapped her rear."

Applicable Law and Analysis

"It is well settled that a rear-end collision with a stopped or stopping vehicle establishes a prima facie case of negligence on the part of the driver of the rear vehicle, and imposes a duty on the part of the operator of the moving vehicle to come forward with an adequate non-negligent explanation for the accident." (*Cabrera v Rodriguez*, 72 A.D.3d 553 [1st Dept. 2010] *citing Tutrani v County of Suffolk*, 10 NY3d 906, 908 [2008]; *Agramonte v City of New York*, 288 AD2d 75, 76 [1st Dept. 2001]; *see also Dattilo v Best Transp. Inc* 79 A.D.3d 432 [1st Dept. 2010]). However, "not every rear-end collision is the exclusive fault of the rearmost driver. The frontmost driver also has the duty not to stop suddenly or slow down without proper signaling so as to avoid a collision. Thus, where the frontmost driver also operates his vehicle in a negligent

manner, the issue of comparative negligence is for a jury to decide." (*Gaeta v. Carter*, 6 A.D.3d 576, 577 (2nd Dept. 2004) [citations omitted]).

Here, Plaintiffs have established a prima facie case of negligence on the part of the Defendants, as it is not disputed that Defendants' vehicle struck the rear of Plaintiff's vehicle (see *Cabrera v Rodriguez, supra.*) The burden therefore shifts to Defendants to provide evidence of a "nonnegligent explanation for the accident, or a nonnegligent reason for [their] failure to maintain a safe distance between their car and the lead car." (*Mullen v. Rigor*, 8 A.D. 3D 104 [1st Dept. 2004] *citing Jean v Xu*, 288 A.D.2d 62, [1st Dept. 2001]; *Mitchell v Gonzalez*, 269 A.D.2d 250, 251 [1st Dept. 2000]).

In some circumstances, the Second Department has held that the sudden stop of a lead vehicle can constitute a sufficient explanation for a rear-end collision, such as when it fails to make a proper signal *Klopchin v. Masri*, 45 A.D.3d 737 (2nd Dept. 2007). Usually, sudden stops that are coupled with other negligent acts or violations of Vehicle and Traffic Law on the part of the stopped vehicle are sufficient to rebut the presumption of negligence *Id, see also Abbott v. Picture Cars East, Inc.*, 78 A.D.3d 869 (2nd Dept 2010) (defendant vehicle made improper lane change then stopped suddenly in front of plaintiff's vehicle). The First Department has repeatedly held, however, that a simple explanation that the plaintiff's vehicle suddenly stopped, is insufficient to rebut the presumption. *See Francisco v. Schoepfer*, 30 A.D.3d 275 (1st Dept. 2006); *Androvic v. Metropolitan Transp. Auth.*, 95 A.D.3d 610 (1st Dept. 2012). Indeed, it is well-settled that "[a] driver is expected to drive at a sufficiently safe speed and to maintain enough distance between himself and cars ahead of him to avoid collisions with stopped vehicles, taking into account weather and road conditions." *Malone v. Morillo*, 6 A.D.3d 324 (1st Dept. 2004), quoting *Mitchell v. Gonzalez*, 269 A.D.2d 250 (1st Dept. 2000).

Here, upon careful review of affidavit submitted in opposition, Defendants have failed to submit a sufficient non-negligent explanation for this accident. This accident occurred because the Plaintiffs' vehicle traveling in front of the defendant stopped suddenly. Mr. Cruz admits that he was looking to his left for oncoming traffic and by the time he realized the lead vehicle had stopped, he could not bring his truck to a stop to avoid the rear end impact. Even though Mr. Cruz asserts that Plaintiffs vehicle stopped for no apparent reason, he does not sufficiently explain his failure to maintain an adequate distance from the lead vehicle (*Malone v. Morillo,*

supra). Under these circumstances, Defendants have failed to sufficiently rebut Plaintiff's prima facie showing.

Conclusion

Accordingly, it is hereby

ORDERED, that summary judgment in favor of Plaintiffs on the issue of liability only is granted.

This constitutes the Decision and Order of this Court.

Dated: 1/29/14

Hon. Mary Ann Brigantti-Hughes, J.S.C.