SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 32

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RUBEN TORRES,

Plaintiff,

-against-

ETILEE TAXI, INC., PRINCE O. OHANMU, GEORGE & HAROULA TAXI, INC., and KAMAL AHMED MILON a/k/a MILON KAMAL AHMED

Defendants.

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Index No. 151964/2012
Motion Seq: 001

DECISION & ORDER

HON. ARLENE P. BLUTH

The motion by defendants George & Haroula Taxi, Inc. and Milon Kamal Ahmed for summary judgment on liability is granted.

Background

This action arises out of a motor vehicle accident rear-end collision in which plaintiff was a passenger in a taxi owned by defendant and driven by defendant Ahmed (the "front car") that was hit in the rear by a taxi owned by defendant Etilee and driven by defendant Ohanmu (the "rear car"). This accident occurred on February 18, 2012 on Madison Avenue near East 77th Street in New York, NY.

In a decision dated July 21, 2014, this Court granted defendants' motions for summary judgment on the ground that plaintiff did not sustain a serious injury within the meaning of the Insurance Law. The First Department, on February 4, 2016, reversed on the threshold serious injury question and directed that this Court consider the branch of the motion by the front car for summary judgment as to liability.

The front car moves for summary judgment on liability on the ground that it was lawfully stopped and hit from the rear.[1] The front car claims that because the rear car did not maintain a reasonably safe distance from its taxi, this Court must grant summary judgment for the front car. The front driver, Ahmed, testified that "[a]s I was going, most likely the car [in front] was slowing down. I probably had light on the brakes, lightly pressured" (Ahmed depo., exh F at 32). The front driver testified that he did not bring his car to a complete stop before his taxi was rear-ended (*id.* at 33-34) and he swore that he specifically remembered that his brake lights were operating on the day of the accident (*id.* at 16).

In opposition to the liability branch of the motion, plaintiff's attorney argues that the car in which plaintiff was a passenger (the front car) did not have operational brake lights and therefore all defendants should be jointly liable; the plaintiff himself, though, had no personal knowledge as to the brake lights. Plaintiff's attorney also argues that the front driver "admitted" after the accident that his taxi had been giving him unspecified "issues"; again, the plaintiff himself, though, never testified that he had any such conversations with his driver. Plaintiff does, however, testify that his car was stopped when it was hit from behind.

The rear car also opposes summary judgment on the ground that (1) the rear driver testified that he did not "see" brake lights, (2) the front driver related to the rear driver that the front car had been giving him unspecified "problems" and (3) that the front car did not start immediately after the accident.

The front driver denies that he had any car issues before the accident or that he told

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[1]Defendants G&H and Ahmed assert in paragraph 6 of their affirmation in support that fault does not lie with "Choudhart Sarwar and Way of Best Airport Transportation, Inc., but with co-defendants Sophia Han and Jenny Huang." The Court will assume that this is merely a typo.

anyone that he had problems with the car. Although his car did not start immediately after the accident, it eventually did and he drove it the rest of his shift. As set forth above, he also testified that his brake lights were working that night.

Discussion

To be entitled to the remedy of summary judgment, the moving party "must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact from the case" (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853, 487 NYS2d 316 [1985]). The failure to make such prima facie showing requires denial of the motion, regardless of the sufficiency of any opposing papers (*id.*). When deciding a summary judgment motion, the court views the alleged facts in the light most favorable to the non-moving party (*Sosa v 46th St. Dev. LLC*, 101 AD3d 490, 492, 955 NYS2d 589 [1st Dept 2012]). Once a movant meets its initial burden, the burden shifts to the opponent, who must then produce sufficient evidence to establish the existence of a triable issue of fact (*Zuckerman v City of New York*, 49 NY2d 557, 560, 427 NYS2d 595 [1980]). The court's task in deciding a summary judgment motion is to determine whether there are bonafide issues of fact and not to delve into or resolve issues of credibility (*Vega v Restani Constr. Corp.*, 18 NY3d 499, 505, 942 NYS2d 13 [2012]). If the court is unsure whether a triable issue of fact exists, or can reasonably conclude that fact is arguable, the motion must be denied (*Tronlone v Lac d'Amiante Du Quebec, Ltee*, 297 AD2d 528, 528-29, 747 NYS2d 79 [1st Dept 2002], *affd* 99 NY2d 647, 760 NYS2d 96 [2003]).

"Although a rear-end collision with a stopped vehicle creates a presumption of negligence

on the party of the operator of the moving vehicle, summary judgment is not warranted where . . . there are questions of fact as to whether the stopped vehicle was the proximate cause of the accident" (*Hernandez v Advance Tr. Co., Inc.*, 101 AD3d 483, 484, 954 NYS2d 869(Mem) [1st Dept 2012] [citation omitted]). An affidavit asserting that another vehicle stopped suddenly, standing alone, is "insufficient to rebut the presumption of negligence" (*Cruz v Lise*, 123 AD3d 514, 514, 999 NYS2d 41 [1st Dept 2014]).

Even if brake lights are inoperable, that does not necessarily rebut an inference of negligence against a vehicle that rear-ends a stopped vehicle (*see Farrington v New York City Tr. Auth.*, 33 AD3d 332, 332, 822 NYS2d 51 [1st Dept 2006]). "When . . . a rear-end collision occurs, the driver of the front vehicle is entitled to summary judgment on liability, unless the driver of the following vehicle can provide a nonnegligent explanation for the collision" (*Santana v Tick-Tak Limo Corp.*, 106 AD3d 572, 573-74, 966 NYS2d 30 [1st Dept 2013]). A driver's testimony that another driver "stopped short and that he could not see her brake lights is insufficient to rebut the presumption of negligence" (*id.* at 574 [internal quotations and citation omitted]).

"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 so as to avoid collisions with stopped vehicles" (*Malone v Morillo*, 6 AD3d 324, 325, 775 NYS2d 312 [1st Dept 2004] [internal quotations and citation omitted]; *see also* Vehicle and Traffic Law § 1129[a]).

Here, the front car satisfied its prima facie burden for summary judgment and neither the plaintiff nor the rear car presented a nonnegligent explanation for rear-ending the front car. Summary judgment is granted to the front car because the issues of fact presented are not

material to liability; under any presented scenario, the rear car still is solely liable.

The rear driver testified that he did not have a chance to stop before hitting the front car (Ohanmu depo., Exh. G at 13). He testified that "I hit the brake, but it was too late" (*id.* at 26). He admitted that he was traveling "[b]etween fifteen, twenty miles [per hour]" (*id.* at 27 and again at 33) and only one car length behind the front car (*id.* at 28).

There has been no legally significant nonnegligent explanation for rear-ending the front car. While there is conflicting testimony as to whether the front car was stopped or just slowing down, that is not legally significant - the rear car was too close and traveling too fast to stop in time.

Because the front car did not start up immediately after the accident, the plaintiff and rear car imply, in opposition to summary judgment, that the front car may have stalled or had car trouble causing it to stop or slow down unexpectedly; in that event, unless the front driver stepped on the brake pedal, the brake lights would not have illuminated.[2] The "car trouble" issue fails to defeat summary judgment for three reasons. First, there is no direct assertion of that, and implications do not defeat summary judgment. Second, the fact that a taxi may have been experiencing nonspecific problems does not demonstrate a nonnegligent explanation for the collision unless those 'problems' were shown to be the proximate cause of the accident. Here, there has been no such showing. And third, even if such a stall were proven, the rear driver still would be responsible because he was following too closely to stop in time.

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[2] Here, the front driver testified that his brake lights were working. The rear driver only says he did not *see* the brake lights; there is no proof that the brake lights were not working. Besides, as set forth above, even the lack of brake lights is not automatically a non-negligent reason for rear-ending another car.

If the rear driver, Ohanmu, had kept a reasonably safe distance from the front car, then he would have been able to stop his vehicle given that he testified that his taxi was traveling only 15-20 mph. The proximate cause of this accident was the rear driver's failure to maintain a safe distance from the front car.

Accordingly, it is hereby

ORDERED that G&H/Ahmed's motion for summary judgment on liability is granted and plaintiff's complaint and all cross claims against G&H/Ahmed are dismissed.

This is the Decision and Order of the Court.

Dated: December 12, 2016
New York, New York

ARLENE P. BLUTH
J.S.C.

ARLENE P. BLUTH, JSC