Bukowski v All Star Limousine Serv., LTD
2018 NY Slip Op 34360(U)
August 13, 2018
Supreme Court, Nassau County
Docket Number: Index No. 610019/16
Judge: James P. McCormack
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SUPREME COURT - STATE OF NEW YORK

PRESENT:

Honorable James P. McCormack
Justice

TRIAL/IAS, PART 23
NASSAU COUNTY

PIOTR BUKOWSKI,

Plaintiff,

Index No. 610019/16

Motions Submitted: 5/29/18
Motion Seq. 002

-against-

ALL STAR LIMOUSINE SERVICE, LTD and ARTHUR BRAUN,

Defendant(s).

The following papers read on this motion:

Notice of Motion/Supporting Exhibits............................X
Affirmation in Opposition...X
Reply Affirmation...X

Plaintiff, Piotr Bukowski (Bukowski), moves this court pursuant to CPLR §3212, for an order granting summary judgment on the issue of liability. Defendants, All Star Limousine Service, LTD (All Star) and Arthur Braun (Braun) oppose the motion. This action arises from a motor vehicle accident that occurred on November 4, 2016, on Sunrise Highway at its intersection with County Line Road, Massapequa, County of Nassau. On that date, Bukowski alleges he was rear ended by the vehicle operated by Braun, who was performing his duties as a driver for his employer, All Star. Plaintiff

[*1]

commenced this action by the service of a summons and complaint dated December 19, 2016. Issue was joined by service of an answer with counterclaim dated January 25, 2017.

It is well settled that in a motion for summary judgment the moving party bears the burden of making a *prima facie* showing that he or she is entitled to summary judgment as a matter of law, submitting sufficient evidence to demonstrate the absence of a material issue of fact (*see Sillman v. Twentieth Century Fox Film Corp.*, 3 NY2d 395 [1957]; *Friends of Animals, Inc. v. Associates Fur Mfrs.*, 46 NY2d 1065 [1979]; *Zuckerman v. City of New York,* 49 NY2d 5557 [1980]; *Alvarez v. Prospect Hospital,* 68 NY2d 320 [1986]).

The failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers (*see Winegard v. New York University Medical Center,* 64 NY2d 851 [1985]). Once this showing has been made, however, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action (*see Zuckerman v. City of New York,* 49 NY2d 5557 [1980], *supra*). The primary purpose of a summary judgment motion is issue finding not issue determination, *Garcia v. J.C. Duggan, Inc.*, 180 AD2d 570 (1st Dept. 1992), and it should only be granted when there are no triable issues of fact (*see also Andre v. Pomeroy,* 35 N2d 361 [1974]).

In support of the motion, Bukowski submits, *inter alia,* his deposition transcript as well as Braun's deposition transcript. Bukowski testified he was driving his car and stopped at a red light. He was in the middle lane of three lanes, and was the first car at

the light. After being stopped for "five to ten seconds" he felt an impact to the rear of his car. Braun also testified that he was driving in the middle lane and began to slow down when he saw the light turn to red. He was unable to slow down in time to avoid hitting Bukowski's vehicle. He admits that Bukowski's car was stopped at the time of the accident.

It is well settled that a rear-end collision is sufficient to establish a *prima facie* case of liability against the operator of the offending vehicle and imposes a duty upon said operator to rebut the inference of negligence by providing a sufficient explanation (*see Young v. City of New York,* 113 AD2d 844 [2d Dept. 1985]; *Benyarko v. Avis Rent A Car System, Inc.,* 162 AD2d 572 [2d Dept. 1990]; *Ayach v. Ghazal,* 25 AD3d 742 [2d Dept. 2006]; *Connors v. Flaherty,* 32 AD3d 891 [2d Dept. 2006]).

The court finds Bukowski has established entitlement to summary judgment as a matter of law. The burden shifts to Defendants to raise a material issue of fact requiring a trial of the action.

In opposition, Defendants submit only an affirmation of counsel, and no admissible evidence. They make no argument that Braun was not negligent, and instead just cite to case law arguing that an issue of fact exists.

In a rear end collision situation, it is the rear driver's duty to maintain a safe distance between his vehicle and the vehicle in front of his. Failure to do so will establish a *prima facie* case of negligence, as a matter of law (*Lifshitz v. Variety Polbans,* 278 AD2d 372 [2d Dept. 2000]; *Pena v. Allen,* 272 AD2d 311 [2d Dept. 2000]; *Hernandez v. Burkitt,* 271 AD2d 648 [2d Dept. 2000]). "Vehicle stops which are foreseeable under the prevailing traffic conditions, even if sudden and frequent, must be anticipated by the

driver who follows, since he or she is under a duty to maintain the safe distance between his or her car and the car ahead." (*see Sharma v. Richmond County Ambulance Serv.*, 279 AD2d 564 [2nd Dept. 2001]). It was Braun's responsibility to keep a safe distance. He failed to do so. (*Lifshitz v. Variety Polbans*, *supra*).

Accordingly, it is hereby

ORDERED, that Plaintiff's motion for summary judgment on the issue of liability is GRANTED.

This constitutes the Decision and Order of the Court.

Dated: August 13, 2018
Mineola, N.Y.

Hon. James P. McCormack, J. S. C.

ENTERED
AUG 14 2018
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