Jooyoul Oh v Caceres
2019 NY Slip Op 34873(U)
November 14, 2019
Supreme Court, Bronx County
Docket Number: Index No. 31733/2017E
Judge: John R. Higgitt

NEW YORK SUPREME COURT – COUNTY OF BRONX Mtn. Seq. # 01

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: **PART 14**

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OH, JOOYOUL, et ano

Index №. **31733/2017E**

- against -

Hon. **JOHN R. HIGGITT**,

CACERES, YELFRY JEREZ

A.J.S.C.

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The following papers in the NYSCEF System were read on this motion for **SUMMARY JUDGMENT (LIABILITY)**, noticed on **November 4, 2019** and duly submitted as No. **27** on the Motion Calendar of **November 4, 2019**

	NYSCEF Doc. Nos.
Notice of Motion – Exhibits and Affidavits Annexed	12-22
Notice of Cross-Motion – Exhibits and Affidavits Annexed	24
Answering Affidavit and Exhibits	23, 28
Replying Affidavit and Exhibits	26-27
Filed Papers	
Memoranda of Law	
Stipulations	

Upon the foregoing papers, the motion of plaintiff Jooyoul Oh for summary judgment dismissing defendant's counterclaim is granted, and the cross motion of plaintiffs for partial summary judgment on the issue of defendant's liability for causing the subject motor vehicle accident is granted, in accordance with the annexed decision and order.

Dated: **11/14/2019**

Hon. _____
JOHN R. HIGGITT, A.J.S.C.

Check one:
□ Case Disposed in Entirety
■ Case Still Active

Motion is:
■ Granted □ GIP
□ Denied □ Other

Check if appropriate:
□ Schedule Appearance
□ Fiduciary Appointment
□ Referee Appointment
□ Settle Order
□ Submit Order

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: I.A.S. PART 14

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JOOYOUL OH and JOUNG HEE OH,

Plaintiffs,

- against -

YELFRY JEREZ CACERES,

Defendant.

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DECISION AND ORDER

Index No. 31733/2017E

John R. Higgitt, J.

Upon the September 23, 2019 notice of motion of plaintiff Jooyoul Oh and the affirmation, exhibits and memorandum of law submitted in support thereof; plaintiffs' October 16, 2019 notice of cross motion and the affirmation submitted in support thereof; defendant's October 3, 2019 and October 21, 2019 affirmations in opposition; plaintiff Jooyoul Oh's October 18, 2019 affirmation in reply; and due deliberation; the motion of plaintiff Jooyoul Oh for summary judgment dismissing defendant's counterclaim is granted, and the cross motion of plaintiffs for partial summary judgment on the issue of defendant's liability for causing the subject motor vehicle accident is granted.

In support of the motion, plaintiff Jooyoul Oh submits the transcripts of the parties' deposition testimony and the police accident report. In support of their cross motion, plaintiffs adopt the arguments and proof of plaintiff Jooyoul Oh's motion.

According to the testimony highlighted by plaintiff Jooyoul Oh, plaintiffs testified that Jooyoul Oh brought his vehicle to a stop at a stop sign before attempting to turn right, and was rear-ended by defendant's vehicle while making the turn. Defendant testified that the front passenger side of his vehicle struck the left side of plaintiffs' vehicle.

Although the accident report was not certified, it contains a statement, ostensibly attributable to defendant, admitting that he struck plaintiffs' vehicle while trying to go around it.

Such statement is admissible as a party admission (*see Liburd v Lulgjuraj*, 156 AD3d 532 [1st Dept 2017]; *Pivetz v Brusco*, 145 AD3d 806 [2d Dept 2016]; *Jackson v Trust*, 103 AD3d 851 [2d Dept 2013]; *Penn v Kirsh*, 40 AD2d 814 [1st Dept 1972]; *see also Delgado v Martinez Family Auto*, 113 AD3d 426 [1st Dept 2014]).

In opposition, defendant asserts that there are issues of fact as to his and plaintiff Jooyoul Oh's negligence. He points to plaintiffs' testimony that they did not see the vehicle that struck their vehicle from behind prior to the accident. Defendant also points to his own testimony that the accident occurred because "plaintiff became frightened and reacted to a vehicle that was exiting from the parking lot located in front of the stop sign" at the corner (*see* October 3, 2019 Noll affirmation at para. 10 and October 21, 2019 Noll affirmation at para. 9). Defendant testified that the accident occurred while he was traveling at approximately one to two miles per hour.

"A rear-end collision with a stationary vehicle creates a prima facie case of negligence requiring a judgment in favor of the stationary vehicle unless defendant proffers a nonnegligent explanation for the failure to maintain a safe distance . . . A driver is expected to drive at a sufficiently safe speed and to maintain enough distance between himself [or herself] and cars ahead of him [or her] so as to avoid collisions with stopped vehicles, taking into account weather and road conditions" (*LaMasa v Bachman*, 56 AD3d 340, 340 [1st Dept 2008]). The happening of a rear-end collision is itself a prima facie case of negligence on the part of the rearmost driver in a chain confronted with a stopped or stopping vehicle (*see Cabrera v Rodriguez*, 72 AD3d 553 [1st Dept 2010]).

The general rule regarding liability for rear-end accidents "has been applied when the front vehicle stops suddenly in slow-moving traffic; even if the sudden stop is repetitive; when

the front vehicle, although in stop-and-go traffic, stopped while crossing an intersection; and when the front car stopped after having changed lanes" (*Johnson v Phillips*, 261 AD2d 269, 271 [1st Dept 1999]). The sudden stop of the lead vehicle, without more (*see Cabrera*, *supra*), "is generally insufficient to rebut the presumption of non-negligence on the part of the lead vehicle" (*Woodley v Ramirez*, 25 AD3d 451, 452 [1st Dept 2006] [citations omitted]). The fact that the lead vehicle is stopped when rear-ended is prima facie evidence that its driver was not negligent (*see Falcone v Dorius*, 160 AD3d 578 [1st Dept 2018]). Thus, the claim of the sudden stop of the lead vehicle, without more, is insufficient to overcome the dual presumptions of the negligence of the rear driver and the non-negligence of the front driver (*see Giap v Hathi Son Pham*, 159 AD3d 484 [1st Dept 2018]).

"A driver of a vehicle approaching another vehicle from the rear is required to maintain a reasonably safe distance and rate of speed under the prevailing conditions to avoid colliding with the other vehicle" (*Nsiah-Ababio v Hunter*, 78 AD3d 672, 672 [2d Dept 2010]; *see also* Vehicle and Traffic Law § 1129[a]; *Niyazov v Hunter EMS, Inc.*, 154 AD3d 954 [2d Dept 2017]; *Service v McCoy*, 131 AD3d 1038 [2d Dept 2015]). Vehicle and Traffic Law § 1129(a) states that a "driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon and the condition of the highway" (*see Darmento v Pacific Molasses Co.*, 81 NY2d 985, 988 [1993]). Based on the plain language of the statute, a violation is clear when a driver follows another too closely without adequate reason and that conduct results in a collision (*see id.*). Responsibility presumptively rests with the rear-most driver in a rear-end motor vehicle collision (*see Mustafaj v Driscoll*, 5 AD3d 138 [1st Dept 2004]).

The presumption of the negligence of the rear driver has been applied where the vehicles

have started to move from a stop at a traffic control device (*see e.g. Brown v Smalls*, 104 AD3d 459 [1st Dept 2013]; *Savarese v Cerrachio*, 79 AD3d 725 [2d Dept 2010]). Defendant's explanation "that the plaintiff proceeded [after turning right at a stop sign] but then suddenly stopped, did not rebut the inference of negligence by providing a non-negligent explanation for the collision" (*Ramirez v Konstanzer*, 61 AD3d 837, 837-38 [2d Dept 2009]; *see also Rodriguez v Budget Rent-A-Car Sys., Inc.*, 44 AD3d 216 [1st Dept 2007]). Thus, "[a]lthough [defendant's] version of the events leading to the subject rear-end collision differed from the [plaintiff's] version of events, [defendant's] version of events, even if accepted as true, did not raise a triable issue of fact as to the existence of a nonnegligent explanation for the rear-end collision" (*Cajas-Romero v Ward*, 106 AD3d 850 [2d Dept 2013]).

Defendant has thus failed to rebut the presumption of his negligence and the presumption of plaintiff Jooyoul Oh's non-negligence (*see Dattilo v Best Transp. Inc.*, 79 AD3d 432 [1st Dept 2010]; *see also Buchanan v Keller,* 169 AD3d 989, 992 [2d Dept 2019] ["[defendant's] testimony [that plaintiff's vehicle stopped suddenly after moving from a stopped position when the traffic signal turned green] amounted to a claim that the plaintiff's vehicle came to a sudden stop which, standing alone, was insufficient to rebut the presumption of negligence on the part of the defendants' vehicle"]; *Little v Morillo*, 168 AD3d 433 [1st Dept 2019]; *Vasquez v Chimborazo*, 155 AD3d 432 [1st Dept 2017]; *Torres v Kalmar*, 136 AD3d 457 [1st Dept 2016]), particularly because he testified that he was travelling at minimal speed at the time of the accident. The court notes that the accident is alleged to have occurred on a local public roadway within the City of New York (*see Animah v Agyei*, 63 Misc 3d 783 [Sup Ct, Bronx County 2019]).

Any differences in the parties' factual recitations do not raise <u>material</u> issues of fact (*see*

Ohlhausen v City of New York, 73 AD3d 89 [1st Dept 2010]; *Lizardo v Board of Educ. of the City of N.Y.*, 77 AD3d 437 [1st Dept 2010]),[1] and do not provide a basis for finding that plaintiff Jooyoul Oh was at fault (*see Lopez v Morel-Ulla*, 144 AD3d 504 [1st Dept 2016]). Defendant's failure to observe traffic conditions and maintain a safe stopping distance behind plaintiffs' vehicle proximately caused the accident (*see Malone v Morillo*, 6 AD3d 324 [1st Dept 2004] [citations omitted]).

The court notes that plaintiffs did not seek (and the court has not considered) dismissal of defendant's affirmative defense(s) regarding plaintiffs' culpable conduct (*see* CPLR 2214[a]; *cf. Poon v Nisanov*, 162 AD3d 804 [2d Dept 2018]), or any relief with respect to plaintiffs' claims of "serious injury."

Accordingly, it is

ORDERED, that the motion of plaintiff Jooyoul Oh for summary judgment dismissing defendant's counterclaim is granted, and the counterclaim is dismissed; and it is further

ORDERED, that the cross motion of plaintiffs for partial summary judgment on the issue of defendant's liability for causing the subject motor vehicle accident is granted.

The parties are reminded of the February 21, 2020 compliance conference before the undersigned.

This constitutes the decision and order of the court.

Dated: November 14, 2019

John R. Higgitt, A.J.S.C.

[1] "[F]actual disputes are not enough; they must relate to material issues" (*Forrest v Jewish Guild for the Blind*, 3 NY3d 295, 312 [2004]).