Lee v Morales
2020 NY Slip Op 35345(U)
December 30, 2020
Supreme Court, Bronx County
Docket Number: Index No. 23587/20
Judge: Ben R. Barbato
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CEF# 001

Motion is Respectfully Referred to Justice: _____
Dated: _____

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX, PART 14

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23587/20

JACQUELINE LEE and KEVIN D. ROMERO,, Index №. ~~35206/2019~~E

Plaintiffs,

-against-

Hon. BEN R. BARBATO
Justice Supreme Court

GABRIEL MORALES and ENID Y. REYES,

Defendants.

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The following papers in the NYSCEF system numbered 10 to 28 were read on this motion (Seq. No.1) for **SUMMARY JUDGMENT LIABILITY** noticed on **October 5, 2020**.

Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed	No(s). 10-19
Answering Affidavit and Exhibits	No(s). 20-28
Replying Affidavit and Exhibits	No(s) .

Plaintiffs move for an order pursuant CPLR §3212, granting Plaintiffs summary judgment on the issue of liability as against Defendants and pursuant to CPLR 3211(b) for an order striking Defendants' first and second affirmative defenses. Plaintiff Kevin D. Romero (hereinafter "Plaintiff Romero") also moves for an order pursuant to CPLR 3212 granting summary judgment on the counterclaim on the grounds that he bears no liability for the subject accident.

Plaintiffs commenced this action to recover for personal injuries sustained in a motor vehicle accident that occurred on January 19, 2019 on East 134th Street, intersecting Brook Avenue, Bronx, New York, when a vehicle owned by Defendant Gabriel Morales (hereinafter "Defendant Morales") and operated by Defendant Enid Y. Reyes (hereinafter "Defendant Reyes"), struck Plaintiffs' vehicle in the rear.

In support of the motion, counsel for Plaintiffs' attorneys each submitted an Affirmation in Support, the Certified Police Report, the Affidavit of the driver, Plaintiff Romero, and an Affidavit of the passenger, Plaintiff Jacqueline Lee (hereinafter "Plaintiff Lee"). According to the Certified Police Report, the driver of Defendants' vehicle,

[* 1]

stated that he struck Plaintiffs' vehicle in the rear when the driver of Plaintiffs' vehicle pulled out of a parking spot. The driver of Defendants' vehicle stated in the Certified Police Report that he could not stop in time.

Plaintiff Romero states in his Affidavit that his vehicle was stopped for approximately 20 seconds at a red light on East 134th Street intersecting Brook Avenue, Bronx, New York when Defendant Morales struck his vehicle. Plaintiff Romero claims that there was nothing he could do to avoid the collision. Plaintiffs argue that Defendant Morales failed to maintain a reasonably safe distance between himself and Plaintiffs' vehicle.

Defendants did not oppose either the motion or cross motion.

Since summary judgment is a drastic remedy, it should not be granted where there is any doubt as to the existence of a triable issue. (See Rotuba Extruders v Ceppos, 46 N.Y.2d 223 [1978]). A rear end collision with a vehicle establishes a prima facie case of negligence against the rear most driver (see Santos v Booth, 1125 A.D.3d 506, 506 [1st Dept 2015]; see also Woodley v Ramirez, 25 A.D.3d 451 [1st Dept 2006]). In a chain-reaction collision, responsibility presumptively rests with the rearmost driver. (See Chang v Rodriguez, 57 A.D.3d 295 [1st Dept 2008]). The rule is that a driver must maintain a safe distance between his vehicle and the one in front of him. (See Vehicle and Traffic Law Section 1129[a] "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 vehicle and the traffic upon the condition of the highway"). A violation of Vehicle and Traffic Law section 1129(a) is prima facie evidence of negligence (see Rodriguez v Budget RentA-Car Sys., Inc., 44 A.D.3d 216, 223-224, [1st Dept 2007]).

In a rear-end collision, there is a presumption of non-negligence of the driver of the lead vehicle. (See Soto-Maroquin v Mellet, 63 A,D,3d 449 [1st Dept 2009]). "[U]nless the driver of the following vehicle presents a non-negligent explanation for the accident, or a non-negligent reason for his failure to maintain a safe distance between

his car and the lead car [a] claim that the lead vehicle 'stopped suddenly' is generally insufficient to rebut the presumption of non-negligence on the part of the lead vehicle" (Woodley v Ramirez, 25 A.D.3d at 452). First Department case law is clear that "a claim by the rear driver that 'the lead vehicle made a sudden stop, standing alone, is insufficient to rebut the presumption of negligence.' " Bajrami v. Twinkle Cab Corp., 147 A.D.3d 649, 46 N.Y.S.3d 879 (1st Dept. 2017) citing Cabrera v. Rodriguez, 72 A.D.3d 553, 553, 900 N.Y.S.2d 29 (1st Dept.2010). See Ly Giap v. Hathi Son Pham, 159 A.D.3d 484, 485, 71 N.Y.S.3d 504, 506 (2018) ("A claim that the lead driver came to a sudden stop, standing alone, is insufficient to rebut the presumption that the rearmost driver was negligent and the stopped vehicle was not negligent"). "[T]he emergency doctrine is typically not available to the rear driver in a rear-end collision, who is responsible for maintaining a safe distance." Vanderhall v. MTA Bus Co., 160 A.D.3d 542, 542–43, 74 N.Y.S.3d 548, 549 (1st Dept. 2018).

Vehicle stops which are foreseeable under the 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 a safe distance between his or her car and the car ahead (Diller v. City of New York Police Dept, 269 A.D.2d 143, [1st Dept 2000]). It is well established that a rear end collision with a stopped or stopping vehicle creates a prima facie case of negligence against the operator of the rear vehicle, unless the rear-most driver can proffer a non-negligent explanation for the accident (Urena v. GVC LTD 160 A.D.3d 467[1st Dept 2018]; Matos v. Sanchez, 147 A.D.3d 585[1st Dept 2017]).

In this case, upon a review of the Affirmations in Support, the Certified Police Report, and Plaintiffs' Affidavits, the Court finds that there was no negligence on the part of Plaintiffs when Defendants' vehicle rear ended Plaintiffs' vehicle. Plaintiffs have met their burden of establishing a prima facie showing of entitlement to summary judgment on the issue of liability.(See Williams v Hamilton, 116 A.D.3d 421, 422, [1st Dept 2014]).

In light of this prima facie showing, the burden shifted to Defendants who failed to produce evidence of a "non-negligent explanation for the accident, or a non-negligent reason for their failure to maintain a safe distance between their car and Plaintiffs'

vehicle. See Mullen v. Rigor, 8 A.D. 3d. 104 (1st Dept. 2004) citing Jean v Xu, 288 A.D.2d 62, (1st Dept. 2001).

Accordingly, it is hereby

ORDERED, that Plaintiffs' motion for an order granting summary judgment on the issue of liability is granted; it is further

ORDERED, that Plaintiffs' motion for an order striking Defendants' first and second affirmative defenses is granted; it is further

ORDERED, that Plaintiff Romero's cross motion for an order granting summary judgment on the issue of liability is granted, and Defendants' counterclaim against Plaintiff Romero is dismissed.

This constitutes the Decision and Order of the Court.

Dated: 12/30/2020

Hon: _____
JSC
HON. BEN. R. BARBATO, J.S.C.