Brito v Santiago
2020 NY Slip Op 35538(U)
October 8, 2020
Supreme Court, Bronx County
Docket Number: Index No. 27813/2019E
Judge: Ben R. Barbato
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Motion is Respectfully Referred to Justice: _____
Dated: _____

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

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BERNARDO BRITO,

Plaintiff

-against-

ROBERT SANTIAGO AND DELIA SANTIAGO,

Defendants.

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Index №. 27813/2019E

Hon. BEN R. BARBATO

Justice Supreme Court

The following papers in the NYSCEF system numbered 15 to 20 were read on this motion (Seq. No. 1) for **SUMMARY JUDGMENT LIABILITY** noticed on **September 4, 2020**.

Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed	No(s).	15-20
Answering Affidavit and Exhibits	No(s).	
Replying Affidavit and Exhibits	No(s)	

Plaintiff moves for an order pursuant CPLR §3212, granting Plaintiff summary judgment on the issue of liability as against Defendants and a finding that Defendants are totally liable for the accident without there being any comparative negligence on the part of Plaintiff.

This is an action to recover for personal injuries sustained in a rear end motor vehicle accident that occurred on May 8,, 2019 at approximately 2:30pm, when Plaintiff was driving a 2011 Toyota sedan westbound on East 161st Street, in Bronx, New York. At the time of the accident, Plaintiff's vehicle was stopped in the parking lane on East 161st Street to discharge passengers when it was struck from behind by defendants' vehicle, a 2013 Nissan.

In support of the motion, counsel for Plaintiff submitted an Affirmation in Support. Portions of Plaintiff's deposition testimony, and the Certified Police Report. Plaintiff appeared for deposition on January 29, 2020. Plaintiff testified that he was involved in the subject motor vehicle collision on May 8, 2019, at which time the weather was

clear and the roads were dry and, was the driver of a livery vehicle, and worked with Apollo Car Service. Plaintiff testified that at the time of the accident, his vehicle was stopped in the parking lane of westbound 161st Street, in Bronx, New York as he was at a complete stop in the process of being paid by an exiting passenger with its hazard lights on, for approximately five minutes. Plaintiff testified that, without any prior warning, there was heavy impact to the rear of his vehicle from the other vehicle. He stated that at the time of this impact, he was wearing his seatbelt

According to the Certified Police Report, at the time and place of occurrence, Defendants' vehicle was traveling westbound when it struck the left rear section of Plaintiff's vehicle, causing damage to that area of Plaintiff's vehicle and damage to the right front section of Defendants' vehicle.

Defendants did not oppose Plaintiff's 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 Affirmation in Support, Plaintiff's deposition testimony and the Certified Police Report, the Court finds that there was no negligence on the part of Plaintiff, and he has met his burden of establishing a prima facie showing of entitlement to summary judgment on 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 Defendants 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, Plaintiff's motion for an order granting summary judgment on the issue of liability is granted without opposition.

This constitutes the Decision and Order of the Court.

Dated: 10/15/2020 Hon: _____

J.S.C

HON. BEN R. BARBATO