Robitaille v Coyle
2021 NY Slip Op 32998(U)
May 19, 2021
Supreme Court, Suffolk County
Docket Number: Index No. 622625/2018
Judge: Martha L. Luft

SHORT FORM ORDER

INDEX No. 622625/2018
CAL. No. 202001191MV

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 50 - SUFFOLK COUNTY

PRESENT:

Hon. MARTHA L. LUFT
Acting Justice of the Supreme Court

MOTION DATE 1/25/21(002)
MOTION DATE 2/4/21(003)
ADJ. DATE 4/6/21
Mot. Seq. # 002 MD
Mot. Seq. # 003 MG

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ANTHONY ROBITAILLE,

Plaintiff,

- against -

DESIREA COYLE, KRISTIAN URQUIZA and ALEXIS KEARNEY,

Defendants.

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Upon the following papers read on these e-filed motions for summary judgment: Notice of Motion/ Order to Show Cause and supporting papers by defendant Urquiza, filed December 29, 2020; by defendant Kearney, filed January 11, 2021; Answering Affidavits and supporting papers by defendant Coyle, filed March 2, 2021; by plaintiff, filed March 29, 2021; by defendant Coyle, filed March 2, 2021; Replying Affidavits and supporting by defendant Urquiza, filed March 5, 2021; by defendant Urquiza, filed April 2, 2021; by defendant Kearney, filed March 9, 2021; by defendant Kearney, filed March 29, 2021; Other _____; it is

ORDERED that the motion by defendant Kristian Urquiza and the motion by defendant Alexis Kearney are consolidated for purposes of this determination; and it is further

ORDERED that the motion by defendant Kristian Urquiza for summary judgment dismissing the complaint and cross claims against him is denied; and it is further

ORDERED that the motion by defendant Alexis Kearney for summary judgment dismissing the complaint and cross claims against her is granted.

This is an action to recover damages for injuries allegedly sustained by plaintiff Anthony Robitaille, as a result of a motor vehicle accident, which occurred on April 22, 2018, on the Long Island Expressway, at or near exit 53, in the Town of Islip, New York. The subject accident allegedly occurred when a vehicle owned and operated by defendant Desirea Coyle struck the rear of plaintiff's vehicle, which was parked alongside the Long Island Expressway. Plaintiff allegedly had parked his vehicle on the side of the roadway, behind the vehicle owned by defendant Alexis Kearney and operated by defendant Kristian Urquiza, after their vehicles were involved in a collision. Plaintiff and Mr. Urquiza were standing outside their vehicles, conversing and exchanging information, when the subject accident occurred. Plaintiff allegedly was struck by his own vehicle after it was hit in the rear and propelled forward by the Coyle vehicle. Ms. Kearney was a front seat passenger of the vehicle driven by Mr. Urquiza at the time of the collisions.

Mr. Urquiza now moves for summary judgment dismissing the complaint and cross claims against him on the ground that he was not negligent, and that Ms. Coyle's negligence in striking plaintiff's vehicle was the proximate cause of the accident and plaintiff's injuries. He submits, in support of the motion, copies of the pleadings, the bill of particulars, the transcript of his deposition testimony, and the transcripts of the deposition testimony of plaintiff, Ms. Coyle, and Ms. Kearney.

Ms. Kearney also moves for summary judgment dismissing the complaint and cross claims against her on the grounds that she was not negligent as the owner or passenger of the vehicle operated by Mr. Urquiza, and that Ms. Coyle's vehicle striking plaintiff's vehicle was the proximate cause of the accident and plaintiff's injuries. She submits, among other things, copies of the pleadings, the bill of particulars, the transcript of her deposition testimony, and the transcripts of the deposition testimony of plaintiff, Mr. Urquiza, and Ms. Coyle.

In opposition to both motions, plaintiff argues that the Noseworthy doctrine applies, and that Mr. Urquiza negligently forced plaintiff's vehicle off the roadway with no option but to park on the shoulder and partially in the lane of travel. He submits, among other things, certified medical records of St. Charles Hospital. Ms. Coyle also opposes the motions, arguing that her unsigned deposition transcript is inadmissible, and that a triable question of fact remains as to which collision caused plaintiff's injuries.

Initially, the Court notes that the transcript of Ms. Coyle's deposition testimony is inadmissible, as it is unsigned, the signature of the certifying stenographer is redacted, and Mr. Urquiza and Ms. Kearney failed to demonstrate that it was previously forwarded to her for her review pursuant to CPLR 3116 (a) (*see* ***Elentuck v New York City Tr. Auth.***, 188 AD3d 825, 135 NYS3d 489 [2d Dept 2020]; *cf.*

Montalvo v United Parcel Service, Inc., 117 AD3d 1104, 986 NYS2d 551 [2d Dept 2014]; ***Franzese v Tanger Factory Outlet Centers, Inc.***, 88 AD3d 763, 930 NYS2d 900 [2d Dept 2011]).

The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law by tendering evidence in admissible form sufficient to eliminate any material issues of fact from the case (***Alvarez v Prospect Hosp.***, 68 NY2d 320, 508 NYS2d 923 [1986]; ***Winegrad v New York Univ. Med. Ctr.***, 64 NY2d 851, 487 NYS2d 316 [1985]). The movant has the initial burden of proving entitlement to summary judgment (***Winegrad v New York Univ. Med. Ctr.***, *supra*). Failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers (***Winegrad v New York Univ. Med. Ctr.***, *supra*). Once such proof has been offered, the burden then shifts to the opposing party who must proffer evidence in admissible form and must show facts sufficient to require a trial of any issue of fact to defeat the motion for summary judgment (CPLR 3212 [b]; ***Alvarez v Prospect Hosp.***, *supra*; ***Zuckerman v City of New York***, 49 NY2d 557, 427 NYS2d 595 [1980]).

A failure to comply with the Vehicle and Traffic Law constitutes negligence as a matter of law (***Marcel v Sanders***, 123 AD3d 1097, 1 NYS3d 230 [2d Dept 2014]; ***Adobea v Junel***, 114 AD3d 818, 980 NYS2d 564 [2d Dept 2014]; ***Colpan v Allied Cent. Ambulette, Inc.***, 97 AD3d 776, 949 NYS2d 124 [2d Dept 2012]). A driver is negligent if he or she failed to see that which, through the proper use of senses, should have been seen (***Nohs v Diraimondo***, 140 AD3d 1132, 35 NYS3d 209 [2d Dept 2016]; ***Thompson v Schmitt***, 74 AD3d 789, 902 NYS2d 606 [2d Dept 2010]). The presumption of negligence in rear-end cases arises from the duty of the driver of the following vehicle to keep a safe distance and not collide with the traffic ahead (*see* Vehicle and Traffic Law § 1129 [a]; ***Witonsky v New York City Tr. Auth.***, 145 AD3d 938, 43 NYS3d 505 [2d Dept 2016]; ***Service v McCoy***, 131 AD3d 1038, 16 NYS2d 283 [2d Dept 2015]). A rear-end collision with a stopped or stopping vehicle creates a prima facie case of negligence on the part of the driver of the rear vehicle, and imposes a duty on that driver to proffer a non-negligent explanation for the collision (***Capuozzo v Miller***, 188 AD3d 1137, 136 NYS3d 416 [2d Dept 2020]; ***Clements v Giatas***, 178 AD3d 894, 112 NYS3d 539 [2d Dept 2019]; ***Mihalatos v Barnett***, 175 AD3d 492, 106 NYS3d 165 [2d Dept 2019]; ***Conroy v New York City Tr. Auth.***, 167 AD3d 977, 91 NYS3d 183 [2d Dept 2018]; ***Tsyganash v Auto Mall Fleet Mgt., Inc.***, 163 AD3d 1033, 83 NYS3d 74 [2d Dept 2018]). If the driver of the offending vehicle cannot come forward with evidence to rebut the inference of negligence, the driver of the stopped or stopping vehicle is entitled to summary judgment on the issue of liability (***Tsyganash v Auto Mall Fleet Mgt., Inc.***, *supra*; ***Cortes v Whelan***, 83 AD3d 763, 922 NYS2d 419 [2d Dept 2011]).

"A defendant moving for summary judgment in a negligence action has the burden of establishing, prima facie, that he or she was not at fault in the happening of the subject accident" (***Kante v Tong Fei Chen***, 176 AD3d 928, 929, 111 NYS3d 612 [2d Dept 2019]; *see* ***Green v Masterson***, 172 AD3d 826, 98 NYS3d 443 [2d Dept 2019]; ***Searless v Karczewski***, 153 AD3d 957, 60 NYS3d 431 [2d Dept 2017]; ***Bernstein v New York City Tr. Auth.***, 153 AD3d 897, 61 NYS3d 113 [2d Dept 2017]). There can be more than one proximate cause of an accident, and it is generally for the trier of fact to determine the issue of proximate cause (***Searless v Karczewski***, *supra*).

Mr. Urquiza failed to establish his prima facie entitlement to summary judgment dismissing the complaint and the cross claim for comparative negligence by Ms. Coyle. The evidence demonstrates Mr. Urquiza's negligence, as he violated Vehicle and Traffic Law § 1129 when his vehicle struck the rear of plaintiff's vehicle on the Sagtikos Parkway shortly before the collision with Ms. Coyle's vehicle on the Long Island Expressway (*see* ***Lopez v Dobbins***, 164 AD3d 776, 79 NYS3d 566 [2d Dept 2018]; ***Niyazov v Hunter EMS, Inc.***, 154 AD3d 954, 63 NYS3d 457 [2d Dept 2017]). In addition, a triable issue of fact remains as to whether Mr. Urquiza's negligence contributed to plaintiff's alleged injuries.

Mr. Urquiza testified that weather and visibility were clear on the roadways at the time of the accidents. He testified that while driving northbound on the Sagtikos Parkway, his vehicle was "cut off" by plaintiff's vehicle while driving in the right lane, causing the front of his vehicle to make contact with the rear of plaintiff's vehicle, and that plaintiff's vehicle proceeded to drive away. While on the off-ramp of the Sagtikos Parkway, Mr. Urquiza honked his vehicle's horn and flashed its headlights to communicate with plaintiff, and both vehicles then pulled over approximately ¼ to ½ mile from the exit off-ramp of the Sagtikos Parkway. He stated that he parked his vehicle four feet in front of plaintiff's vehicle on the shoulder of the Long Island Expressway. Mr. Urquiza testified that approximately 6 to 12 inches of his vehicle and plaintiff's vehicle may have been parked in the right lane of travel. He stated that both vehicles had their headlights on and were parked three feet from the guardrail. Mr. Urquiza further stated that both he and plaintiff exited their vehicles and met "in the gap to the right in-between both cars" to converse, and that Ms. Kearney stayed in the front passenger seat of his vehicle.

Mr. Urquiza explained that after 20 to 30 seconds of conversation, he heard tires screeching and a loud bang, so he instinctively put his hands over his face. When he put his hands down, plaintiff was no longer standing in front of him. He stated his belief that the sound of impact was Ms. Coyle's vehicle hitting the rear of plaintiff's vehicle. Mr. Urquiza testified that while he was facing the direction from which Ms. Coyle vehicle was approaching, he did not see her vehicle before impact. He stated that plaintiff's vehicle moved 90 degrees clockwise as a result of the impact and that the rear driver's side of plaintiff's vehicle made contact with the rear of his vehicle, which pushed his vehicle 4 to 5 feet into the right lane of travel. Mr. Urquiza testified that plaintiff landed 10 feet away from his vehicle under the guardrail, and that Ms. Coyle's vehicle came to a stop 50 to 100 feet down the road in the middle lane of travel.

Ms. Kearney testified that she owned the vehicle operated by Mr. Urquiza, her boyfriend, and that she was riding as a passenger at the time of the collision. She explained that while driving in the right northbound lane of the Sagtikos Parkway, plaintiff's vehicle cut off her vehicle, and the fender of her vehicle made contact with the bumper of his vehicle. She stated that when her vehicle and plaintiff's vehicle reached the Long Island Expressway, Mr. Urquiza flashed the vehicle's headlights and both vehicles pulled over to the shoulder and parked. Ms. Kearney explained that both her vehicle and plaintiff's vehicle were in the right lane of travel approximately one foot, and that her vehicle was parked "a couple of feet" in front of plaintiff's vehicle. However, she also stated that the rear portion of the driver's side of plaintiff's vehicle stuck out into the right lane of travel and that the entirety of the driver's side of her vehicle was one or two feet into the right lane with the driver's door slightly ajar. She further explained that Mr. Urquiza and plaintiff exited the vehicles and met by the guardrail. She stated that while she did not see the collision occur approximately one minute later, she believed that

plaintiff was struck by his own vehicle after it was struck by Ms. Coyle's vehicle. Ms. Kearney testified that her vehicle was impacted by plaintiff's vehicle and Ms. Coyle's vehicle "simultaneous[ly]" and "within a split second." She stated that she did not hear horns sounding or tires screeching before the impact.

Having determined that defendant Urquiza failed to meet his prima facie burden, it is unnecessary to consider whether the non-moving parties' papers in opposition are sufficient to raise a triable issue of fact (***Winegrad v New York Univ. Med. Ctr.***, *supra*).

Ms. Kearney, however, made a prima facie showing that she was free from fault as the evidence demonstrates that she was merely a passenger in the vehicle that struck plaintiff's vehicle and was subsequently struck by Ms. Coyle's vehicle, without any control over its positioning and operation upon the roadway (*see generally* ***Romain v City of New York***, 177 AD3d 590, 112 NYS3d 162 [2d Dept 2019]; ***Phillip v D&D Carting Co., Inc.***, 136 AD3d 18, 22 NYS3d 75 [2d Dept 2015]). In addition, there is no allegation that Ms. Kearney was negligent in the ownership of her vehicle. In opposition, Ms. Coyle and plaintiff failed to raise a triable issue of fact as to Ms. Kearney's negligence. Therefore, the complaint and the cross claim for comparative negligence asserted by Ms. Coyle are dismissed.

Accordingly, the motion by defendant Urquiza is denied and the motion by defendant Kearney is granted.

Dated: May 19, 2021

Martha L. Luft
A.J.S.C.

____ FINAL DISPOSITION __X__ NON-FINAL DISPOSITION