

Gonzalez v Bah

2021 NY Slip Op 33050(U)

November 12, 2021

Supreme Court, Bronx County

Docket Number: Index No. 25177-2018e

Judge: Veronica G. Hummel

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This opinion is uncorrected and not selected for official publication.

To commence the statutory time for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX IAS PART 31**

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DAVID GONZALEZ,

Plaintiff

-against -

**Index No. 25177-2018e
DECISION/ORDER
Motion Seqs. 3,4**

MOHAMED BAH, ANTONE SAMARNEH, DIANA SAMARNEH,
ARISLEYDA POLANCO, and JULIO PAREDES,
Defendants.

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VERONICA G. HUMMEL, A.S.C.J.

In accordance with CPLR 2219 (a), the decision herein is made upon consideration of all papers filed by the parties in NYSCEF regarding: the motion by defendants ANTONE SAMARNEH and DIANA SAMARNEH [Mot. Seq. 3], made pursuant to CPLR 3212, seeking an order dismissing the complaint of plaintiff DAVID GONZALEZ and all cross-claims against them; and the motion of plaintiff [Mot. Seq. 4], made pursuant to CPLR 3212, seeking an order granting plaintiff partial summary judgment on the issue of liability as against defendant MOHAMED BAH.

The motions and the oppositions thereto are supported by attorney affirmations, copies of the pleadings, copies of the police report, and the transcripts from the depositions of the parties. On August 27, 2019, summary judgment was granted dismissing the complaint and all cross-claims alleged against defendants Paredes and Polanco.

The undisputed facts as set forth in the statements of material facts are as follows: This is a personal injury action arising out of a motor vehicle, motorcycle, and pedestrian accident that occurred on July 22, 2019, at the intersection of South Broadway and McLean Avenue (the Accident). Plaintiff was a pedestrian. The Samarneh Vehicle was at or near the intersection of the

two roads when it was struck in the rear by the Bah Vehicle. The Samarneh Vehicle was pushed to the right by the impact, and collided with a parked motorcycle on the right side of the road. The rear tire of the motorcycle subsequently contacted with plaintiff's left knee and threw plaintiff on his back on the sidewalk. As is relevant to supplement the agreed to statement of material facts, the parties testified as follows:

Plaintiff testified that at the time of the Accident, he was a pedestrian on South Broadway, approximately 10-15 feet from the corner with McLean Avenue. He saw the Samarneh Vehicle stopped on South Broadway, near the light on McLean Avenue. The Samarneh Vehicle was struck from behind by the Bah Vehicle, which was travelling very fast. After the impact, the Samarneh Vehicle was pushed into a motorcycle that was parked on South Broadway at a parking meter. The rear tire of the motorcycle hit plaintiff's left knee and threw him to the ground.

The driver of the Samarneh Vehicle testified, in relevant part, that at the time of the Accident, the weather was clear, and her vehicle was traveling south on Broadway and came to a traffic light at the intersection with McLean Avenue. The light was red as she approached the intersection. The Samarneh Vehicle was the first vehicle at the light. Defendant Samaraneh stopped the car gradually, not suddenly and was completely stopped at the red light when her car was hit from behind. The Samarneh Vehicle was pushed by the impact.

Defendant Bah testified, in relevant part, that he was traveling south on Broadway for four to five blocks before the Accident. The Accident occurred about 5 to 6 yards before the intersection. Defendant Bah testified that his attention was drawn away for a moment, and when he looked back, traffic had slowed, causing defendant Bah to break suddenly. Defendant Bah stated that the light was green and that the Samarneh Vehicle was moving when he hit the Samarneh Vehicle in the rear as he could not stop his car. He stated that the Samarneh Vehicle had slowed down to try to go around a motorcycle that was double-parked in her lane. The Samarneh Vehicle was then pushed into the motorcycle. He did not see the motorcycle come into contact with plaintiff.

Motions for Summary Judgment

The proponent of a summary judgment motion must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact “ (*Winegrad v New York Univ. Med Ctr.*, 64 NY2d 851 [1985]). The moving party is entitled to summary judgment only if it tenders evidence sufficient to eliminate all material issues of fact from the case (*Winegrad v New York University Medical Center, supra*; *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]) If a party makes a *prima facie* showing of its entitlement to summary judgment, the opposing party bears the burden of establishing the existence of a triable issue of fact (*Zuckerman v City of New York, supra*). Only then does the burden shift to the motion's opponent to "present evidentiary facts in admissible form sufficient to raise a genuine, triable issue of fact" (*Casper v Cushman & Wakefield*, 74 AD3d 669 [1st Dept 2010]; *Mazurek v Metropolitan Museum of Art*, 27 AD3d 227 [1st Dept (2006)]).

Motion Seq. 3-Defendants Samaraneh's Motion for Summary Judgment

Since there can be more than one proximate cause of an accident, a defendant moving for summary judgment is required to make a *prima facie* showing that he or she is free from fault (*see Harrigan v Sow*, 165 AD3d 463 [1st Dept 2018]; *Hilago v Vasquez*, 187 AD3d 683 [1st Dept 2020]). In order for a defendant driver to establish entitlement to summary judgment on the issue of liability in a motor vehicle collision case, therefore, the driver must demonstrate, *prima facie*, that he or she kept the proper lookout, or that his or her alleged negligence, if any, did not contribute to the accident (*see Harrigan v Sow, supra*; *Hilago v Vasquez, supra*).

Vehicle and Traffic Law §1129(a) provides 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(*Urena v GVC Ltd.*, 160 AD3d 467, 467 [1st Dept 2018]).

It is well settled, therefore, that a rear-end collision with a stopped or stopping vehicle establishes a *prima facie* case of negligence on the part of the driver of the rear vehicle, and imposes a duty on the part of the operator of the moving vehicle to come forward with an adequate

non-negligent explanation for the accident (*see Cabrera v Rodriguez*, 72 AD3d 553 [1st Dept 2010]; *Tutrani v County of Suffolk*, 10 NY3d 906, 908 [2008]; *Agramonte v City of New York*, 288 AD2d 75, 76 [1st Dept 2001]). Furthermore, in a chain reaction collision, responsibility presumptively rests with the rearmost driver (*Mustafaj v Driscoll*, 5 AD3d 138 [1st Dept 2004]; *Chuk Hwa Shin v Correale*, 142 AD3d 518, 519 [2d Dept 2016]; *Skura v Wojtowski*, 165 AD3d 1196, 1199 [2d Dept 2018]).

First Department case law is also 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 AD3d 649 [1st Dept 2017]; *Cabrera v Rodriguez, supra*; *see Ly Giap v Hathi Son Pham*, 159 AD3d 484, 485 [1st Dept 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”). Hence, the happening of a rear-end collision with a vehicle stopped at a red light is itself a *prima facie* case of negligence of the rearmost driver (*Vasquez v Chimborazo*, 155 AD3d 432 [1st Dept 2017]; *see Smyth v Murphy*, 177 AD3d 492 [1st Dept 2019]; *Corrigan v Porter Cab Corp.*, 101 AD3d 471 [1st Dept 2012]; *LaMasa v Bachman*, 56 AD3d 340 [1st Dept 2008]). Furthermore, a claim that plaintiff had stopped at a yellow light does not constitute a nonnegligent explanation for the accident (*see Smyth v Murphy, supra*; *Elihu v Nicoleau*, 173 AD3d 578 [1st Dept. 2019]; *Matos v Sanchez*, 147 AD3d 585 [1st Dept 2017]).

On this motion, defendant Samarneh establishes *prima facie* entitlement to judgment as a matter of law by submitting evidence that the defendant driver was driving safely, stopped at a red light and her vehicle, the first in the chain, was struck in the rear by Bah Vehicle (*Vasquez v Chimborazo, supra*; *Smyth v Murphy, supra*; *Corrigan v Porter Cab Corp., supra*; *LaMasa v Bachman, supra*; *see Martinez v Kuhl*, 165 AD3d 774 [2d Dept 2018]). The moving papers therefore demonstrate that the movant defendant acted without negligence and the defendant driver’s actions did not contribute to causing the Accident.

In opposition, defendant Bah fails to generate an issue of fact warranting denial of the motion. Defendant Bah’s allegation that movant was moving slowing and the light was green at

the time of impact is insufficient to generate an issue of fact as defendant Bah fails to provide an explanation for following the Samarneh Vehicle too closely in violation of the VTL (*Grier-Key v Lyons*, 195 AD3d 798 [2d Dept 2021]; *Hakakian v McCabe*, 38 AD3d 493 [2d Dept 2007]; see *Smyth v Murphy, supra*; *Elihu v Nicoleau, supra*). As such, it was defendant Bah's failure to maintain a proper distance from the Samarneh Vehicle that solely caused the Accident (see *Grier-Kay v Lyones, supra*).

The argument made in the opposition papers that defendant Samarneh negligently failed to evade the collision is speculative (see *Jenkins v Alexander*, 9 AD3d 286, 288 [1st Dept 2018]; *Hidalgo v Vasquez, supra*), and no other evidence was proffered to support the claim that moving defendant failed to take reasonable steps to avoid the collision (*Hidalgo v Vasquez, supra*).

Consequently, the motion by defendants Samarneh is granted (see *Sirlin v Schreib*, 117 AD3d 819, 819-820 [2d Dept 2014]). Of note, an "innocent ... driver exists in a case where the ... driver did not contribute to the happening of the accident in any way. A typical example is the case at bar where ... [the] driver, while stopped, was rear-ended by the following driver" (*Oluwatayo v Dulinayan*, 142 AD3d 113, 119 [1st Dept 2016]).

Plaintiff's Motion [Mot. Seq. 4] for Partial Summary Judgment

Similarly, plaintiff demonstrates entitlement to partial summary judgment on the issue of liability against defendant Bah by showing that the Samarneh Vehicle was stopped at a light when it was struck in the rear by the Bah Vehicle and that impact caused the Samarneh Vehicle to hit the motorcycle which injured plaintiff (*Vasquez v Chimborazo, supra*; *Smyth v Murphy, supra*; *Corrigan v Porter Cab Corp., supra*; *Martinez v Kuhl*, 165 AD3d 774 [2d Dept 2018]). Defendant Bah's claim of a short stop, for the reasons set forth above, is insufficient to generate an issue of fact as to liability. Plaintiff's motion for partial summary judgment on the issue of liability is granted.

The court has considered the additional contentions of the parties not specifically addressed herein. To the extent any relief requested by either party was not addressed by the court, it is hereby denied. Accordingly, it is hereby

ORDERED that the motion by defendants ANTONE SAMARNEH and DIANA SAMARNEH [Mot. Seq. 3], made pursuant to CPLR 3212, seeking an order dismissing the complaint of plaintiff DAVID GONZALEZ and all cross-claims against them is granted; and it is further

ORDERED that the Clerk shall enter judgment dismissing the complaint and all cross-claims against the moving defendants and severing the remaining action; and it is further

ORDERED that the motion of plaintiff [Mot. Seq. 4], made pursuant to CPLR 3212, seeking an order granting plaintiff partial summary judgment on the issue of liability as against defendant MOHAMED BAH is granted; and it is further

ORDERED that on August 27, 2019, summary judgment was granted [Mot. Seq. 1] dismissing the complaint and all cross-claims alleged against defendants Paredes and Polanco and severing the remaining action; and it is further

ORDERED that the caption shall therefore henceforth read as:

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DAVID GONZALEZ,

Plaintiff

Index No. 25177-2018e

-against -

MOHAMED BAH,

Defendant.

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; and it is further

ORDERED that the Clerk shall upload a copy of this decision in NYSCEF in this action and in the companion case of *Samarneh v Bah*, 61285-2020e which is joined [Mot. Seq. 2] with this action for purposes of discovery and trial.

The foregoing constitutes the Decision/Order of the court.

Dated: Bronx, New York

November 12, 2021

E N T E R,

s/Hon. Veronica G. Hummel/signed 11/12/2021

HON. VERONICA G. HUMMEL, A.J.S.C.

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- 1. CHECK ONE..... CASE DISPOSED IN ITS ENTIRETY CASE STILL ACTIVE
 - 2. MOTION 3 is granted,
MOTION 4 is granted..
 - 3. CHECK IF APPROPRIATE..... SETTLE ORDER SUBMIT ORDER SCHEDULE APPEARANCE
 FIDUCIARY APPOINTMENT REFEREE APPOINTMENT