Lee v Transport G. Poulot, Inc.
2021 NY Slip Op 33054(U)
November 12, 2021
Supreme Court, Bronx County
Docket Number: Index No. 25826/2020E
Judge: Veronica G. Hummel
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX, PART 31

----------X

YOO JEAN LEE,

Index №. 25826/2020E

-against-

Hon. VERONICA G. HUMMEL

Acting Justice Supreme Court

TRANSPORT G. POULOT, INC. and JOEY GILBERT MORIN,

----------X

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 plaintiff YOO JEAN LEE [Mot. Seq.1], made pursuant to CPLR 3212, for an order granting plaintiff partial summary judgment on liability against defendants TRANSPORT G. POULOT, INC. and JOEY GILBERT MORIN.

This is an action to recover damages for alleged personal injuries sustained by plaintiff in a motor vehicle accident that occurred on or about November 14,2017 on Interstate 95, westbound on the Cross-Bronx Expressway at or near its intersection with Havemeyer Avenue , Bronx County. Plaintiff was driving a vehicle which came into contract with a tracker trailer owned by defendant Transport G. Pouliot, Inc. and driven by defendant Joey Gilbert Morin. In support of the motion, plaintiff submits the pleadings, plaintiff's affidavit, and the police accident report. In opposition, defendants submit the affidavit of the defendant driver.

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)]).

Plaintiff submits an affidavit stating that platinff's vehicle was travelling on Interstate 95, westbound on the Cross-Bronx Expressway at or near its intension with Havemeyer Avenue. While on the road, the Plaintiff's Vehicle was rear-ended by defendants' truck. Plaintiff did not stop short, and prior to the Accident, was totally within plaintiff's lane at the posted speed limit. The Plaintiff's Vehicle was completely stopped due to traffic conditions when the car was rear-ended.

Defendant Morin's version of the accident differs from the version presented by plaintiff. In his affidavit, the defendant driver avers that the Plaintiff's Vehicle cut him off. He states that at the time of the Accident he was traveling westbound on the Expressway. In the direction of travel, there were three lanes of moving traffic and his truck was in the middle lane. The traffic conditions were heavy. Prior to the collision, the defendant driver did not hear any honking or tires screeching and the truck was travelling at less than five miles per hour. Suddenly plaintiff, who was in the right lane, without warning, merged directly in front of defendants' truck in the middle lane. As the result of plaintiff's unsafe merger, the defendant driver did not have time to react and the vehicles collided. Ther front right bumper of the truck lightly contacted the left rear bumper of plaintiff's vehicle and because of the sudden nature of plaintiff's actions, the defendant driver could not avoid the Accident.

A plaintiff in a negligence action moving for summary judgment on the issue of liability must establish, *prima facie*, that the defendant breached a duty owed to the plaintiff and that the defendant's negligence was a proximate cause of the alleged injuries (*see Rodriguez v City of New York,* 31 NY3d 312 [2018]; *Tsyganash v Auto Mall Fleet Management, Inc.,* 163 AD3d 1033 [2d Dept 2018]). A plaintiff is no longer required to show freedom from comparative fault in establishing his or her *prima facie* case (*see Rodriguez v City of New York, supra; Tsyganash v Auto Mall Fleet Management, Inc., supra).*

A violation of the Vehicle and Traffic Law (VTL) constitutes negligence *per se* (*Drummond v Perez,* 146 AD3d 645 [1st Dept 2017]; *see Davis v Turner,* 132 AD3d 603 [1st Dept 2015]; *Flores v City of New York*, 66 AD3d 599 [1st Dept 2009]). Vehicle and Traffic Law (VTL) 1128(a), prohibits suddenly switching lanes without a signal and without warning. Vehicle and Traffic Law § 1129(a) "Following too closely" provides that: "[t]he

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."

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 Wojtlowski*, 165 AD3d 1196, 1199 [2d Dept 2018]).

Here plaintiff's testimony demonstrates that plaintiff had the right of way, remained in the lane traveling at a legal speed, and the Defendants' Vehicle rear-ended the Plaintiff's Vehicle. Under the facts presented, due to following too closely, in violation of the VTL, the Defendants' Vehicle rear-ended Plaintiff's Vehicle and this violation of the VTL constitutes *per se* negligence. (*Castro v Hatim, supra*). Hence, plaintiff sets forth a *prima facie* showing of entitlement to partial summary judgment as to liability (*Guerriero v Timberlake*, 254 AD2d 393 [2d Dept 1998]).

In opposition, defendants' submissions generate a question of fact warranting the denial of the motion by setting forth a non-negligent explanation for the Accident. The defendant driver states that plaintiff changed lanes when it was unsafe to do so and suddenly attempted to move into the defendant driver's lane without a proper look or a safe path. As such, the defendant driver presents a non-negligent reason for colliding with the Plaintiff's Vehicle as plaintiff violated his duty not to enter a lane of moving traffic until it was safe to do so (*Castro v Hatim*, 174 AD3d 464 [1st Dept 2019]; *Davis v Turner*, *supra*; *see* VTL 1128[a]). In this regard, courts have held that, "on the merits, an issue of fact as to [the other driver's] plaintiff's fault is raised by defendant's assertion that the accident occurred when plaintiff's vehicle cut in front of his vehicle" (*Matos v Scoppetta*, 6 AD3d 329, 330 [1st Dept 2004]). A motion for summary judgment on the issue of liability is properly denied, where a defendant driver's affidavit raises issues of fact as to whether plaintiff swerved her vehicle in front of his vehicle and abruptly stopped short, leaving him too little space to safely react and avert a collision (*Lebron v IESI NY Corp.*, 6 AD3d

215, 215-216 [1st Dept 2004]; *see Evans v Fox Trucking Inc.*, 309 AD2d 618, 618 [1st Dept 2003]). Accordingly, "[t]hese competing versions of the accident demonstrate the existence of material issues of fact precluding summary judgment in favor of the moving" party (*Myers v Crestwood Metals Corp*., 40 AD3d 376, 376 [1st Dept 2007]). These questions of fact as to the cause of the accident are not only relevant to determining comparative negligence but are determinative of whether the defendant driver acted with any negligence at all. Under the specific circumstances in this case, triable issues of fact exist, *inter alia*, as to whether the defendant driver was negligent or had a nonnegligent explanation for the collision (*see Hernandez v Advance Transit Co., Inc.*, 101 AD3d 483 [1st Dept 2012]; *Castro v Hatim*, 174 AD3d 464 [1st Dept 2019]; *see Sanders v Sangemino*, 185 AD3d 617 [2d Dept 2020]; *Yassin v Blackman*, 188 AD3d 62 [2d Dept 2020]; *Hotkins v New York Transit Authority*, 7 AD3d 474 [1st Dept 2004]).

The court has considered the additional contentions of the parties not specifically addressed herein. To the extent that 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 plaintiff YOO JEAN LEE [Mot. Seq.1], made pursuant to CPLR 3212, for an order granting plaintiff partial summary judgment on liability against defendants TRANSPORT G. POULOT, INC. and JOEY GILBERT MORIN is denied.

This constitutes the decision and order of the Court.

Dated: November 12 , 2021

s/Hon. Veronica G. Hummel/signed 11/12/2021
HON. VERONICA G. HUMMEL, A.J.S.C.

1. CHECK ONE.....
2. MOTION IS.....
3. CHECK IF APPROPRIATE.....

☐ CASE DISPOSED IN ITS ENTIRETY √ **CASE STILL ACTIVE**

☐ GRANTED √ **DENIED** ☐ GRANTED IN PART ☐ OTHER

☐ SETTLE ORDER ☐ SUBMIT ORDER

☐ FIDUCIARY APPOINTMENT ☐ REFEREE APPOINTMENT