Cardona v BNF Skilled Inc.
2021 NY Slip Op 33078(U)
November 5, 2021
Supreme Court, Queens County
Docket Number: Index No. 700858/2021
Judge: Lourdes M. Ventura

SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK - QUEENS COUNTY

Present: HONORABLE LOURDES M. VENTURA, J.S.C. IAS Part 37

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MARVIN CARDONA,

Plaintiff,

-against-

BNF SKILLED INC. and JOHN GREENE,

Defendants.

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Index Number: 700858/2021

Motion Date: August 9, 2021

Motion Seq. No.: 1

The following electronically filed (EF) papers read on this motion by plaintiff, for an Order: pursuant to CPLR 3212(e), resolving the liability issues in plaintiff's favor, and for such other and further relief as the Court deems just and proper. Defendants cross move and seek an Order: pursuant to CPLR 3042(c), precluding the plaintiff from offering any evidence at trial of the plaintiff's outstanding discovery responses and response to the Preliminary Conference Order or, in the alternative; for an Order, pursuant to CPLR 3124, compelling the plaintiff's compliance with the discovery demands and the Court's Preliminary Conference Order, pursuant to CPLR 3101 and CPLR 3102; and for such other and further relief as this Court deems just and proper.

	Papers Numbered
Notice of Motion - Affirmation - Exhibits…..……...……..	EF 9-14
Affirmation in Opposition to Motion – Exhibits……	EF 17-24
Notice of Cross-Motion- Affirmation- Exhibits……	EF 27-36
Affirmation in reply……	EF 25

Upon the foregoing papers, it is ORDERED that plaintiff and defendants' cross-motion are hereby determined as follows:

Plaintiff commenced the above-entitled action to recover for personal injuries allegedly arising out of a motor vehicle accident that occurred on or about November 5, 2020 at or near the Grand Central Parkway in the County of Queens. Plaintiff avers that its vehicle was stopped at a red light and was then struck directly in the rear by a vehicle owned by defendant BNF Skilled Inc. and operated by defendant John Greene.

In order to succeed on a motion for summary judgment "it is necessary that the movant establish [its] cause of action or defense 'sufficiently to warrant the court as a matter of law in directing judgment' in [its] favor [CPLR 3212, subd. (b)], and [it] must do so by tender of evidentiary proof in admissible form" (*Zuckerman v. City of New York*, 49 NY2d 557, 562 [1980]).

"Only if the movant succeeds in meeting its burden will the burden shift to the opponent to demonstrate through legally sufficient evidence that there exists a triable issue of fact" [cite

omitted] (see *Richardson v. County of Nassau*, 156 AD3d 924, 925 [2d Dept 2017]. Consequently, where the movant fails to meet this initial burden, summary judgment must be denied regardless of the sufficiency of the opposing papers (see *Voss v. Netherlands Ins. Co.*, 22 NY3d 728, 734 [2014]). A court deciding a motion for summary judgment is required to view the evidence presented in the light most favorable to the party opposing the motion and to draw every reasonable inference from the pleadings and proof submitted by the parties in favor of the opponent to the motion (*Myers v. Fir Cab Corp.*, 64 NY2d 806, 807 [1985]).

> 3. On November 5, 2020 at approximately 6:10 p.m. I was involved in a motor vehicle accident. At the time of the accident, I was operating a 2000 Acura motor vehicle bearing New York State license plate number DXN9712 travelling Southbound on Grand Central Parkway in the County of Queens, State of New York. At that time, the 2000 Acura vehicle was owned by Samantha Marty.
> 4. At the time of the accident, Defendant JOHN GREENE was operating a 2013 Ford Bus bearing New York State license plate number 12795SH Southbound at or near the intersection of Grand Central Parkway and Main Street in the County of Queens, State of New York.
> 5. At that time, the 2013 Ford Bus was owned by Defendant BNF Skilled Inc.
> 6. While my vehicle was stopped at a red-light traffic signal on the roadway at or near the intersection of Grand Central Parkway and Main Street, Defendant JOHN GREENE did strike the 2000 Acura directly in the rear.
> 7. After Defendant JOHN GREENE struck the 2000 Acura directly in the rear, the police arrived at the scene and a police report was created. According to the certified police report, at 6:10 p.m. the roadway was straight and level, and dry, and there was adequate lighting.
> 8. The police report also indicates that the rear of the 2000 Acura was the area of impact. This fact is illustrated on the police report which shows the points of impact between the two vehicles as being the front of Defendants' vehicle (#2) directly striking the rear of the 2000 Acura (#2). Additionally, the police report indicates that the 2013 Ford Bus was travelling Southbound, and the 2000 Acura was travelling Southbound."

The Court finds that plaintiff has established a prima facie entitled to judgment as a matter of law on the issue of liability through the submission of plaintiff's affidavit which demonstrates that plaintiff was stopped at a red light before being struck in the rear by a vehicle owned by defendant BNF Skilled Inc. and operated by defendant John Greene. (see *Hewitt v. Gordon-Fleetwood*, 163 AD3d 536 [2018] [where movant submitted an affidavit wherein she asserted that she brought the vehicle she was operating to a stop at a certain intersection, in compliance with a red traffic light, and that the vehicle was stopped for approximately five seconds before it was struck in the rear by the vehicle owned and operated by the defendant; the court held that this evidence established the plaintiff's prima facie entitlement to judgment as a matter of law]).

The burden now shifts to defendants to raise a triable issue of fact (see *Richardson v County of Nassau*, 156 AD3d 924 [2d Dept 2017]). "A driver of a vehicle approaching another vehicle from the rear is required to maintain a reasonably safe distance and rate of speed under the prevailing conditions to avoid colliding with the other vehicle [citations omitted]" (see *Nsiah-Ababio v Hunter*, 78 AD3d 672 [2d Dept 2010] "Thus, a rear-end collision with a stopped or

stopping vehicle establishes a prima facie case of negligence on the part of the operator of the rear vehicle, requiring that operator to come forward with evidence of a nonnegligent explanation for the collision to rebut the inference of negligence [citations omitted]" (see *Montalvo v Cedeno,* 170 AD3d 1166 [2d Dept 2019]).

Here, defendants oppose plaintiff's motion and aver that plaintiff's motion is premature and seeks to deprive defendants of any opportunity to depose the plaintiff. Defendants further aver that a question of material fact exists as to the proximate cause of the collision warranting denial of the motion.

It is well settled that "[a] driver of a vehicle approaching another vehicle from the rear is required to maintain a reasonably safe distance and rate of speed under the prevailing conditions to avoid colliding with the other vehicle" (see *Nsiah-Ababio v Hunter*, 78 AD3d 672 [2d Dept 2010]; Vehicle and Traffic Law § 1129[a]). Additionally, "[a] rear-end collision with a stopped or stopping vehicle establishes a prima facie case of negligence on the part of the operator of the rear vehicle, thereby requiring that operator to rebut the inference of negligence by providing a nonnegligent explanation for the collision" [citations omitted] (*Arslan v Costello,* 164 AD3d 1408, 1409 [2d Dept 2018]).

Here, defendant John Greene submits an affidavit which in relevant part states:

> "13. When the light turned green, traffic began to move forward and I, along with the plaintiff began to move forward.
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> 14. As a result of the green light, I had to move my vehicle forward to vacate the intersection, I moved my vehicle forward and at the same time observed plaintiff's vehicle move forward.
>
> 15. Suddenly, without warning, plaintiff stopped his vehicle abruptly.
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> 16. I was not aware of the plaintiff's intention to abruptly stop his vehicle, as the light turned green and all traffic began to move forward.
>
> 17. After Plaintiff accelerated into the intersection he abruptly and without reason stopped short, I had no warning of an intention to stop and my vehicle tapped the rear of his vehicle. As a result of plaintiff's actions my vehicle touched plaintiff's vehicle."

It is well settled in the Second Department, Appellate Division, that "a sudden stop of the lead vehicle may constitute a nonnegligent explanation for a rear-end collision, vehicle stops which are foreseeable under the prevailing 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 vehicle and the vehicle ahead' " [citations omitted] (see *Catanzaro v Edery*, 172 AD3d 995 [2d Dept 2019]); see also *Arslan v Costello*, 164 AD3d 1408 [2d Dept 2018][plaintiff's vehicle came to a sudden stop was insufficient to raise a triable issue of fact as to whether there was a nonnegligent explanation for the collision between the plaintiff's vehicle and the defendants' vehicle]).

Applying the above principles held by the Second Department, Appellate Division to the case at bar, this Court finds that defendants' averments that plaintiff's vehicle "stopped suddenly and stopped short" is insufficient to raise a triable issue of fact as to whether there was a

nonnegligent explanation for the collision between the plaintiff's vehicle and the defendants' vehicle (see *Catanzaro v Edery*, 172 AD3d 995, 996 [2d Dept 2019]); see also *Arslan v Costello*, 164 AD3d 1408, 1410 [2d Dept 2018]).

In addition, defendants' averments that plaintiff's motion is premature is unavailing as defendants' opposing papers fail to establish that additional discovery might lead to relevant evidence, or that facts essential to oppose the motion were in the exclusive knowledge and control of the plaintiff or defendant Bowen (see CPLR 3212[f]; *Romain v City of New York*, 177 AD3d 590 [2d Dept 2019]).

Defendants also cross move and seek an Order: pursuant to CPLR 3042(c), precluding the plaintiff from offering any evidence at trial of the plaintiff's outstanding discovery responses and response to the Preliminary Conference Order or, in the alternative; for an Order, pursuant to CPLR 3124, compelling the plaintiff's compliance with the discovery demands and the Court's Preliminary Conference Order, pursuant to CPLR 3101 and CPLR 3102.

Pursuant to this Court's Part Rules, Practices, and Procedures, section entitled "CONFERENCES AND DISCOVERY DISPUTES", in relevant part states:

> "Prior to filing a discovery-related motion i.e. Motions to Vacate the Note of Issue, Motions to Restore, Motions to Strike Pleadings, Motions to Demand Bill of Particulars, Motions to Preclude, the parties are directed to send an email to QSCPart37@nycourts.gov with a cc to ALL parties to schedule a virtual conference. The email should include a summary of the discovery related issues."

Here, defendants filed a cross motion seeking a discovery prior to making the request for a virtual conference as required pursuant to this Court's Part Rules, Practices, and Procedures. In addition, this matter is currently assigned to the compliance conference part and the parties are directed to address any outstanding discovery during their compliance conference(s).

Accordingly, plaintiff's summary judgment motion pursuant to CPLR 3212 is granted on the issue of liability only and the branch of plaintiff motion seeking to strike the affirmative defense(s) of comparative negligence is similarly granted. Defendants cross motion seeking discovery is denied. Any other requested relief not expressly addressed herein has nonetheless been considered by this Court and is hereby denied.

This shall constitute the Decision and Order of the Court.

Dated: November 5, 2021

LOURDES M. VENTURA, J.S.C.