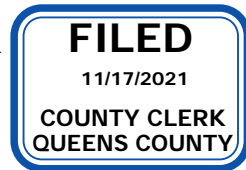


Segarra-Guallpa v Miqui
2021 NY Slip Op 33109(U)
November 15, 2021
Supreme Court, Queens County
Docket Number: Index No. 709115/2021
Judge: Robert J. McDonald
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SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK
CIVIL TERM - IAS PART 34 - QUEENS COUNTY
25-10 COURT SQUARE, LONG ISLAND CITY, N.Y. 11101



P R E S E N T : HON. ROBERT J. MCDONALD
Justice

- - - - - x

OLIVER ISRAEL SEGARRA-GUALLPA, JHOANNA Index No.: 709115/2021
MARITZA JUELA PINANCELA and CELSO
FERNANDO GUALLPA PELAEZ, Motion Date: 11/4/21

Plaintiffs, Motion No.: 39

- against - Motion Seq.: 1

EDWIN V. MIQUI, FEDEX GROUND PACKAGE
SYSTEM, INC. and QUEENS EMPIRE INC.,

Defendants.

- - - - - x

The following electronically filed documents read on this motion
by plaintiffs for an Order pursuant to CPLR 3212, granting
plaintiffs summary judgment on the issue of liability:

	<u>Papers Numbered</u>
Notice of Motion-Affirmation-Exhibits.....	EF 16 - 22
Affirmation in Opposition-Exhibits.....	EF 23 - 30
Reply Affirmation.....	EF 31

This is an action for personal injuries allegedly sustained
by plaintiffs as a result of a motor vehicle accident that
occurred on February 19, 2021 at or near the intersection of 29th
Street and 31st Avenue, in Queens County, New York.

This action was commenced by the filing of a summons and
complaint on April 20, 2021. Defendants joined issue by service
of an answer on June 15, 2021. Plaintiffs now move for partial
summary judgment on the issue of liability.

In support of the motion, plaintiff operator, Oliver Israel
Segarra-Guallpa, submits an affidavit, affirming that prior to
the accident, he was completely stopped on 29th Street, waiting
on a red traffic light for approximately fifteen seconds before a
heavy impact occurred to the rear of his vehicle. He did not hear

any horns or warning before his vehicle was struck in the rear. The roadway was not icy. He was able to come to a gradual stop without sliding/skidding.

Plaintiffs also submit a copy of the Police Accident Report (MV-104AN). In the Accident Description portion, the responding officer notes, in relevant part:

DRIVER 1 (plaintiff Oliver Israel Segarra-Guallpa) STOPPED AT LIGHT AND HIS VEHICLE WAS STRUCK BEHIND CAUSING DAMAGES TO REAR BUMPER OF HIS VEHICLE. . . DRIVER TWO (defendant Edwin V. Miqui) STATES WAS DRIVING NORTHBOUND ON 29 STREET ATTEMPTED TO STOP AT BUT HIS VEHICLE SLID ON THE ICY ROAD AND STRUCK VEHICLE 1.

Based on the evidence submitted, plaintiffs contend that summary judgment is warranted because, inter alia, defendant operator violated Vehicle and Traffic Law Section 1129 by failing to maintain a reasonably safe rate of speed and control over his vehicle, failing to exercise his duty to see what should be seen, and by failing to exercise his reasonable duty to avoid striking the vehicle ahead of him in the rear.

In opposition, defendant operator, Edwin V. Miqui, submits an affidavit, affirming that on the date of the accident, the weather was snowy/icy, and the road conditions were slippery. Prior to the accident, he was traveling northbound on 29th Street at a speed of less than 25 miles per hour. The vehicle in front of him suddenly and unexpectedly stopped. After applying his brakes in response to the sudden stop, his vehicle began to slide. He was unable to stop in time to avoid the accident due to the slippery conditions.

Defendants contend that the motion should be denied because, inter alia, issues of fact remain and since defendant operator was faced with an emergency situation as the roads were slippery and defendants' vehicle skidded.

The proponent of a summary judgment motion must tender evidentiary proof in admissible form, eliminating any material issues of fact from the case. If the proponent succeeds, the burden shifts to the party opposing the motion, who then must show the existence of material issues of fact by producing evidentiary proof in admissible form, in support of his or her position (see Zuckerman v City of New York, 49 NY2d 557 [1980]).

"When the driver of an automobile approaches another automobile from the rear, he or she is bound to maintain a

reasonably safe rate of speed and control over his or her vehicle, and to exercise reasonable care to avoid colliding with the other vehicle" (Macauley v ELRAC, Inc., 6 AD3d 584 [2d Dept. 2003]). It is well established law that a rear-end collision creates a prima facie case of negligence on the part of the driver of the rearmost vehicle, requiring the operator of that vehicle to proffer an adequate, non-negligent explanation for the accident (see Hearn v Manzollillo, 103 AD3d 689[2d Dept 2013]; Tainq v Drewery, 100 AD3d 740; Kastritsios v Marcello, 84 AD3d 1174[2d Dept. 2011]; Klopchin v Masri, 45 AD3d 737 [2d Dept. 2007]; Hakakian v McCabe, 38 AD3d 493 [2d Dept. 2007]; Velazquez v Denton Limo, Inc., 7 AD3d 787 [2d Dept. 2004]).

Here, plaintiff operator affirmed that his stopped vehicle was struck from behind by defendants' vehicle. Thus, plaintiffs satisfied their prima facie burden of establishing their entitlement to judgment as a matter of law on the issue of liability by demonstrating that their vehicle was struck in the rear by defendants' vehicle (see Volpe v Limoncelli, 74 AD3d 795 [2d Dept. 2010]; Vavoulis v Adler, 43 AD3d 1154 [2d Dept. 2007]).

Having made the requisite prima facie showing of entitlement to summary judgment, the burden then shifted to the non-moving parties to rebut the presumption of negligence (see Goemans v County of Suffolk, 57 AD3d 478 [2d Dept. 2007]).

In opposition, defendants failed to raise a triable issue of fact. The emergency doctrine is not a defense available to defendants because the slippery road condition was foreseeable, and the emergency condition was partially created by defendant operator's disregard for the existing weather and road conditions (see Caristo v Sanzone, 96 NY2d 172 [2001]; Marsicano v Dealer Storage Corp., 8 AD3d 451 [2d Dept. 2004]).

Moreover, although defendant operator maintains that the accident was the result of plaintiff operator stopping suddenly, this does not explain defendant operator's failure to maintain a safe distance from the vehicle in front of him (see Dicturel v Dukureh, 71 AD3d 558 [1st Dept. 2010]; Shirman v Lawal, 69 AD3d 838 [2d Dept. 2010]; Lampkin v Chan, 68 AD3d 727 [2d Dept. 2009]; Zdenek v Safety Consultants, Inc., 63 AD3d 918 [2d Dept. 2009]). A bare claim that the driver of the lead vehicle suddenly stopped, standing alone, is insufficient to rebut the presumption of negligence, especially where, as here, defendant operator fails to explain why he did not maintain a safe following distance (see Ramirez v Konstanzer, 61 AD3d 837 [2nd Dept 2009]).

Accordingly, and for the reasons stated above, it is hereby

ORDERED, that the summary judgment motion by plaintiffs OLIVER ISRAEL SEGARRA-GUALLPA, JHOANNA MARITZA JUELA PINANCELA and CELSO FERNANDO GUALLPA PELAEZ is granted, plaintiffs shall have summary judgment on the issue of liability against defendants, and the Clerk of Court is authorized to enter judgment accordingly; and it is further

ORDERED, that upon completion of discovery on the issue of damages, filing a Note of Issue, and compliance with all the rules of the court, this action shall be placed on the trial calendar of the court for a trial on serious injury and damages.

Dated: November 15, 2021
Long Island City, N.Y

Robert J. McDonald

ROBERT J. MCDONALD
J.S.C.

