Abankwah v Morales
2021 NY Slip Op 34012(U)
February 8, 2021
Supreme Court, Bronx County
Docket Number: Index No. 33170/2018E
Judge: Bianka Perez

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX, PART 14

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NANA I. ABANKWAH,

Plaintiff,

Index №. 33170/2018E

-against-

Hon. BIANKA PEREZ

BRANDON B. MORALES and ARI FLEET LT,
Defendants.

Justice Supreme Court

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The following papers NYSCEF Doc. # 22 to 27 and 31 to 35 were read on this motion (Seq. No. 2) for Summary Judgment noticed on August 6, 2020.

Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed	No(s).1
Answering Affidavit and Exhibits	No(s).2
Replying Affidavit and Exhibits	No(s).3

Motion is Respectfully Referred to Justice: _____
Dated: _____

Upon the foregoing papers, the plaintiffs move for an Order pursuant to CPLR 3212 granting the plaintiffs partial summary judgment against the defendants on the issue of liability and awarding such other and further relief as this Court deems just and proper. Defendants oppose.

Procedural History

This is an action to recover damages for personal injuries, which plaintiffs allegedly sustained in a motor vehicle accident which occurred on January 11, 2018 when Plaintiff's vehicle was struck in the rear by the vehicle driven by Defendant Morales and owned by defendant Ari Fleet LT, on the Grand Concourse headed northbound near intersection with East Burnside Avenue, in the County of Bronx, City, and State of New York. As a result, on November 19, 2018, the plaintiffs commenced this action against defendants who were the owner and driver of the motor vehicle involved in the subject accident. On February 8, 2019, issue was joined, wherein the defendants interposed an answer. Thereafter discovery was exchanged and depositions were held of all parties.

Now, the plaintiffs move for summary judgment on the issue of liability pursuant to CPLR § 3212. In support of said motion, the plaintiff avers that he was stopped at a red light at the time of the impact, when he was rear ended by defendant, see Exhibit "A" and Exhibit "B". As such, counsel for the plaintiff argues that plaintiff did not cause or contribute to the subject accident, as his vehicle was hit in the rear by defendant's vehicle while he was at a complete stop. As such, movant cannot be held liable for the accident or any injuries allegedly sustained.

In opposition, counsel for the defendants argues that the deposition testimony in this litigation creates an issue of fact as to the happening of the accident, and whether plaintiff driver, was the proximate cause of same when he suddenly stopped due to a yellow light. Specifically, defendant Morales testified at

his deposition that plaintiff came to an unexpected, abrupt stop as the traffic light turned from green to yellow (see deposition transcript Exhibit "A"). Additionally, defendant's testimony that plaintiffs' vehicle abruptly stopped clearly conflicts with plaintiff's testimony that he was stopped at the red light. (Exhibit "A" and Exhibit "B"). Thus, arguing this creates an issue of fact which precludes an award of summary judgment.

In reply, counsel for plaintiff argues that defendant has not submitted any additional contributing factors to indicate why defendant was unable to maintain a proper distance from Plaintiff's vehicle. Under either Plaintiff or Defendant's version of the events, Defendant has not overcome the presumption of negligence in a rear-end collision. Thus, the defendant's submissions are insufficient to defeat this motion.

Standard of Review

The court's function on this motion for summary judgment is issue finding rather than issue determination. *Sillman v. Twentieth Century Fox Film Corp*., 3 N.Y.2d 395 (1957). Since summary judgment is a drastic remedy, it should not be granted where there is any doubt as to the existence of a triable issue. *Rotuba Extruders v. Ceppos*, 46 N.Y.2d 223 (1978). The movant must come forward with evidentiary proof in admissible form sufficient to direct judgment in its favor as a matter of law. *Zuckerman v. City of New York*, 49 N.Y.2d 557, 562 (1980). Thus, when the existence of an issue of fact is even arguable or debatable, summary judgment should be denied. *Stone v. Goodson*, 8 N.Y.2d 8, (1960); *Sillman v. Twentieth Century Fox Film Corp*., supra.

The proponent of a motion for summary judgment carries the initial burden of production of evidence as well as the burden of persuasion. *Alvarez v. Prospect Hospital*, 68 N.Y.2d 320 (1986). Thus, the moving party must tender sufficient evidence to demonstrate as a matter of law the absence of a material issue of fact. Once that initial burden has been satisfied, the “burden of production” (not the burden of persuasion) shifts to the opponent, who must now go forward and produce sufficient evidence in admissible form to establish the existence of a triable issue of fact. The burden of persuasion, however, always remains where it began, i.e., with the proponent of the issue. Thus, if evidence is equally balanced, the movant has failed to meet its burden. *300 East 34th Street Co. v. Habeeb*, 683 N.Y.S.2d 175 (1st Dept. 1997).

It is well established that a rear-end collision with a stationary vehicle creates a prima facie case of negligence on the part of the operator of offending vehicle and imposes a duty upon that operator to proffer a non-negligent explanation for his failure to maintain a safe distance between cars. Agramonte v. City of New York. 732 N.Y.S.2d 414 (1st Dept. 2001); Mitchell v. Gonzalez, 703 N.Y.S.2d 124 (1st Dept. 2000). “Drivers must maintain safe distances between their cars and cars in front of them and this rule imposes on them a duty to be aware of traffic conditions, including vehicle stoppages”. Johnson v. Phillips, 690

N.Y.S.2d 545 (1st Dept. 1999). In addition, a rear-end collision with a 'stopped' or 'stopping' vehicle creates a prima facie case of negligence with respect to the operator of the rearmost vehicle, thereby requiring that operator to rebut the inference of negligence by providing a non-negligent explanation for the collision" (*Sooklall v. Morisseav-Lafague*, 185 AD3d 1079 [2d Dept 2020]; *Buchanan v. Keller*, 169 AD3d 989 [2d Dept 2019]; Edgerton v. City of New York, 160 AD3d 809 [2d Dept 2018]).

Discussion

"It is well settled 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." (*Cabrera v Rodriguez*, 72 A.D.3d 553 [1st Dept. 2010] citing *Tutrani v County of Suffolk*, 10 NY3d 906, 908 [2008]; *Agramonte v City of New York*, 288 AD2d 75, 76 [1st Dept. 2001]; see also *Dattilo v Best Transp. Inc* 79 A.D.3d 432 [1st Dept. 2010]).

In this matter, Plaintiff carried his initial summary judgement burden by submitting plaintiff's affidavit and transcripts where he states while he was stopped at a red light he was rear ended by defendant's vehicle.

In opposition Defendant avers he is not liable for the impact as the vehicle in front of his vehicle came to an abrupt stop. Defendant states in his deposition that although he saw plaintiff's vehicle slowing down for the yellow light he was not able to stop due to the wet roadway and was unable to avoid the impact due to plaintiffs abrupt stop. A rear-end collision with a stopped vehicle, or a vehicle slowing down, establishes a prima facie case of negligence on the part of the operator of the rear-ending vehicle, which may be rebutted if that driver can provide a non-negligent explanation for the accident (Passos v MTA Bus Co., 129 AD3d 481 [1st Dept 2015]; Beloff v Gerges, 80 AD3d 460 [1st Dept 2011]). The defendant argues that a sudden stop by a lead vehicle is a non-negligent explanation. However, this is not accurate,"..an allegation that the lead vehicle suddenly stopped is insufficient to rebut the presumption of negligence on the part of the rear-ending vehicle." (Pena v. MM Truck and Body Repair, Inc., 151 A.D.3d 473 [1st Dept 2017]). Thus, the defendant has failed to rebut the presumption of negligence and has failed to raise a triable issue of fact.

Partial summary judgement against the defendants on the issue of liability is hereby granted to plaintiffs. Here, the court finds that plaintiffs have met their burden for entitlement to summary judgment on the issue of liability based upon the submission of their affidavits and sworn depositions, which are not controverted by any sworn testimony from defendant. (see *Rodriguez v. City of New York*, 31 NY3d 312 [2018]; *Arslan v. Costello, 164 AD3d 1408* [2d Dept 2018]). In addition, here, defendant fails to provide a non-negligent explanation as to why he did not maintain a safe distance between his vehicle and plaintiff's vehicle. Drivers are charged with a responsibility to maintain a safe distance between vehicles and to be

prepared for such vehicle stoppages. see Vehicle and Traffic Law §1129(a). Furthermore, it is not a sufficient defense to claim that the vehicle in front stopped short. See, Mitchell, 703 N.Y.S.2d at 124. See also, Figueroa v. Luna, 721 N.Y.S.2d 635 (1st Dept. 2001); *Moustapha v. Riteway International Removal, Inc*., 724 N.Y.S.2d 52 (1st Dept. 2001).

Thus, defendant failed to raise a triable issue of fact. (see *Mosquera v. Roach*, 151 AD3d 1056 [2d Dept 2017]; *Shvydkaya v. Park Ave. v. BMW Acura Motor Corp.*, 172 AD3d 1130 [2d Dept 2019]; *Krayniova v. Lowy*, 166 AD3d 600 [2d Dept 2018]; *Mastricova v. Ruderman*, 164 AD3d 1435 [2d Dept 2018]).

Conclusion

Accordingly, it is hereby

ORDERED that the plaintiffs' motion for summary judgment, pursuant to CPLR § 3212, is granted on the issue of liability.

This constitutes the Decision and Order of this Court.

Dated: February 8, 2021 **Hon.** _____
BIANKA PEREZ, J.S.C.

1. CHECK ONE.....	☐ CASE DISPOSED IN ITS ENTIRETY	☐ CASE STILL ACTIVE
2. MOTION IS.....	☒ GRANTED ☐ DENIED	☐ GRANTED IN PART ☐ OTHER
3. CHECK IF APPROPRIATE.....	☐ SETTLE ORDER ☐ SUBMIT ORDER	☐ SCHEDULE APPEARANCE
	☐ FIDUCIARY APPOINTMENT	☐ REFEREE APPOINTMENT