

Marquez-Fuentes v Crump

2007 NY Slip Op 33574(U)

October 23, 2007

Supreme Court, Suffolk County

Docket Number: 0000012/2006

Judge: Emily Pines

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Short Form Order

Index Number: 000¹²16-2006

Supreme Court - State of New York
I. A. S. PART 23 SUFFOLK COUNTY

Present:

Hon. Emily Pines
 Justice Supreme Court

Motion Date: 04-12-2007
Submit Date: 08-30-2007
Motion No.: 001, MG; 002, MD

_____ X
ALFREDO A. MARQUEZ-FUENTES,

Plaintiffs,

-against-

AARON L. CRUMP, LORRAINE E. MASON,

Defendants.

Attorney of Plaintiff

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ORDERED, that the motion (motion sequence number 001) by plaintiff for summary judgment on the issue of liability is granted; and it is further

ORDERED, that the cross-motion by defendants Aaron L. Crump and Lorraine E. Mason¹ for summary judgment dismissing the complaint on the ground that plaintiff failed to sustain a serious injury as required by **Insurance Law §5102(d)** is denied; and it is further

ORDERED, that a compliance conference is scheduled for October 25, 2007 at 9:30 a.m. before the undersigned.

The instant action was commenced by the plaintiff to recover money damages for injuries allegedly sustained as a result of four car chain reaction rear end collision which occurred on November 3, 2005, on Brentwood Road, near the intersection of Kentucky Street, Town of Islip, County of Suffolk, State of New York. Plaintiff alleges that he sustained serious injuries when his

¹By Stipulation dated November 8, 2006, the action was discontinued against defendants Wilber A. Gomez and Roman Gallardo.

vehicle was struck in the rear by the motor vehicle operated by the defendant, Aaron Crump (“Crump”), owned by defendant Lorraine Mason (“Mason”), pushing him into the vehicle of Wilbur Gomez which was then pushed into the vehicle of Roman Gallardo.

LIABILITY

In support of the motion for summary judgment, plaintiff submits the pleadings, Amended Verified Further Bill of Particulars dated November 14, 2006, deposition testimony of plaintiff and defendant Crump and an affidavit in support.

Plaintiff testified at his examination before trial that he was traveling on Brentwood Road approaching the intersection of Kentucky Street and was stopped while a vehicle was attempting to make a left turn on Kentucky Street. Plaintiff testified that there were three vehicles in front of him waiting to proceed through the intersection because there was insufficient room to go around the vehicle on the right side. Plaintiff testified he was stopped for approximately one minute prior to being struck by the vehicle operated by defendant Crump. Plaintiff stated that he saw the car that struck him prior to the impact when he looked in his rearview mirror and saw Crump on the telephone; he said that he saw the Crump vehicle approximately ten to fifteen seconds prior to the impact but thought he was going to stop. Plaintiff testified that the impact pushed his vehicle forward into the vehicle ahead of him.

Defendant Crump also testified at an examination before trial. Crump testified that he was traveling northbound on Brentwood Road and that he observed plaintiff’s vehicle about forty seconds prior to the collision. He stated that when he first noticed the vehicle “it was moving. The vehicle came to a sudden stop.” He stated that when he first noticed the vehicle he was traveling at twenty-five miles per hour and was fifteen feet from plaintiff’s vehicle. He claims that when plaintiff’s vehicle came to a stop it did not have any brake lights.

Plaintiff also submitted an affidavit in which he states that, prior to the accident, he had not experienced any problems with his brake lights and that he believes that prior to the time of the accident that his brake lights were working correctly. He alleges that after the accident he had the opportunity to inspect his vehicle, the brake lights were still operational, he still drives the vehicle and the brakes are functioning properly.

Defendants oppose the motion for summary judgment and also cross-move to dismiss as discussed below. On the issue of liability, defendants argue that Crump's claim that plaintiff came to a sudden stop and had no brake lights, creates a non-negligent explanation for the happening of the collision, precluding summary judgment.

Summary judgment is the proper disposition of a matter when it is established that the movant is entitled to judgment as a matter of law by demonstrating the lack of any material issues of fact regarding liability for determination by a jury. **Christian v. Audi of America, Inc.**, 233 A.D.2d 289, 649 N.Y.S.2d 466 (2d Dept. 1996). Thus, a motion for summary judgment will be granted when the facts clearly indicate that one party is without fault or culpable conduct. **Hoffman v. Anolik**, 250 A.D.2d 733, 672 N.Y.S.2d 785 (2d Dept. 1998). In order to defeat a motion for summary judgment, the opponent must introduce evidentiary proof in admissible form to support the allegation of a question of material fact to warrant proceeding to a trial. **Christian, supra**.

With regard to rear-end chain reaction collisions, it is well settled that "a rear-end collision with a stationary vehicle creates a *prima facie* case of liability against the operator of the moving vehicle unless he or she can come forward with an adequate, non-negligent explanation for the collision." **Aloia v. Stoffel**, 273 A.D.2d 420, 711 N.Y.S.2d 737 (2d Dept. 2000). **See also, Jaffe v. Miller**, 295 A.D.2d 404, 743 N.Y.S.2d 294 (2d Dept. 2002); **Cerda v. Parsley**, 273 A.D.2d 339, 709 N.Y.S.2d 585 (2d Dept. 2000); **Miller v. Irwin**, 243 A.D.2d 546, 663 N.Y.S.2d 110 (2d Dept. 1997). If the driver cannot come forward with evidence to rebut the inference of negligence, the plaintiff may be properly awarded judgment as a matter of law. **Hurley v. Izzo**, 248 A.D.2d 674, 670 N.Y.S.2d 575 (2d Dept. 1998). "A sudden, negligent or unexplained stop of the lead vehicle can constitute a non-negligent explanation." **Carhuayano v. J & R Hacking**, 28 A.D.3d 413, 813 N.Y.S.2d 162 (2d Dept. 2006). But, an unsubstantiated claims of a sudden stop, standing alone, is insufficient to rebut the presumption of negligence. **Campbell v. City of Yonkers**, 37 A.D.3d 750, 833 N.Y.S.2d 101 (2d Dept. 2007).

In the case at bar, plaintiff has met his *prima facie* burden of demonstrating liability by establishing that his vehicle was stopped when it was struck from behind by the vehicle operated by Crump. Thus, defendants were required to come forward with evidence to rebut the inference of negligence. Defendants have not met their burden by the mere unsubstantiated conclusory

allegations that plaintiff stopped suddenly and did not have brake lights. **Francisco v. Schoepfer**, 30 A.D.2d 275, 817 N.Y.S.2d 52 (1st Dept. 2006). **See also, Shamah v. Richmond County Ambulance Service, Inc.**, 279 A.D.2d 564, 719 N.Y.S.2d 287 (2d Dept. 2001); **Baron v. Murray**, 268 a.D.2d 495, 702 N.Y.S.2d 354 (2d Dept. 2000). There is no testimony as to why Crump was unable to avoid the accident since he testified that he observed plaintiff's vehicle forty seconds prior to the accident, even assuming that his brake lights were not operational. **See, Farrington v. New York City Transit Authority**, 33 A.D.3d 332, 822 N.Y.S.2d 51 (1st Dept. 2006).

Based upon the foregoing, plaintiff's motion for summary judgment on the issue of liability is granted.

SERIOUS INJURY

Defendants cross-move for summary judgment dismissing the complaint on the grounds that plaintiff has not suffered a "serious injury" under **Insurance Law §5102(d)**. According to the Amended, Further Verified Bill of Particulars, as a result of the accident, plaintiff alleges that he sustained the following permanent injuries²:

- Severe sprain, contusion and derangement of left shoulder, with impingement and tendonosis, requiring arthroscopic surgery with shaving and debridement of glenoid labrum and decompression of subacromial joint;
- Severe sprain and strain of the lumbar spine with L5-S1 radiculopathy, causing chronic, severe pain and limitation of motion and bulging disc at L4-L5 and L5-S1.
- Severe sprain and strain of the cervical spine, with marked straightening of the normal lordosis, internal cervicothoracolumba derangement, cervicolumbar intervertebral disc syndrome, bulging disc at C5-C6 and nerve root dysfunction compression;
- Thoracic Myalgia
- Post Traumatic Anxiety.

²This represents an overview or summary of items listed in plaintiff's Amended Further Verified Bill of Particulars dated November 14, 2006.

Both parties submitted medical affidavits in support of and in opposition to the cross-motion.

Defendants' contentions to the contrary, there are issues of fact yet to be determined by a trier of fact. Competing medical reports, based upon examinations and objective testing of the plaintiff, both contemporaneous with the accident and immediately prior to the submission of this motion, render the Court unable to award summary judgment at this time, and require that the matter proceed to trial for a determination as to whether the plaintiffs have sustained a "serious injury" as that term is defined in the Insurance Law. ***Garcia v. Long Island MTA***, 2 A.D.3d 675, 768 N.Y.S.2d 630 (2d Dept. 2003). The cross-motion for summary judgment dismissing the complaint is therefore denied.

The foregoing constitutes the ***DECISION*** and ***ORDER*** of the Court.

Dated: October 23, 2007
Riverhead, New York



EMILY PINES
J. S. C.