

**Rende v Lebron**

2010 NY Slip Op 33527(U)

December 15, 2010

Supreme Court, Nassau County

Docket Number: 5963/09

Judge: Denise L. Sher

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**SHORT FORM ORDER**

SUPREME COURT OF THE STATE OF NEW YORK

PRESENT: HON. DENISE L. SHER  
Acting Supreme Court Justice\_\_\_\_\_  
THOMAS J. RENDE,

Plaintiff,

- against -

RAMON E. LEBRON, CITYSIDE ARCHIVES, LTD. and  
ELRAC, INC. d/b/a ENTERPRISE RENT-A-CAR,Defendants.  
\_\_\_\_\_TRIAL/IAS PART 32  
NASSAU COUNTYIndex No.: 5963/09  
Motion Seq. No.: 01  
Motion Date: 10/24/10**The following papers have been read on this motion:**

	Papers Numbered
Notice of Motion, Affirmation and Exhibits	1
Affirmation in Opposition	2
Reply Affirmation	3

Upon the foregoing papers, it is ordered that the motion is decided as follows:

Plaintiff moves, pursuant to CPLR § 3212, for an Order granting him summary judgment on the issue of liability. Defendants oppose the motion.

This action arises from a motor vehicle accident which occurred on November 6, 2008, at approximately 11:30 a.m., at or near the intersection of 86<sup>th</sup> Street and 7<sup>th</sup> Avenue, Brooklyn, Kings County, New York. The accident involved a 2008 Honda owned and operated by plaintiff and a 2004 Ford Van owned by defendant Elrac Inc. and operated by defendant Ramon E. Lebron ("Lebron") who, at the time of said accident, was driving the automobile in his capacity as an employee of defendant Cityside Archives, Ltd. Plaintiff commenced the action by

the filing and service of a Summons and Verified Complaint on or about March 23, 2009. Issue was joined on or about May 4, 2009.

Briefly, it is plaintiff's contention that the accident occurred when defendant Lebron, without warning, crashed into the rear of plaintiff's vehicle when his car was stopped at the red light located at the intersection of 86<sup>th</sup> Street and 7<sup>th</sup> Avenue, Brooklyn, Kings County, New York. Plaintiff states that his car was at a full stop for approximately five to ten seconds when defendants' car slammed into the rear of his vehicle. As a result of said accident, plaintiff allegedly sustained multiple injuries which include a shoulder injury that has required two operations. Plaintiff submits that it was raining at the time of said accident and that defendant Lebron testified during his Examination Before Trial that the accident occurred when his front left bumper struck the right rear bumper of plaintiff's vehicle and that his vehicle slid into plaintiff's vehicle. Plaintiff also concedes that defendant Lebron additionally testified that plaintiff stopped short, but argues that "those buzz words cannot permit him to escape liability especially when they were not present either in his statement to the police officer or his signed accident report presented to his employer." Plaintiff argues that the Police Accident Report, prepared by the New York City Police Department with respect to the accident in the present matter, clearly shows that defendants' vehicle struck plaintiff's vehicle in the rear. According to said Police Accident Report, defendant Lebron stated to the responding officer at the scene that he tried to stop while traveling eastbound on 86<sup>th</sup> Street at 7<sup>th</sup> Avenue directly behind plaintiff's vehicle when he slipped on pavement causing the collision. Plaintiff claims that defendants cannot come up with a non-negligent explanation for striking his vehicle in the rear.

In opposition, defendants argue that "[p]laintiff through his attorney argues that he is

entitled to summary judgment as there are no triable issues of fact surrounding the happening of the within motor vehicle accident. However, the papers are devoid of any evidence in admissible form to support that contention.” Defendants claim that defendant Lebron was stopped at the red light behind plaintiff’s vehicle. When the light turned green traffic proceeded, when plaintiff opted to suddenly and abruptly stop his vehicle to make a left turn at the intersection causing defendant Lebron to collide with his vehicle striking plaintiff’s car in the rear. Defendants submit that plaintiff’s alleged “sudden, abrupt, short-stop precipitated said accident.”

Defendants further argue that plaintiff cannot rely on the Police Accident Report as evidence that he was not at fault for this accident as “[s]elf serving affidavits, statement, and police reports are hearsay and are insufficient as a matter of law and cannot be relied upon as evidence.”

It is well settled that the proponent of a motion for summary judgment must make a *prima facie* showing of entitlement to judgment as a matter of law by providing sufficient evidence to demonstrate the absence of material issues of fact. *See Sillman v. Twentieth Century- Fox Film Corp.*, 3 N.Y.2d 395, 165 N.Y.S.2d 498 (1957); *Alvarez v. Prospect Hospital*, 68 N.Y.2d 320, 508 N.Y.S.2d 923 (1986); *Zuckerman v. City of New York*, 49 N.Y.2d 557, 427 N.Y.S.2d 595 (1980); *Bhatti v. Roche*, 140 A.D.2d 660, 528 N.Y.S.2d 1020 (2d Dept. 1988). To obtain summary judgment, the moving party must establish its claim or defense by tendering sufficient evidentiary proof, in admissible form, sufficient to warrant the court, as a matter of law, to direct judgment in the movant’s favor. *See Friends of Animals, Inc. v. Associated Fur Mfrs., Inc.*, 46 N.Y.2d 1065, 416 N.Y.S.2d 790 (1979). Such evidence may include deposition transcripts, as well as other proof annexed to an attorney’s affirmation. *See*

CPLR § 3212 (b); *Olan v. Farrell Lines Inc.*, 64 N.Y.2d 1092, 489 N.Y.S.2d 884 (1985).

If a sufficient *prima facie* showing is demonstrated, the burden then shifts to the non-moving party to come forward with competent evidence to demonstrate the existence of a material issue of fact, the existence of which necessarily precludes the granting of summary judgment and necessitates a trial. *See Zuckerman v. City of New York*, 49 N.Y.2d 557, 427 N.Y.S.2d 595 (1980), *supra*. When considering a motion for summary judgment, the function of the court is not to resolve issues but rather to determine if any such material issues of fact exist. *See Sillman v. Twentieth Century-Fox Film Corp.*, 3 N.Y.2d 395, 165 N.Y.S.2d 498 (1957), *supra*. Mere conclusions or unsubstantiated allegations are insufficient to raise a triable issue. *See Gilbert Frank Corp. v. Federal Ins. Co.*, 70 N.Y.2d 966, 525 N.Y.S.2d 793 (1988).

Further, to grant summary judgment, it must clearly appear that no material triable issue of fact is presented. The burden on the court in deciding this type of motion is not to resolve issues of fact or determine matters of credibility, but merely to determine whether such issues exist. *See Barr v. Albany County*, 50 N.Y.2d 247, 428 N.Y.S.2d 665 (1980); *Daliendo v. Johnson*, 147 A.D.2d 312, 543 N.Y.S.2d 987 (2d Dept. 1989). It is the existence of an issue, not its relative strength that is the critical and controlling consideration. *See Barrett v. Jacobs*, 255 N.Y. 520 (1931); *Cross v. Cross*, 112 A.D.2d 62, 491 N.Y.S.2d 353 (1<sup>st</sup> Dept. 1985).

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 pursuant to New York State Vehicle and Traffic Law (“VTL”) § 1129(a). *See Krakowska v. Niksa*, 298 A.D.2d 561, 749 N.Y.S.2d 55 (2d Dept. 2002); *Bucceri v. Frazer*, 297 A.D.2d 304, 746 N.Y.S.2d 185 (2d Dept. 2002).

A rear end collision with a stopped vehicle establishes a *prima facie* case of negligence on the part of the operator of the offending vehicle. *See Tutrani v. County of Suffolk*, 10 N.Y.3d 906, 861 N.Y.S.2d 610 (2008). Such a collision imposes a duty of explanation on the operator. *See Hughes v. Cai*, 55 A.D.3d 675, 866 N.Y.S.2d 253 (2d Dept. 2008); *Gregson v. Terry*, 35 A.D.3d 358, 827 N.Y.S.2d 181 (2d Dept. 2006); *Belitsis v. Airborne Express Freight Corp.*, 306 A.D.2d 507, 761 N.Y.S.2d 329 (2d Dept. 2003).

As noted, a rear-end collision with a stopped or stopping vehicle creates a *prima facie* case of liability with respect to the operator of the rearmost vehicle, thereby requiring the operator to rebut the inference of negligence by providing a non-negligent explanation for the collision. *See Francisco v. Schoepfer*, 30 A.D.3d 275, 817 N.Y.S.2d 52 (1<sup>st</sup> Dept. 2006); *McGregor v. Manzo*, 295 A.D.2d 487, 744 N.Y.S.2d 467 (2d Dept. 2002).

Vehicle stops which are foreseeable under the prevailing traffic conditions, even if sudden and frequent, must be anticipated by the driver who follows, since the following driver is under a duty to maintain a safe distance between his or her car and the car ahead. *See Shamah v. Richmond County Ambulance Service, Inc.*, 279 A.D.2d 564, 719 N.Y.S.2d 287 (2d Dept. 2001).

Drivers must maintain safe distances between their cars and the cars in front of them and this rule imposes on them a duty to be aware of traffic conditions including stopped vehicles. *See VTL § 1129(a); Johnson v. Phillips*, 261 A.D.2d 269, 690 N.Y.S.2d 545 (1<sup>st</sup> Dept. 1999).

Drivers have a duty to see what should be seen and to exercise reasonable care under the circumstances to avoid an accident. *See Filippazzo v. Santiago*, 277 A.D.2d 419, 716 N.Y.S.2d 710 (2d Dept. 2000).

In the context of a rear end collision, a claim that the driver of the lead vehicle made a

sudden stop, stranding alone, is insufficient to rebut the presumption of negligence. *See Campbell v. City of Yonkers*, 37 A.D.3d 750, 833 N.Y.S.2d 101 (2d Dept. 2007); *Ayach v. Ghazal*, 25 A.D.3d 742, 808 N.Y.S.2d 759 (2d Dept. 2006); *Rainford v. Han*, 18 A.D.3d 638, 795 N.Y.S.2d 645 (2d Dept. 2005).

A driver's claim that the vehicle in front had a "pretty sudden" stop is insufficient to raise a triable issue of fact. *See Neidereger v. Misuraca*, 27 A.D.3d 537, 811 N.Y.S.2d 758 (2d Dept. 2006). As is the excuse that the front vehicle stopped short. *See Leal v. Wolff*, 224 A.D.2d 392, 638 N.Y.S.2d 110 (2d Dept. 1996).

As noted, conclusory assertions that the driver of the lead vehicle made a sudden unexpected stop is, without more, insufficient to rebut the presumption of negligence. *See Vecchio v. Hildebrand*, 304 A.D.2d 749, 758 N.Y.S.2d 666 (2d Dept. 2003); *McGregor v. Manzo*, *supra*; *Dileo v. Greenstein*, 281 A.D.2d 586, 722 N.Y.S.2d (2d Dept. 2001); *Shamah v. Richmond County Ambulance Services, Inc.*, *supra*.

The Appellate Division, Second Department, has held that the explanation that the stopped vehicle came to a sudden stop, standing alone, is insufficient to rebut the inference of negligence. *See Geschwind v Hoffman*, 285 A.D.2d 448, 727 N.Y.S.2d 155 (2d Dept. 2001). Thus, a sudden stop coupled with other evidence, such as a failure to comply with the Vehicle and Traffic Law with respect to proper signaling (*see Purcell v. Axelsen*, *supra*), or stopping in high speed traffic (*see Mundo v. City of Yonkers*, 249 A.D.2d 522, 672 N.Y.S.2d 128 (2d Dept. 1998) or in response to an emergency created by a non-party (*see Kienzle v. McLoughlin*, 202 A.D.2d 299, 610 N.Y.S.2d 771 (1<sup>st</sup> Dept. 1994)) can all constitute a non-negligent explanation for the rear-end collision. None of these conditions exist herein.

When a vehicle is stopped, anyone traveling behind the stopped vehicle is charged with

the duty of coming to a timely halt. *See Edney v. Metropolitan Suburban Bus Authority*, 178 A.D.2d 398, 577 N.Y.S.2d 102 (2d Dept. 1991). Absent an excuse, it is negligence as a matter of law if a stopped vehicle is hit in the rear. *See DeAngelis v. Kirschner*, 171 A.D.2d 593, 567 N.Y.S.2d 457 (1<sup>st</sup> Dept. 1991).

Additionally, the Court notes that the Police Accident Report submitted by plaintiff as an Exhibit in his moving papers qualifies as an exception to the hearsay rule since it was an admissions of a party/an admission against interest. *See Vaden v. Rose*, 4 A.D.3d 468, 771 N.Y.S.2d 670 (2d Dept. 2004); *Kemenyash v. McGoey*, 306 A.D.2d 516, 762 N.Y.S.2d 629 (2d Dept. 2003); *Guevara v. Zaharakis*, 303 A.D.2d 555, 756 N.Y.S.2d 465 (2d Dept. 2003).

Plaintiff, in his motion, has demonstrated *prima facie* entitlement to summary judgment on the issue of liability. Therefore, the burden shifts to the opposing parties to demonstrate an issue of fact which precludes summary judgment. *See Zuckerman v. City of New York, supra*.

After applying the law to the facts in this case, the Court finds that defendants failed to meet their burden to demonstrate an issue of fact which precludes summary judgment. Defendants' opposition consists of an affirmation from defendants' attorney, but no affidavit from defendant Lebron himself. Defendants failed to submit any evidence to establish a non-negligent explanation for striking plaintiff's vehicle in the rear. The Court finds that the undisputed facts on the record establish that defendants' vehicle struck plaintiff's vehicle in the rear and defendant has offered no excuse for the occurrence of the rear-end collision.

Moreover, defendants' contention that plaintiff came to a sudden stop just before the accident happened fails to provide a non-negligent explanation for the collision and thus is insufficient to rebut the inference of negligence arising out of the fact that the accident was a rear-end collision with a stopped or stopping vehicle. *See Ramirez v. Konstanzer*, 61 A.D.3d

837, 878 N.Y.S.2d 381 (2d Dept. 2009); *Harrington v. Kern*, 52 A.D.3d 473, 859 N.Y.S.2d 480 (2d Dept. 2008).

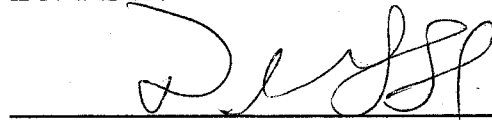
Therefore, based upon the foregoing, plaintiff's motion for an order, pursuant to CPLR § 3212 (b) and ( c), granting him summary judgment on the issue of liability is hereby granted.

This matter shall proceed to trial on the issue of damages only.

All parties shall appear for a Pre-Trial conference in Nassau County Supreme Court, Differentiated Case Management Part (DCM) at 100 Supreme Court Drive, Mineola, New York, on January 20, 2011 at 9:30 a.m.

This constitutes the decision and order of this Court.

ENTER:



DENISE L. SHER  
A.J.S.C.

Dated: Mineola, New York  
December 15, 2010

**ENTERED**  
DEC 17 2010  
NASSAU COUNTY  
COUNTY CLERK'S OFFICE