

Truskowski v Blue Dog Leasing, Inc.

2011 NY Slip Op 33822(U)

July 26, 2011

Sup Ct, Queens County

Docket Number: 22835/2009

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

TOMASZ TRUSZKOWSKI and KATARZYNA
TRUSZKOWSKA,

Plaintiffs,

- against -

BLUE DOG LEASING, INC., and MICHAEL
PANTALEO,

Defendants.

- - - - - x

The following papers numbered 1 to 12 were read on this motion by the defendants for an order pursuant to CPLR 2221(a) granting the defendants leave to renew and reargue a prior motion entered on default which granted plaintiff's motion for partial summary judgment on the issue of liability and upon reargument denying the plaintiff's motion for summary judgment and plaintiff's cross-motion for monetary sanctions against the defendant for frivolous motion practice:

Papers Numbered

Notice of Motion-Affidavits-Exhibits.....	1 - 6
Cross-Motion-Affirmation in Opposition	7 - 10
Affirmation in Opposition to Cross-Motion and Reply....	11 - 13
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In this negligence action, the plaintiffs, TOMASZ TRUSZKOWSKI and KATARZYNA TRUSZKOWSKA seek to recover damages for personal injuries they each sustained as a result of a motor vehicle accident that occurred on November 30, 2007, between the plaintiffs' vehicle and the vehicle owned by defendant BLUE DOG LEASING, INC., and operated by defendant, MICHAEL PANTALEO. The

rear end collision took place at the intersection of Cross Bay Boulevard and West 17th Road in Queens County, New York.

The plaintiffs commenced this action by filing a summons and complaint on August 24, 2009. Issue was joined by service of defendant's verified answer dated December 31, 2009. On November 11, 2010, the plaintiffs moved for partial summary judgment on the issue of liability. The defendants failed to file a timely affirmation in opposition to the motion and the motion was submitted to the Court for decision on January 10, 2011 without opposition.

On January 20, 2011 this Court rendered a decision and order granting the plaintiffs' motion for summary judgment pursuant to CPLR 3211(a) on the ground that the plaintiffs submitted sufficient evidence to demonstrate, prima facie, that the defendant driver was negligent as a matter of law. This court found that the plaintiff testified at his deposition that his vehicle was completely stopped at a red light for fifteen to twenty seconds when it was struck in the rear by the vehicle being operated by defendant Michael Pantaleo. Defendant Pantaleo testified that he observed the light turn red and applied his brakes and horn, however his vehicle hit the plaintiffs' vehicle in the rear.

This court found that the plaintiff established a prima facie case of negligence on the part of the defendant who struck the plaintiffs' vehicle in the rear. This court read the deposition of the defendant-driver which was also submitted in support of the motion and found that the defendant's testimony failed to rebut the inference of negligence by providing a non-negligent explanation for the collision.

The defendants now move for an order pursuant to CPLR 2221(a), granting leave to renew and reargue the prior motion on ground that defendants' late opposition to the motion was due to law office failure. Defendants contend that although they were required to serve opposition papers by December 29, 2010 they did make service of their opposition papers on January 5, 2011.

Plaintiffs oppose the motion and cross-move for sanctions on the ground that the defendants have failed to provide a sufficient justification for filing late opposition papers and have failed to provide a meritorious defense to rear end collision. Plaintiffs' counsel requests sanctions in the amount of \$1,845.00 as reimbursement for their time in preparing opposition papers to the motion.

Upon review and consideration of the defendants' motion, plaintiffs' cross-motion and opposition and defendants' reply thereto, this court finds that the motion to reargue is granted and upon reargument the original determination of this court is adhered to in its entirety.

The underlying incident occurred on November 30, 2007 at approximately 8:50 p.m. on Cross Bay Boulevard at its intersection with West 17th Road, Queens County, New York. The plaintiff, a medical coordinator at Brooklyn Hospital, testified at his deposition taken on June 2, 2010 that on the date of the accident he was headed home from shopping at BJ Supermarket. His wife Katarzyna and cousin Marian were passengers in his vehicle. He was traveling on Cross Bay Boulevard and completely stopped at a red traffic signal at the intersection of West 17th Road. After waiting at the light for fifteen to twenty seconds, he felt an impact to the rear of his vehicle.

Plaintiff KATARZYNA TRUSZKOWSKA was deposed on June 25, 2010. She was a passenger in the plaintiffs' vehicle at the time of the accident. She also testified that their vehicle was stopped at a red traffic signal for 10 - 15 seconds when she felt an impact to the rear of her vehicle. She testified that she sustained serious physical injuries as a result of the accident.

Defendant Michael Pantaleo testified at an examination before trial on June 25, 2010. He stated that at the time of the accident he was employed as a driver for the Howard Car Service. The vehicle he was driving was owned by the Blue Dog Leasing Company. He stated that on the night of the accident he was coming from Howard Beach traveling on Cross Bay Boulevard. As he approached the intersection of 17th Road he observed the traffic light turn red. He observed the plaintiffs' vehicle in front of his about two seconds prior to the impact. He engaged his horn and applied his brakes two seconds before the impact. He stated that he began braking when he was four or five lengths away from plaintiffs' vehicle.

Plaintiffs' counsel contends that the accident was caused solely by the negligence of the defendant in that his vehicle was traveling too closely and that the defendant failed to safely stop his vehicle prior to rear-ending the plaintiffs' vehicle which was stopped at a red traffic signal on Cross Bay Boulevard. Counsel contends, therefore, that the plaintiff is entitled to partial summary judgment as to liability because the defendant driver was solely responsible for causing the accident while the plaintiff driver was free from culpable conduct.

"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 with a stopped or stopping vehicle 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 Klopchin v Masri, 45 AD3d 737 [2d Dept. 2007]; Hakakian v McCabe, 38 AD3d 493 [2d Dept. 2007]; Reed v. New York City Transit Authority, 299 AD2d 330 [2d Dept. 2002]; Velazquez v Denton Limo, Inc., 7 AD3d 787 [2d Dept. 2004]).

Here, as stated in this Court's original decision, the plaintiffs satisfied their prima facie burden of establishing entitlement to judgment as a matter of law on the issue of liability (see Volpe v Limoncelli, 74 AD3d 795 [2d Dept. 2010]; Vavoulis v. Adler, 43 AD3d 1154 [2d Dept. 2007]; Levine v Taylor, 268 AD2d 566 [2000]).

Having made the requisite prima facie showing of entitlement to summary judgment, the burden then shifted to defendant to raise a triable issue of fact as to whether plaintiff was also negligent, and if so, whether that negligence contributed to the happening of the accident (see Goemans v County of Suffolk, 57 AD3d 478 [2d Dept. 2007]). This court finds that the defendant failed to submit evidence as to a non-negligent explanation for the accident sufficient to raise a triable question of fact (see Lampkin v Chan, 68 AD3d 727 [2d Dept. 2009]; Cavitch v Mateo, 58 AD3d 592 [2d Dept. 2009]; Garner v Chevalier Transp. Corp., 58 AD3d 802 [2d Dept. 2009]; Kimyagarov v Nixon Taxi Corp., 45 AD3d 736 [2d Dept. 2007]). The fact that the defendant observed the red light and saw the plaintiffs' vehicle and applied his brakes and utilized his horn prior to impact does not provide a non-negligent explanation for the accident or mitigate his error in failing to stop his vehicle in time (see De La Cruz v. Ock Wee Leong, 16 AD3d 199 [2d Dept. 2005]). Defendant has not alleged that his failure to stop was due to any brake or mechanical failure (see Ballatore v HUB Truck Rental Corp., 83 AD3d 978 [2d Dept. 2011]; Schuster v. Amboy Bus Co., 267 AD2d 448 [2d Dept. 1999]).

As the evidence in the record demonstrates that the sole proximate cause of the accident was the defendant driver's negligent failure to see what there was to be seen and to maintain a safe distance behind the plaintiffs' vehicle and as

there are no triable issues of fact which have been raised as to whether plaintiffs may have borne comparative fault for the causation of the accident, this Court's decision dated January 20, 2011, granting partial summary judgment to the plaintiffs on the issue of liability is adhered to in its entirety.

Plaintiff's cross-motion for sanctions is denied.

Dated: July 26, 2011
Long Island City, N.Y.

ROBERT J. MCDONALD
J.S.C.