

Griffith v Moya

2013 NY Slip Op 32911(U)

November 8, 2013

Supreme Court, Queens County

Docket Number: 20917/2012

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

CHRISTOPHER P. GRIFFITH and SALEMA
PARKER GRIFFITH,

Plaintiffs,

Index No.: 20917/2012
Motion Date: 10/30/13
Motion No.: 65
Motion Seq.: 2

- against -

NEY MOYA d/b/a ECUA TOWNCAR and CARLOS
W. MARTINEZ,

Defendants.

- - - - - x

The following papers numbered 1 to 15 were read on this motion by plaintiffs, CHRISTOPHER P. GRIFFITH and SALEMA PARKER GRIFFITH, for an order pursuant to CPLR 3212(b) granting plaintiffs partial summary judgment on the issue of liability and setting the matter down for a trial on damages:

	Papers Numbered
Notice of Motion-Affidavits-Exhibits.....	1 - 8
Affirmation in Opposition.....	9 - 12
Reply Affirmation.....	13 - 15

In this action for negligence, the plaintiff, CHRISTOPHER P. GRIFFITH, seeks to recover damages for personal injuries he sustained as a result of a motor vehicle accident that occurred on November 15, 2011. The accident took place at approximately 7:00 a.m. on the southbound lanes of the Van Wyck Expressway at or near the intersection with Hillside Avenue. Plaintiff alleges that he sustained injuries when his vehicle was struck in the rear by the vehicle owned by defendant NEY MOYA d/b/a ECUA TOWNCAR and operated by defendant CARLOS W. MARTINEZ.

This action was commenced by the plaintiffs by the filing of a summons and complaint on October 10, 2012. Issue was joined by service of defendant's verified answer dated January 9, 2013. Plaintiffs now move for an order pursuant to CPLR 3212(b), granting partial summary judgment on the issue of liability and setting this matter down for a trial on damages.

In support of the motion, the plaintiffs submit an affirmation from counsel, Frank A. Andrea, III, Esq; an affidavit from the plaintiff, Christopher Griffith, dated October 8, 2013; a copy of the pleadings; an unaffirmed and electronically signed copy of a radiological report from Dr. Glen Gray with the results of the MRI of the plaintiff's lumbar spine; as well as copies of repair estimates from Geico Insurance Company with respect to the damage sustained by the plaintiff's vehicle; and a copy of the motor vehicle accident report submitted by plaintiff Christopher Griffith.

In his affidavit, the plaintiff states that: "on November 15, 2011, at approximately 7:00 a.m. I was involved in a severe rear end collision on Route 678, the Van Wyck Expressway, Southbound, at or near its intersection with Hillside Avenue, County of Queens, State of New York. A vehicle operated by defendant CARLOS W. MARTINEZ, and owned by defendant NEY MOYA d/b/a ECUA TOWNCAR violently collided into the rear of my vehicle. At the time my vehicle was struck, I was stopped in moderate traffic 5 to 10 seconds when my vehicle sustained a heavy impact to the rear by the defendants' vehicle. As a result of the accident I sustained severe injuries, including but not limited to, herniated and bulging lumbar discs. He states that the happening of the accident was caused by the defendants' sole negligence in failing to keep their vehicle under control and at a safe distance from the rear of my vehicle as well as failing to stop and operate their vehicle in a proper manner causing the rear-end collision."

The plaintiff contends that the defendant driver was negligent in the operation of his vehicle in striking the plaintiffs' vehicle in the rear. Plaintiffs' counsel contends that the accident was caused solely by the negligence of the defendant driver in that his vehicle was traveling too closely and that the driver failed to safely stop his vehicle prior to rear-ending the plaintiff's vehicle. Counsel contends, therefore, that the plaintiff is entitled to partial summary judgment as to liability because the defendant was solely responsible for causing the accident while the plaintiff was free from culpable conduct.

In opposition, defendant's counsel, Cynthia Hung, Esq. contends that there are triable issues of fact as to the issue of liability. In support of the opposition, defendant, Carlos W. Martinez submits a copy of the transcript of his examination before trial taken on August 2, 2013. Mr. Martinez, a part-time taxi driver for Hoyt Limo stated that on the date of the accident he was driving a Lincoln Town Car. He had commenced work at 4:00 a.m. and driving a passenger to Kennedy Airport on the Van Wyck Expressway. He stated that traffic conditions were heavy. When he first observed the plaintiffs' vehicle it was moving ahead of his vehicle. He stated that he was traveling twenty-five to thirty miles an hour in the left lane when plaintiffs' vehicle stopped suddenly in front of his vehicle. He stated that he stopped his car abruptly and the car behind his hit his vehicle from behind. He states that he tried to avoid the accident and moved his vehicle to the right but the vehicle behind his propelled his vehicle into the plaintiff's vehicle.

Defendant's counsel argues in opposition to the motion that although the defendant's vehicle struck the plaintiff's vehicle in the rear, it was only because his vehicle was first struck in the rear by a vehicle behind his pushing his vehicle into the plaintiff's vehicle.

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 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 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 AD2 330 [2d Dept. 2002]; Velazquez v Denton Limo, Inc., 7 AD3d787 [2d Dept. 2004]).

Here, plaintiff states that his vehicle was stopped in moderate traffic when his vehicle was struck from behind by defendant's Town Car. As such, the plaintiff satisfied his prima facie burden of establishing entitlement to judgment as a matter of law on the issue of liability by demonstrating that his vehicle was stopped in traffic when it was struck in the rear by the vehicle operated by defendant (see (see Robayo v Aghaabdul, 971 NYS2d 317 [2d Dept. 2013]; Sayyed v Murray, 109 AD3d 464 [2d Dept. 2013]; Prosen v Mabella, 107 AD3d 870 [2d Dept. 2013]; Xian Hong Pan v Buglione, 101 AD3d 706 [2d Dept. 2012])).

Having made the requisite prima facie showing of entitlement to summary judgment, the burden then shifted to defendant to rebut the inference of negligence by providing a non-negligent explanation for the collision (see Xian Hong Pan v Buglione, 955 NYS2d 375 [2d Dept. 2012]; Zdenek v Safety Consultants, Inc., 63 AD3d 918 [2d Dept. 2009]). Generally, a claim that the driver of the lead vehicle made a sudden stop, standing alone, is insufficient to rebut the presumption of negligence created by the rear-end collision, and raise a triable issue of fact to defeat summary judgment (see Kastritsios v Marcello, 84 AD3d 1174 [2d Dept. 2011]; Jumandeo v Franks, 56 AD3d 614 [2d Dept. 2008]; Arias v Rosario, 52 AD3d 551 [2d Dept. 2008]; Plummer v Nourddine, 82 AD3d 1069 [2d Dept. 2011][the mere assertion that the respondents' vehicle came to a sudden stop while traveling in heavy traffic was insufficient to raise a triable issue of fact}); Staton v Ilic, 69 AD3d 606 [2d Dept. 2010]; Ramirez v Konstanzer, 61 AD3d 837 [2d Dept. 2009]). Further, 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 AD2d 564, (2d Dept. 2001)).

However, the courts have also found that a non-negligent explanation may include evidence of a mechanical failure, a sudden stop of the vehicle ahead, an unavoidable skidding on wet pavement or any other reasonable cause (see Ramos v TC Paratransit, 96 AD3d 924 [2d Dept. 2012]; Fajardo v City of New York, 95 AD3d 820 [2d Dept 2012]). Here, this court finds that under the circumstances of this case, the testimony of the defendant, stating that he was required to stop suddenly behind the plaintiff's car and that his car was pushed into the plaintiff's vehicle by a third vehicle behind his, raises genuine issues of material fact. Those issues include whether the plaintiff suddenly slowed his vehicle or came to a sudden unexplained stop, whether the defendant was required to stop

abruptly behind the plaintiff and whether a third vehicle pushed the defendant's vehicle into the plaintiffs' vehicle (see Tutrani v County of Suffolk, 10 NY3d 906 [2008]; Markesinis v Jaquez, 106 AD3d 961 [2d Dept. 2013]; Martin v Cartledge, 102 AD3d 841 [2d Dept. 2013]; Hauswirth v Transcare N.Y., Inc., 97 AD3d 792 [2d Dept. 2012] [evidence that a vehicle was struck in the rear and propelled into the vehicle in front of it may provide a sufficient nonnegligent explanation]; also see Katz v Masada II Car & Limo Serv., Inc., 43 AD3d 876 [2d Dept. 2011]).

Accordingly, plaintiff's motion, for an order pursuant to CPLR § 3212, granting partial summary judgment against defendant on the issue of liability is hereby denied.

Dated: November 8, 2013
Long Island City, N.Y.

ROBERT J. MCDONALD
J.S.C.