

**Garcia v Cepeda**

2013 NY Slip Op 33783(U)

July 25, 2013

Supreme Court, Bronx County

Docket Number: 302371/11

Judge: Sharon A.M. Aarons

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX: PART 24

-----X  
Juana Garcia,

Plaintiff,

**Index No. 302371/11**

-against-

Christian Cepeda and Miguel E. Caceres

Defendants.

**DECISION and ORDER**

Present:

**Hon. SHARON A.M. AARONS**

-----X  
Recitation, as required by CPLR § 2219(a), of the papers considered in the review of motion, as indicated below:

<u>Papers</u>	<u>Numbered</u>
Notice of Motion and Exhibits Annexed-----	1
Co-defendant's affirmation in Support -----	2
Affirmation in Opposition-----	3

*Upon the foregoing papers the Decision and Order on the motion are as follows:*

Plaintiff's motion for summary judgment on the issue of liability is denied. Defendant Miguel E. Caceres has submitted opposition to the plaintiff's motion. Co-defendant Christian Cepeda submits an affirmation in support of plaintiff's motion.

This personal injury action arises out of a multi-vehicle accident that occurred on September 6, 2010 on the northbound section of the Major Deegan Expressway near the West Fordham Road exit, Bronx County, New York.

In support of the motion for summary judgment, plaintiff submits a copy of the pleadings, a copy of the bill of particulars, the police accident report, plaintiff's deposition transcript, defendant Christian Cepeda's deposition transcript, and defendant Miguel E. Caceres' deposition transcript. Plaintiff testified that she was driving northbound on the Major Deegan Expressway for approximately ten minutes in light traffic when she saw

defendant Cepeda's vehicle suddenly come to a stop. Plaintiff stated that she maintained a half car distance with Cepeda's vehicle and within 30 seconds after she brought her vehicle to a "kind of gradual" stop, defendant Caceres' vehicle rear ended her vehicle. As a result of the heavy impact, plaintiff's vehicle propelled into defendant Cepeda's vehicle. Plaintiff also points to defendant Cepeda's deposition who testified that while his vehicle proceeded northbound on the Major Deegan Expressway on medium traffic, the car ahead of his vehicle came to a sudden abrupt stop and defendant Cepeda had to apply medium pressure on his vehicle's brake. He further stated that his vehicle was stopped for a second when he heard screeching tires and felt that his vehicle was rear ended. He only felt one heavy impact to his vehicle and did not see or hear any other collision.

In opposition, defendant Caceres disputed plaintiff's account of the accident and state that he was driving in medium traffic maintaining a 45-50 foot distance between his vehicle and plaintiff's vehicle when he saw plaintiff's vehicle brake light on, heard screeching tires and saw plaintiff's vehicle collide with defendant Cepeda's vehicle. He further testified that he did not see defendant Cepeda's vehicle slowing down or stopping in the lane of traffic prior to the collision. Defendant Caceres stated that after the initial collision, he had to suddenly stop his vehicle which caused his vehicle to rear-end plaintiff's car.

Summary judgment is the procedural equivalent of a trial. *See, Mendoza v Highpoint Associates, IX, LLC*, 83 A.D.3d 1 (1<sup>st</sup> Dept. 2011). It is a drastic remedy and should not be granted where there is any doubt as to the existence of a triable issue. *Rotuba Extruders Inc.*,

*v Ceppos*, 46 N.Y.2d 223 (1978). The proponent of a motion for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law, presenting sufficient evidence, in admissible form, to eliminate any material issues of fact from the case. *Winegrad v New York University Medical Center*, 64 N.Y.2d 851 (1985). Failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers. As a general rule, a rear-end collision with a stopped automobile creates a prima facie case of liability with respect to the operator of the moving vehicle unless the operator of the moving vehicle can come forth with an adequate, non-negligent explanation for the accident. *Gambino v. City of New York*, 205 A.D.2d 583 (2d Dept. 1994); *Parise v. Meltzer*, 204 A.D.2d 295 (2d Dept. 1994); *Aromando v. City of New York*, 202 A.D.2d 617 (2d Dept. 1994). Here, the plaintiff made a prima facie showing of negligence on the part of defendant Caceres based on her testimony that the motor vehicle accident occurred when defendant Caceres rear-ended plaintiff's vehicle. In opposition, defendant Caceres has presented an adequate non-negligent version of the accident in that he claimed that he maintained a safe distance with the plaintiff's vehicle who suddenly and abruptly stopped, thus, causing the collision. In this case, triable issues of fact remain as to whether Caceres's vehicle caused the initial rear-end collision and whether plaintiff's vehicle suddenly stopped without warning; thus, contributing to the multi-vehicle accident. Furthermore, since there are different versions of the accident, the determination of the trier of fact as to issues of credibility is given substantial deference as it has the opportunity to observe and evaluate the

testimony and demeanor of the witnesses thereby affording it a better perspective from which to evaluate the credibility of the witnesses. *McGuirk v. Mugs Pub*, 250 A.D.2d 824 (2d Dept. 1998); *Richard's Home Ctr. & Lbr. v. Kraft*, 199 A.D.2d 254 (2d Dept. 1993); *Vizzari v. State of New York*, 184 A.D.2d 564 (2d Dept. 1992); *Kincade v. Kincade*, 178 A.D.2d 510, 511(2d Dept. 1991).

Generally, negligence cases do not lend themselves to resolution by a motion for summary judgment unless the facts clearly demonstrate the negligence of one party without any culpable conduct by the other. *Burns v. Gonzalez*, 307 A.D.2d 863 (1<sup>st</sup> Dept. 2003); *Barnes v. Lee*, 158 A.D.2d 414 (1<sup>st</sup> Dept. 1990). For the foregoing reasons, triable issues of fact exist which warrant denial of plaintiff's motion.


Accordingly, plaintiff's motion for summary judgment is denied. It is hereby

**ORDERED**, that plaintiff is to serve a copy of this Decision and Order with notice of entry upon the defendants.

This constitutes the Decision and Order of this Court.

Dated: Bronx, New York

7/25/13

  
SHARON A.M. AARONS, J.S.C.