

Martinez v Cofer

2014 NY Slip Op 33258(U)

March 24, 2014

Supreme Court, Bronx County

Docket Number: 301486/2011

Judge: Alison Y. Tuitt

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NEW YORK SUPREME COURT-----COUNTY OF BRONX

PART IA - 5

JOSE RAMON MARTINEZ,

INDEX NUMBER: 301486/2011

Plaintiff,

-against-

Present:

HON. ALISON Y. TUITT

Justice

ROBERT COFER and A.R.E.B.A.-CASIEL, INC.,

Defendant.

The following papers numbered 1-3

Read on this Plaintiff's Motion for Summary Judgment

On Calendars of 1/13/14

Notice of Motion-Exhibits and Affirmation 1

Affirmation in Opposition and Exhibits 2

Reply Affirmation 3

Upon the foregoing papers, plaintiff's motion for summary judgment is granted for the reasons set forth herein.

The within action involves an automobile accident on October 13, 2010 at the intersection of Edward L. Grant Highway and West 169th Street, County of Bronx, State of New York. At the time of the accident, plaintiff was driving northbound Edward L. Grant Highway through its intersection with 169th Street when defendant, who was traveling westbound on West 169th Street allegedly failed to yield the right of way to plaintiff, striking his vehicle. It is undisputed that westbound traffic on West 169th Street was controlled by a stop sign and northbound traffic on Edward L. Grant Highway was not governed by a traffic control device. Plaintiff alleges that immediately prior to the accident, he was traveling in the left northbound lane at approximately 30-35 miles per hour and when his vehicle was entirely within the left lane and in the middle of

the intersection with 169th Street, his vehicle was struck by the defendant's vehicle. Plaintiff states that his vehicle was struck on the passenger side between the front passenger side door and the front fender. Immediately prior to his accident, plaintiff did not hear any screeching tires or honking horns.

Defendant Robert Cofer, the operator of the alleged offending vehicle, testified at his deposition that he was operating a 12 passenger van at the time of the accident. Immediately prior to the accident, defendant was crossing Edward L Grant while he was on either 168th or 169th Street. There was a stop sign to his right at the intersection. It was his intention to make a left onto Edward L. Grant. As defendant approached the stop sign on West 169th Street, there were no vehicles in front of his van. Defendant testified that he stopped at the stop sign but is unable to state for how long he was stopped before he proceeded into the intersection. He further testified that there was no traffic control device at the subject intersection for traffic on Edward L. Grant. As he was stopped at the intersection, defendant could see "pretty far" down Edward L. Grant, however, he testified that he never saw plaintiff's vehicle prior to the accident. Defendant further testified that after stopping, he began moving his vehicle and looked to his left. His view was unobstructed and he does not recall seeing any vehicles approaching as he looked to his left. Defendant does not recall how much time passed from the time he began moving his vehicle up to the point of impact.

The police accident report provides that "at T/P/O driver of veh #1 states he was through the intersection on W 169 St trying to turn left onto E.L. Grant when veh #2 struck veh #1. Veh #1 states veh #2 was speeding. Veh #2 states veh #1 went through the intersection without stopping at the stop sign and struck veh #2 causing veh #2 to lose control of veh."

Plaintiff argues that he is entitled to judgment as a matter of law because defendant failed to yield the right of way to plaintiff's oncoming vehicle in violation of Vehicle and Traffic Law (hereinafter "VTL"). VTL §1142 provides that every vehicle approaching a stop sign "...shall stop... and after having stopped shall yield the right of way to any vehicle which has entered the intersection from another highway or which is approaching so closely on said highway as to constitute an immediate hazard during the time when such driver is moving across or within the intersection." Defendants argue that operator Robert Cofer did not see plaintiff's vehicle prior to the accident because plaintiff's vehicle "was moving so fast, came out of nowhere like a bat out of hell speeding."

The court's function on motion for summary judgment is issue finding rather than issue

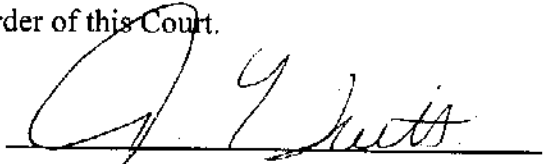
determination. Sillman v. Twentieth Century Fox Film Corp., 3 N.Y.2d 395 (1957). Since summary judgment is a drastic remedy, it should not be granted where there is any doubt as to the existence of a triable issue. Rotuba Extruders v. Ceppos, 46 N.Y.2d 223 (1978). The movant must come forward with evidentiary proof in admissible form sufficient to direct judgment in its favor as a matter of law. Zuckerman v. City of New York, 49 N.Y.2d 557, 562 (1980). Thus, when the existence of an issue of fact is even arguable or debatable, summary judgment should be denied. Stone v. Goodson, 8 N.Y.2d 8, (1960); Sillman v. Twentieth Century Fox Film Corp., *supra*.

The proponent of a motion for summary judgment carries the initial burden of production of evidence as well as the burden of persuasion. Alvarez v. Prospect Hospital, 68 N.Y.2d 320 (1986). Thus, the moving party must tender sufficient evidence to demonstrate as a matter of law the absence of a material issue of fact. Once that initial burden has been satisfied, the "burden of production" (not the burden of persuasion) shifts to the opponent, who must now go forward and produce sufficient evidence in admissible form to establish the existence of a triable issue of fact. The burden of persuasion, however, always remains where it began, i.e., with the proponent of the issue. Thus, if evidence is equally balanced, the movant has failed to meet its burden. 300 East 34th Street Co. v. Habeeb, 683 N.Y.S.2d 175 (1st Dept. 1997).

Plaintiff argues that he is entitled to summary judgment because he had the right of way and defendant failed to look for traffic before entering the intersection. Summary judgment on the issue of liability is warranted on these facts. The submissions of defendants fail to raise any questions of fact. While it is true that under the doctrine of comparative negligence, a driver who lawfully enters an intersection may still be found partially at fault for an accident if he or she fails to use reasonable care to avoid an accident with another vehicle in the intersection, (Nevarez v. S.R.M. Mgt. Corp., 867 N.Y.S.2d 431 (1st Dept. 2008)), in the instant matter, there is no evidence that plaintiff was negligent in the operation of his vehicle. Defendant had a stop sign and his testimony that he looked and did not see plaintiff's vehicle prior to the accident is unbelievable as a matter of law. Defendant testified that he had a clear, unobstructed view of traffic on the roadway, yet he failed to see plaintiff's vehicle, which did not have any traffic control devices impeding him to proceed through the subject intersection. Defendant breached his duty to see what through the proper use of his senses he should have seen. Boltan v. Lohan, 661 N.Y.S.2d 286 (2d Dept. 1997).

Accordingly, plaintiff's motion for summary judgment on the issue of liability is granted.
This constitutes the decision and order of this Court.

Dated: 3/24/2014



Hon. Alison Y. Tuitt