

**Succart v Uruchic Nwosu**

2014 NY Slip Op 33289(U)

February 10, 2014

Supreme Court, Bronx County

Docket Number: 23941/2013

Judge: Lucindo Suarez

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX: I.A.S. PART 19

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HECTOR SUCCART,

Plaintiff,

DECISION AND ORDER

Index No. 23941/2013

- against -

URUCHIC NWOSU and JOHN NWOSU,

Defendants.  
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PRESENT: Hon. Lucindo Suarez

Upon plaintiff's notice of motion dated December 2, 2013 and the affirmation, affidavit and exhibits submitted in support thereof; defendants' affirmation in opposition dated January 31, 2014 and the affidavit submitted therewith; plaintiff's affirmation in reply dated February 5, 2014 and the exhibits submitted therewith; and due deliberation; the court finds:

Plaintiff avers that his vehicle had been stopped at a red traffic signal for several seconds when rear-ended by defendants' vehicle. In response to this *prima facie* showing of entitlement to partial summary judgment on the issue of defendants' liability for causing the accident, defendant Uruchic Nwosu avers that she was stopped directly behind plaintiff's vehicle at a red light, but that after the light had turned green and the vehicles began to move, plaintiff stopped his car suddenly. She further avers that she could not avoid striking plaintiff's vehicle.

"A rear-end collision with a stationary vehicle creates a *prima facie* case of negligence requiring a judgment in favor of the stationary vehicle unless defendant proffers a nonnegligent explanation for the failure to maintain a safe distance . . . A driver is expected to drive at a sufficiently safe speed and to maintain enough distance between himself and cars ahead of him so as to avoid collisions with stopped vehicles, taking into account weather and road conditions." *LaMasa v.*

*Bachman*, 56 A.D.3d 340, 340, 869 N.Y.S.2d 17, 18 (1st Dep't 2008) (citations omitted). The happening of a rear-end collision is itself a *prima facie* case of negligence on the part of the rearmost driver in a chain confronted with a stopped or stopping vehicle. See *Cabrera v. Rodriguez*, 72 A.D.3d 553, 900 N.Y.S.2d 29 (1st Dep't 2010).

The general rule regarding liability for rear-end accidents “has been applied when the front vehicle stops suddenly in slow-moving traffic; even if the sudden stop is repetitive; when the front vehicle, although in stop-and-go traffic, stopped while crossing an intersection; and when the front car stopped after having changed lanes.” *Johnson v. Phillips*, 261 A.D.2d 269, 271, 690 N.Y.S.2d 545, 547 (1st Dep't 1999) (citations omitted). The sudden stop of the lead vehicle “is generally insufficient to rebut the presumption of non-negligence on the part of the lead vehicle,” *Woodley v. Ramirez*, 25 A.D.3d 451, 452, 810 N.Y.S.2d 125, 126-27 (1st Dep't 2006) (citations omitted), and, without more, does not rebut the presumption of negligence, see *Cabrera, supra*.

This presumption of negligence has been applied where the vehicles have started to move from a stop at a traffic signal. See e.g. *Brown v. Smalls*, 104 A.D.3d 459, 961 N.Y.S.2d 104 (1st Dep't 2013); *Savarese v. Cerrachio*, 79 A.D.3d 725, 911 N.Y.S.2d 921 (2d Dep't 2010). Defendants' reliance on *Tutrani v. County of Suffolk*, 10 N.Y.3d 906, 891 N.E.2d 726, 861 N.Y.S.2d 610 (2008) is misplaced; “the unique circumstances of that case are not present here.” *Schmidt v. Guenther*, 103 A.D.3d 1162, 1163, 958 N.Y.S.2d 844, 846 (4th Dep't 2013).

Defendants confirm that plaintiff was stopped at the time of impact, see *Brown, supra*, and their explanation “that the plaintiff proceeded once the traffic light turned green but then suddenly stopped, did not rebut the inference of negligence by providing a non-negligent explanation for the collision.” *Ramirez v. Konstanzer*, 61 A.D.3d 837, 837-38, 878 N.Y.S.2d 381, 382 (2d Dep't 2009). Thus, “[a]lthough the defendant's version of the events leading to the subject rear-end collision differed from the plaintiffs' version of events, the defendant's version of events, even if accepted as

true, did not raise a triable issue of fact as to the existence of a nonnegligent explanation for the rear-end collision.” *Cajas-Romero v. Ward*, 106 A.D.3d 850, 965 N.Y.S.2d 559 (2d Dep’t 2013). Defendants have thus failed to rebut the presumption of negligence. *See Dattilo v. Best Transp. Inc.*, 79 A.D.3d 432, 913 N.Y.S.2d 163 (1st Dep’t 2010). Summary judgment is warranted in the absence of an issue of fact with respect to plaintiff’s negligence. *See Maniscalco v. New York City Tr. Auth.*, 95 A.D.3d 510, 512 n 3, 943 N.Y.S.2d 486, 488 (1st Dep’t 2012); *cf. Dong Ming Huang v. State of New York*, 41 Misc.3d 1203[A], 2013 N.Y. Misc. LEXIS 4270 (Ct Claims July 31, 2013).

Defendants failed to argue or raise a triable issue of fact that plaintiff was the sole proximate cause of his injuries or that defendants were not negligent. *See Strauss v. Billig*, 78 A.D.3d 415, 909 N.Y.S.2d 724 (1st Dep’t 2010), *lv dismissed*, 16 N.Y.3d 755, 944 N.E.2d 645, 919 N.Y.S.2d 109 (2011). Given defendants’ failure to provide a non-negligent explanation for the collision and the failure to maintain a safe distance from plaintiff’s vehicle, any claimed lack of discovery would not render the motion premature. *See Maynard v. Vandyke*, 69 A.D.3d 515, 893 N.Y.S.2d 53 (1st Dep’t 2010); *Soto-Marroquin v. Mellet*, 63 A.D.3d 449, 880 N.Y.S.2d 279 (1st Dep’t 2009); *Jean v. Zong Hai Xu*, 288 A.D.2d 62, 732 N.Y.S.2d 338 (1st Dep’t 2001).

Accordingly, it is

ORDERED, that the motion of plaintiff for partial summary judgment on the issue of defendants’ liability for causing the accident is granted; and it is further

ORDERED, that the Clerk of the Court is directed to enter judgment in favor of plaintiff against defendants on the issue of defendants’ liability for causing the accident; and it is further

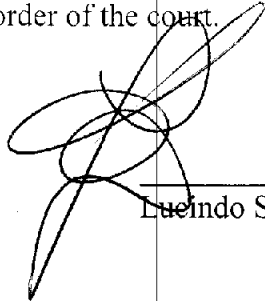
ORDERED, that upon plaintiff’s filing of a note of issue and certificate of readiness for trial with proof of service upon all parties by regular mail, together with a copy of this order and payment of the appropriate fee, the Clerk of the Court shall place this matter upon the appropriate calendar for a trial on damages and shall notify the parties of the date, time and place of any conference to be

conducted in contemplation of same; and it is further

ORDERED, that at such trial, plaintiff shall have the burden of demonstrating that he sustained a serious injury within the meaning of Insurance Law § 5102(d).

This constitutes the decision and order of the court.

Dated: February 10, 2014



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Luendo Suarez, J.S.C.