Sosa v Romano
2014 NY Slip Op 33560(U)
October 24, 2014
Supreme Court, Bronx County
Docket Number: 302059/2014
Judge: Lucindo Suarez

 FILED Oct 28 2014 Bronx County Clerk

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

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JOSE SOSA,

DECISION AND ORDER

Plaintiff,

Index No. 302059/2014

- against -

GUY ROMANO,

Defendant.

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PRESENT: Hon. Lucindo Suarez

Upon plaintiff's notice of motion dated September 24, 2014 and the affirmation, affidavit and exhibits submitted in support thereof; defendant's affirmation in opposition dated October 15, 2014 and the affidavit submitted therewith; plaintiff's affirmation in reply dated October 21, 2014; and due deliberation; the court finds:

Plaintiff moves for partial summary judgment on the issue of defendant's liability for causing the subject motor vehicle accident, submitting his affidavit in which he averred that his vehicle had been stopped in traffic for several seconds when it was struck from behind by defendant's vehicle. In opposition to this *prima facie* showing, defendant averred that plaintiff stopped abruptly in heavy traffic, creating an emergency situation, and that he 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). The sudden stop of the lead vehicle, without more, does not rebut the presumption of negligence. *See Cabrera*, *supra*.

Regardless of how defendant chooses to characterize the happening of the accident, and regardless of the version of the accident propounded by the parties, defendant's explanation amounts to nothing more than plaintiff's sudden stop, and defendant does not deny that he struck plaintiff's stopped vehicle in the rear. Defendant failed to raise a triable issue of fact that plaintiff was the sole proximate cause of his injuries or that defendant was not negligent. *See Strauss v. Billig*, 78 A.D.3d 415, 909 N.Y.S.2d 724 (1st Dep't 2010), *leave dismissed*, 16 N.Y.3d 755, 944 N.E.2d 645, 919 N.Y.S.2d 109 (2011). Given defendant's 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-Maroquin 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). Defendant 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).

The court notes that while it has been held that a plaintiff is not required to establish her freedom from comparative negligence to be granted summary judgment on the issue of a defendant's liability, *see Tselebis v. Ryder Truck Rental, Inc.*, 72 A.D.3d 198, 895 N.Y.S.2d 389 (1st Dep't 2010), the Appellate Division, First Department has declined to follow *Tselebis*, *see Maniscalco v. New York City Tr. Auth.*, 95 A.D.3d 510, 943 N.Y.S.2d 486 (1st Dep't 2012), because, despite CPLR 1411, the summary judgment motion did not dispel all triable issues of fact with respect to plaintiff's comparative fault. *See Thoma v. Ronai*, 189 A.D.2d 635, 592 N.Y.S.2d 333 (1st Dep't 1993), *affirmed*, 82 N.Y.2d 736, 621 N.E.2d 690, 602 N.Y.S.2d 323 (1993). The Maniscalco court held that it is "inappropriate" to rule as a matter of law that one party caused the injury where more than one party's negligence may have caused the injury. *Maniscalco*, 95 A.D.3d at 512-13, 943 N.Y.S.2d 486 at 488.

Although it has been suggested that a plaintiff may be granted partial summary judgment on the issue of a defendant's *negligence* without deciding the issue of the defendant's *liability*, *see Calcano v. Rodriguez*, 91 A.D.3d 468, 936 N.Y.S.2d 185 (1st Dep't 2012) (Catterson, J., concurring), this approach has been labeled confusing, *see Capuano v. Tishman Constr. Corp.*, 98 A.D.3d 848, 950 N.Y.S.2d 517 (1st Dep't 2012) (Acosta, J., concurring); *Calcano*, *supra*, and, in any event, plaintiff did not seek such relief, *see SAF LaSala Corp. v. S&H 88th St. Assocs.*, 138 A.D.2d 241, 525 N.Y.S.2d 206 (1st Dep't 1988); *Calcano*, *supra*. It is apparent, however, that the above-cited principles regarding rear-end motor vehicle accidents remain intact, even in the wake of *Maniscalco* and *Calcano*. *See Joplin v. City of New York*, 116 A.D.3d 443, 982 N.Y.S.2d 762 (1st Dep't 2014), *citing Renteria v. Simakov*, 109 A.D.3d 749, 972 N.Y.S.2d 15 (1st Dep't 2013); *cf. Dong Ming Huang v. State of New York*, 41 Misc.3d 1203(A), 2013 NY Slip Op 51566(U) (Ct Claims

July 31, 2013).

Accordingly, it is

ORDERED, that plaintiff's motion for partial summary judgment on the issue of defendant's 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 defendant on the issue of defendant's 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: October 24, 2014

Lucindo Suarez, J.S.C.