Wright v Royal Waste Servs., Inc.
2014 NY Slip Op 33564(U)
October 10, 2014
Supreme Court, Bronx County
Docket Number: 304318/2012
Judge: Alison Y. Tuitt
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NEW YORK SUPREME COURT----------COUNTY OF BRONX

PART IA - 5

CLAYTON WRIGHT,

Plaintiff,

-against-

ROYAL WASTE SERVICES, INC. and CARL SCHON,

Defendants.

INDEX NUMBER: **304318/2012**

Present:
HON. **ALISON Y. TUITT**
Justice

The following papers numbered 1-3,

Read on this Plaintiff's Motion for Partial Summary Judgment

On Calendar of **5/19/14**

Notice of Motion-Exhibits and Affirmation 1

Affirmation in Opposition 2

Reply Affirmation 3

Upon the foregoing papers, plaintiff's motion for partial summary judgment on the issue of liability is granted for the reasons set forth herein.

The within action arises from a motor vehicle accident on March 26, 2012 on the southbound lanes of the Cross Bronx Expressway at or near Beach Avenue in the County of Bronx and State of New York. Plaintiff alleges that defendants' Mack garbage truck struck plaintiff's truck in the rear while it was stopped in traffic. Plaintiff testified at his deposition that he was driving a tractor trailer on the Cross Bronx Expressway in the center lane of the three lane highway. Traffic was starting to slow down and "there was traffic all over the place". Before the accident, no vehicle attempted to cut in front of his truck. He was completely stopped when his truck was hit in the rear. It was a heavy impact that caused the seat to break and shove him forward. Plaintiff testified that he had been stopped for about two seconds when he was hit from the rear. Prior to the

accident, he saw that traffic was backing up and he put on his four way flashes so no one would run into the back of the truck. Following the accident, defendant Carl Schon (hereinafter "Schon") who was operating a garbage truck owned by defendant Royal Waste Services, Inc. told plaintiff that his phone was ringing and he was trying to get his phone. Defendant also states that he was not paying attention and that he was sorry. After the accident, they had to use a chain to pull plaintiff's trailer off of defendant's truck. The cost of repairing the truck was $18,000.

Defendant Schon testified at his deposition that he was operating a Mack garbage truck with two axle trailer in the rear. He was traveling on the Cross Bronx Expressway and had moved into the middle lane. There was medium traffic and his approximate rate of speed to the place where the accident occurred was 45 miles per hour. Defendant Schon first saw plaintiff's tractor trailer moving in the middle lane five to seven car lengths in front of him and he was following it for a couple of minutes. Plaintiffs' brake lights were operational. Schon testified that "someone might of cut into [plaintiff's] lane from the right to go to the left, I don't remember". At the time of the impact, plaintiff's tractor trailer was stopped for a couple of seconds. When he first observed that plaintiff's truck was stopped, defendant was traveling at 40 miles per hour. He first became aware that plaintiff's truck had stopped because he saw him tap his brakes a couple of times and the brake lights went on and off. Defendant Schon testified that plaintiff was cut off by a car from the left lane that was getting off the Rosedale exit. He saw a car go from the left lane in front of plaintiff and then get off at the exit. It was at that time that plaintiff tapped his brakes and came to a stop. Defendant Schon's vehicle made a heavy impact with plaintiff's truck. At the time of the impact, the tractor trailer was stopped by defendant stated that he did not realize at the time that the truck was stopped. He tried to swerve around him but was unable to avoid the impact. Half of defendant's vehicle was in the left lane, trying to go around him. Three seconds passed from the time defendant first hit his brakes until the accident occurred. Plaintiff's back bumper was bent in, his trailer wedged underneath. The garbage truck was severely damaged with the entire front end caved in and it had to be towed. The roadway was straight without curves and nothing obstructed his vision.

The police accident report provides as follows: "V-1, V-2 W/B Cross Bronx Expy. M/Lane. As V-2 is slowing for traffic Op V-1 not attentive to traffic conditions strikes rear of V-2, a cargo trailer... V-1 and trailer of V-2 towed due to damage."

The court's function on this 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).

It is well established that a rear-end collision with a stationary vehicle creates a prima facie case of negligence on the part of the operator of offending vehicle and imposes a duty upon that operator to proffer a non-negligent explanation for his failure to maintain a safe distance between cars. Agramonte v. City of New York, 732 N.Y.S.2d 414 (1st Dept. 2001); Mitchell v. Gonzalez, 703 N.Y.S.2d 124 (1st Dept. 2000). As a corollary, a presumption arises that no negligence on the part of the driver of the lead vehicle contributed to the collision. Soto–Maroquin v. Mellet,880 N.Y.S2d 279 (1st Dept. 2009). "Drivers must maintain safe distances between their cars and cars in front of them and this rule imposes on them a duty to be aware of traffic conditions, including vehicle stoppages". Johnson v. Phillips, 690 N.Y.S.2d 545 (1st Dept. 1999).

Defendants argue that the motion should be denied because there was a "sudden stip" caused by another vehicle cutting off plaintiff's truck within seconds before the accident. Defendants further argue that based on the prevailing traffic pattern, he reasonably anticipated that the highway traffic would continue unimpeded and had no reason to anticipate a "sudden stop" caused by another car cutting off plaintiff's truck. Finally, defendants argue that the motion should be denied based on questions of fact under the emergency doctrine.

A non-negligent explanation may exist where a driver is face with an emergency situation. The

emergency doctrine applies only to circumstances where a driver is confronted by a sudden and unforeseen occurrence not of the driver's own making. Rivera v. New York City Transit Authority, 77 N.Y.2d 322 (1991). The common-law emergency doctrine "recognizes that when an actor is faced with a sudden and unexpected circumstance which leaves little or no time for thought, deliberation or consideration, or causes the actor to be reasonably so disturbed that the actor must make a speedy decision without weighing alternative courses of conduct, the actor may not be negligent if the actions taken are reasonable and prudent in the emergency context, provided the actor has not created the emergency". Caristo v. Sanzone, 96 N.Y.2d 172, 174 (2001). The doctrine recognizes that a person confronted with such an emergency situation "cannot reasonably be held to the same accuracy of judgment or conduct as one who has had full opportunity to reflect, even though it later appears that the actor made the wrong decision". Rivera, 77 N.Y.2d at 327. "If the operator could not reasonably foresee the injury as a result of his action in the over-all context of this particular fact pattern, or if his conduct was reasonable and proportionate to the danger he could anticipate, defendant may be excused or found not liable by a fact finder. Id. at 329 citing Danielenko v. Kinney Rent-A-Car, 57 N.Y.2d 198, 204 (1982).

Here, defendant Schon fails to provide a non-negligent explanation for the happening of this accident. Under these facts, it cannot be said that defendant Schon was faced with an emergency situation. The emergency doctrine typically is inapplicable to routine rear-end traffic accidents. Johnson, 690 N.Y.S.2d at 548 citing Sass v. Ambu Trans, Inc., 657 N.Y.S.2d 69 (2d Dept. 1997). Even when a front motorist stopped suddenly to allow passage of an ambulance, an emergency was not presented to rebut the inference of negligence and thereby exonerate the driver of the rear car. Id. citing DiPaola v. Scherpich, 657 N.Y.S.2d 883 (2d Dept. 1997). The emergency doctrine is inappropriate in cases where the subject accident resulted from an occurrence which the parties had reason to anticipate. In this instant matter, it was totally foreseeable that defendant Schon could cause an accident with plaintiff's truck by failing to maintain a reasonably safe distance from plaintiff's vehicle. Schon does not explain why he failed maintain a safe distance between his vehicle and plaintiff's vehicle. Drivers are charged with a responsibility to maintain a safe distance between vehicles and to be prepared for such vehicle stoppages. Vehicle and Traffic Law §1129(a). If defendant Schon was suddenly faced with an emergency situation, it was of his own making in failing to maintain a safe distance between the vehicles. Furthermore, it is not a sufficient defense to claim that the vehicle in front "stopped short" or stopped suddenly, as defendant Schon claims here. See, Mitchell, 703 N.Y.S.2d at 124; Joplin v. City of New York, 982

N.Y.S.2d 762 (1st Dept. 2014)(Defendants' evidence that plaintiff's vehicle suddenly stopped was insufficient to raise an issue of fact with respect to their liability); Franco v. Rolling Frito-Lay Sales, Ltd., 962 N.Y.S.2d 54 (1st Dept. 2013)(Defendant stopped vehicle that was rear-ended by plaintiff was entitled to summary judgment. Plaintiff failed to provide a non-negligent explanation for the collision. Plaintiff's assertion that defendants' vehicle had "stopped suddenly" is insufficient to rebut the presumption of his negligence); Williams v. Kadri, 976 N.Y.S.2d 460 (1st Dept. 2013)(Taxi driver's explanation that the taxi slipped on ice was inadequate to establish a non-negligent explanation for accident, as required to overcome presumption that taxi driver's negligence was cause for accident in which taxi struck stopped limousine from the rear. A driver is expected 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 condition); Profita v. Diaz, 954 N.Y.S.2d 40 (1st Dept. 2012)(Plaintiff driver's testimony that defendants' vehicle stopped suddenly and then struck defendants' vehicle is insufficient to raise a triable issue of fact. Indeed, plaintiff driver failed to explain why he did not maintain a safe distance between his vehicle and defendants' vehicle. Plaintiff driver's testimony that it had been raining on and off on the day of the accident is also insufficient, by itself, to raise an issue of fact); Dicturel v. Dukureh, 897 N.Y.S.2d 87 (1st Dept. 2010)(Although defendant maintained that the accident was the result of plaintiff stopping suddenly, this does not explain his failure to maintain a safe distance from the vehicle in front of him and is insufficient to rebut the presumption that no negligence on plaintiff's part contributed to the accident); Francisco v. Schoepfer, 817 N.Y.S.2d 52 (1st Dept. 2006)(Rear-end collision with a stopped vehicle establishes prima facie case of negligence on part of driver who strikes vehicle in front; assertion that lead vehicle "stopped suddenly" is generally insufficient to rebut presumption of negligence. Driver who asserted that, while traveling 30 miles per hour, he observed vehicle stop approximately 32–40 feet in front of him, was negligent in rear-ending that vehicle, regardless of his unsubstantiated allegations that brake lights of rear-ended vehicle were not in working order, or that vehicle had stopped suddenly).

Finally, defendants' contention that the portions of the deposition transcripts submitted by plaintiff in support of his motion are inadmissible because it did not contain the signature pages is without merit. See, Franco, 962 N.Y.S.2d at 55 (Plaintiff's unsigned deposition transcript was admissible on defendants' motion for summary judgment where transcript was certified by the reporter and plaintiff did not challenge its accuracy. Unsigned deposition transcript of defendant was admissible where, although the transcript was not certified by a reporter, the transcript was submitted by the party deponent himself, and, therefore, was adopted

as accurate by the deponent). In any event, plaintiff submits the signature page of his deposition transcript in his reply papers. Moreover, defendants annexed both the plaintiff's and defendant's deposition transcripts with the reporter's certification.

Accordingly, plaintiff's motion for summary judgment on the issue of liability is granted.

This constitutes the decision and order of this Court.

Dated: 10/10/14

Hon. Alison Y. Tuitt