

Canelo v Bedoya

2014 NY Slip Op 33895(U)

October 21, 2014

Supreme Court, Queens County

Docket Number: 19768/2012

Judge: Robert J. McDonald

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ORIGINAL

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK
CIVIL TERM - IAS PART 34 - QUEENS COUNTY
25-10 COURT SQUARE, LONG ISLAND CITY, N.Y. 11101

P R E S E N T : HON. ROBERT J. MCDONALD
Justice

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JESSICA CANELO,

Plaintiff,

- against -

Index No.: 19768/2012
Motion Date: 10/03/14
Motion No.: 14
Motion Seq.: 6

FILED
NOV 7 - 2014
COUNTY CLERK
QUEENS COUNTY

JONATHAN BEDOYA, MARINKO DJOKIC and
INGRID GUZMAN,

Defendants.

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The following papers numbered 1 to 12 were read on this motion by defendants, Marinko Djokic and Ingrid Guzman, for an order pursuant to CPLR 3212(b), granting said defendants summary judgment on the issue of liability and dismissing the plaintiff's complaint and all cross-claims against them:

	Papers Numbered
Defendant Djokic's Notice of Motion-Affidavits-Exhibits..	1 - 6
Defendant Bedoya's Affirmation in Opposition.....	7 - 9
Reply Affirmation.....	10 - 12

In this negligence action, the plaintiff, Jessica Canelo, seeks to recover damages for personal injuries she allegedly sustained as a result of a motor vehicle accident that occurred on August 19, 2011, between the vehicle owned and operated by Jonathan Bedoya and the vehicle owned by defendant Ingrid Guzman and operated by defendant, Marinko Djokic. The complaint asserts that plaintiff Jessica Canelo was a passenger in the Djokic vehicle.

At the time of the accident, defendant Djokic was operating his vehicle on Astoria Boulevard, near its intersection with 77th Street in Queens County, New York. Djokic claims that

his vehicle was completely stopped at a red traffic signal when it was struck in the rear by the vehicle operated by defendant, Jonathan Bedoya. Plaintiff alleges that she sustained serious physical injuries as a result of the impact.

The plaintiff commenced this action by filing a summons and verified complaint on September 24, 2012. Issue was joined by service of defendant Djokic and Guzman's verified answer with cross-claims on January 7, 2013. Defendant Bedoya joined issue by serving a verified answer with cross-claims dated December 20, 2012. Plaintiff filed a Note of Issue on January 17, 2014. This matter is on the calendar of the Trial Scheduling Part on February 3, 2015.

Defendants Marinko Djokic and Ingrid Guzman now move for an order pursuant to CPLR 3212(b), granting summary judgment on the issue of liability and dismissing the plaintiff's complaint and all cross-claims against them.

In support of the motion, defendant Djokic submits an affirmation from counsel, Manuel R. Reynoso, Esq., a copy of the pleadings; a copy of the police accident report and copies of the transcripts of the examination before trial of the defendants, Djokic and Bedoya, and the plaintiff, Jessica Canelo.

In his examination before trial, defendant Djokic, age 30, testified that he is employed as a track worker for the MTA. He testified that at the time of the accident, approximately 10:00 a.m. on August 19, 2011, he was operating a small Honda Civic or Accord which he believed was owned by his friend Jessica Mosquera. He stated that Jessica Mosquera who was seated in the front seat, was the only other passenger in the vehicle. They were driving on Astoria Boulevard. He stopped his vehicle at the intersection of 77th Avenue waiting at a red traffic signal. After being stopped for a second or two his vehicle was struck in the rear by the vehicle operated by defendant Bedoya. As a result of the impact his vehicle was propelled into the middle of the intersection.

Jessica Mosquera commenced a separate action against Jonathan Bedoya in March 2012 under Index No. 5199/2012. That action was consolidated with the instant action for joint trial by order of this Court dated March 5, 2013. However, Ms. Mosquera discontinued that action in April, 2014.

The police officer who responded to the scene described the accident in the police report based upon the statements of the drivers as follows:

"At t/p/o veh # 1 (Bedoya) states didn't see Veh #2 (Djokic) breaking and struck in rear. Veh #2 (Djokic) states braking for traffic light at location when he was struck in the rear by Veh #1." The time of the accident is stated to be 10:40 a.m. The original report states there was one passenger in the Djokic vehicle, Jessica Mosquera. The Officer prepared an amended report at a later date adding Jessica Canelo as a passenger in the vehicle and stating that she left the scene prior to the police arrival.

Defendant Jonathan Bedoya, age 27, was deposed on June 30, 2014. At that time he testified that he is employed as a Court Officer at the Criminal Court in Kew Gardens. On the date of the accident, he was driving a white Nissan Altima. He was traveling on Astoria Boulevard on his way to work. He stated that when he was half a block from the intersection of 77th Street he looked up and saw that the light was green. He stated that he took his eyes off he light and less than ten seconds later he saw the brake lights of the vehicle in front of him. He swerved his vehicle to the right but was unable to stop in time and struck the vehicle in front of him. He did not keep the light under observation after he first saw it and he does not know the color of the light when the impact occurred. He stated he was traveling at approximately 30 miles per hour when the impact occurred and does not remember if he had time to apply his brakes before the collision. He stated that both vehicles ended up in the middle of the intersection. He testified that the other vehicle was being operated by a male and he observed that there was one female passenger.

The plaintiff, Jessica Canelo, a commercial sales assistant at TD Bank, age 26, testified on November 1, 2013. She stated that the subject accident took place on a Friday night at approximately 10:00 p.m. She was in a vehicle owned by her friend Jessica Mosquera and being operated by Djokic. She stated he was driving because he was a designated driver. Jessica Canela stated she was a passenger in the rear seat and Jessica Mosquera was a front seat passenger. Her friend Pedro was also a rear seat passenger in the vehicle. They were on Astoria Boulevard heading toward the Grand central Parkway. When they approached the intersection with 77th Street, she observed that the traffic signal was red. The driver, Djokic, brought his vehicle to a gradual stop at the red traffic signal. She stated that his vehicle was stopped for thirty seconds when it was struck in the rear pushing it into the intersection. After the collision she exited the vehicle and sat on the sidewalk. She left the scene in a cab with her friend Pedro and they were driven to the emergency room at New York Hospital. She did not speak to the police at the

Scene. At the hospital she had complaints of not being able to breath and numbness in her right arm and pain in her neck and back. A few weeks after the accident she went to the 115th Precinct because her name was not on the police report. She showed the officer documents from the hospital and he prepared a revised police report adding her as a passenger.

Counsel for defendants Djokic and Guzman contends that the accident was caused solely by the negligence of defendant Bedoya in that his vehicle was traveling too closely in violation of VTL § 1129 and the defendant driver failed to safely stop his vehicle prior to rear-ending the co-defendant's vehicle. Counsel contends, therefore, that the Djokic is entitled to summary judgment dismissing the plaintiff's complaint and all cross-claims because defendant Bedoya was solely responsible for causing the accident.

Plaintiff has not opposed the motion.

Defendant Bedoya opposes the motion on the ground that there is conflicting testimony as to whether plaintiff Jessica Canelo was even present and involved in the motor vehicle accident. Although Canelo testified that she was a rear seat passenger along with her friend Pedro and Jennifer Mosquera was a front seat passenger, the driver Djokic testified that Ms. Mosquera was the only passenger in the vehicle at the time of the accident. Counsel argues that if Ms. Canelo was not present as a passenger then there is no duty of care to Ms. Canelo by either driver.

The proponent of a summary judgment motion must tender evidentiary proof in admissible form eliminating any material issues of fact from the case. If the proponent succeeds, the burden shifts to the party opposing the motion, who then must show the existence of material issues of fact by producing evidentiary proof in admissible form in support of his position (see Zuckerman v City of New York, 49 NY2d 557[1980]).

"When the driver of an automobile approaches another automobile from the rear, he or she is bound to maintain a reasonably safe rate of speed and control over his or her vehicle, and to exercise reasonable care to avoid colliding with the other vehicle" (Macauley v ELRAC, Inc., 6 AD3d 584 [2d Dept. 2003]). It is well established law that a rear-end collision creates a prima facie case of negligence on the part of the driver of the rearmost vehicle, requiring the operator of that vehicle to proffer an adequate, non-negligent explanation for the accident (see Delgado v Bang, 120 AD3d 608 [2d Dept. 2014]; Kertesz v Jason Transp. Corp., 102 AD3d 658 [2d Dept. 2013]; Ramos v TC Paratransit, 96 AD3d 924 [2d Dept. 2012]; Pollard v Independent Beauty & Barber Supply Co., 94 AD3d 845 [2d Dept. 2012]; Klopchin v Masri, 45 AD3d 737 [2d Dept. 2007]).

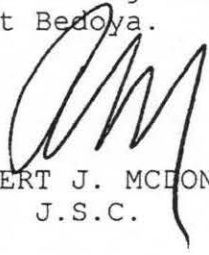
Here, Djokic testified that his vehicle was lawfully stopped at a red traffic signal when it was suddenly struck from behind by the Bedoya vehicle. Thus, Djokic satisfied his prima facie burden of establishing entitlement to judgment as a matter of law on the issue of liability (see Rodriguez v Farrell, 115 AD.3d 929 [2d Dept. 2014]; Williams v Spencer-Hall, 113 AD3d 759 [2d Dept. 2014]; Robayo v Aghaabdul, 109 AD3d 892 [2d Dept. 2013]; Sayyed v Murray, 109 AD3d 464 [2d Dept. 2013]; Prosen v Mabella, 107 AD3d 870 [2d Dept. 2013]; Xian Hong Pan v Buglione, 101 AD3d 706 [2d Dept. 2012]).

Having made the requisite prima facie showing of entitlement to summary judgment, the burden then shifted to Bedoya to raise a triable issue of fact as to whether Djokic was also negligent, and if so, whether that negligence contributed to the happening of the accident (see Goemans v County of Suffolk, 57 AD3d 478 [2d Dept. 2007]). Here, there is no dispute that Djokic's vehicle was rear-ended by defendant's vehicle and no dispute that defendant admitted to the police officer at the scene that he did not see the plaintiff's vehicle braking in front of him until seconds before he he crashed into it (see Brown v Pinkett, 110 AD3d 1024 [2d Dept. 2013]; Griffin v Pennoyer, 49 AD3d 341 [1st Dept. 2008]). This court finds, therefore, that Bedoya has failed to provide evidence as to a non-negligent explanation for the accident sufficient to raise a triable question of fact (see Bernier v Torres, 79 AD3d 776 [2d Dept. 2010]; Lampkin v Chan, 68 AD3d 727 [2d Dept. 2009]; Cavitch v Mateo, 58 AD3d 592 [2d Dept. 2009]; Garner v Chevalier Transp. Corp., 58 AD3d 802 [2d Dept. 2009]; Kimyagarov v Nixon Taxi Corp., 45 AD3d 736 [2d Dept. 2007]) Bedoya testified that his vehicle struck Djokic's vehicle in the rear and that he did not see Djocik's vehicle until only seconds before the accident when it was too late for him to safely stop his vehicle. He did not see the color of the traffic signal at the time of the impact.

As the evidence in the record demonstrates that Bedoya failed to provide a non-negligent explanation for the collision and as no triable issues of fact have been put forth as to whether Djokic may have borne comparative fault for the causation of the accident, and based on the foregoing, it is hereby,

ORDERED, that Djokic's motion is granted and the plaintiff's complaint is dismissed against Djocik and Guzman only. All cross-claims against defendants Djokic and Guzman are dismissed. As Bedoya remains a defendant in the action he may raise the issue of whether plaintiff Canelo was a passenger in Djokic's vehicle at the time of the trial of Canelo against Bedoya.

Dated: October 21, 2014
Long Island City, N.Y.


ROBERT J. McDONALD
J.S.C.

FILED

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