

Pineda v Bo Sun

2015 NY Slip Op 31346(U)

April 21, 2015

Supreme Court, Queens County

Docket Number: 707624/2014

Judge: Robert J. McDonald

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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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GUILLERMO PINEDA, Index No.: 707624/2014
Plaintiff, Motion Date: 03/05/15
- against - Motion No.: 129
BO SUN, Motion Seq.: 1
Defendant.

- - - - - x

The following papers numbered 1 to 10 were read on this motion by plaintiff, Guillermo Pineda, for an order pursuant to CPLR 3212, granting plaintiff partial summary judgment on the issue of liability and setting the matter down for a trial on damages:

	<u>Papers Numbered</u>
Notice of Motion-Affidavits-Exhibits.....	1 - 5
Affirmation in Opposition-Affidavits-Exhibits.....	6 - 8
Reply Affirmation.....	9 - 10

This is a personal injury action in which plaintiff, Guillermo Pineda, a self-employed handyman, seeks to recover damages for injuries he sustained as a result of a motor vehicle accident that occurred on June 22, 2014, on Queens Boulevard near the intersection with Jackson Avenue, Queens County, New York. At the time of the accident, the plaintiff's vehicle was allegedly stopped in traffic when it was hit in the rear by the vehicle owned and operated by defendant Bo Sun. Plaintiff alleges that as a result of the impact he sustained, inter alia, a right knee complex tear of the medial meniscus requiring arthroscopic surgery; right knee ACL sprain; bulging disc at L1-L2 through L5-S1 with superimposed central, left central and subarticular protruded disc herniation at L4-5.

The plaintiff commenced this action by filing a summons and complaint on October 20, 2014. Issue was joined by service of defendant's verified answer dated December 10, 2014. Plaintiff now moves, prior to depositions, for an order pursuant to CPLR 3212(b), granting partial summary judgment on the issue of liability and setting the matter down for a trial on serious injury and damages only.

In support of the motion, the plaintiff submits an affidavit from counsel, Stuart T. Spitzer, Esq; a copy of the pleadings; a copy of plaintiff's verified bill of particulars; a copy of the police accident report (MV-104AN); and an affidavit of facts from the plaintiff Guillermo Pineda.

In his affidavit, dated February 11, 2015, the plaintiff states that on the date of the accident, June 22, 2014, he was operating his motor vehicle on the span over Queens Boulevard leading to the Queensboro Plaza Bridge at or near Jackson Avenue in Long Island City, New York. He states that as he was driving he brought his vehicle to a gradual stop. He states that while stopped his vehicle was suddenly and without warning struck in the rear by a 2011 Cadillac livery vehicle owned and operated by the defendant.

Defendant, Bo Sun, states in his affidavit, dated February 18, 2015, that on the date of the accident he was traveling westbound in the left lane of Queens Boulevard near its intersection with Jackson Avenue when a small car cut in front of his vehicle and came to a sudden stop. He states that as a result he was unable to avoid contact with the car because it came to a sudden and unexpected stop.

The police report which is based upon the statements of the drivers states:

"Driver of Vehicle 1 (plaintiff) states he was stopping on the roadway when Vehicle #2 (defendant) rear-ended vehicle No 1. Driver of vehicle 2 states Veh #1 merged in front of him and stopped causing vehicle #2 to rear end Veh #1."

The plaintiff contends that defendant was negligent in the operation of his vehicle in striking plaintiff's vehicle in the rear. Plaintiff's counsel contends that the accident was caused solely by the negligence of the defendant in that his vehicle was traveling too closely in violation of VTL § 1129 and that he failed to brake his vehicle in a timely and proper manner. Counsel contends that defendant's explanation that plaintiff came to a sudden and unanticipated stop in and of itself is

insufficient to provide a non-negligent explanation for the collision and is insufficient to raise a triable issue of fact (citing Rodriguez v Farrell, 115 AD3d 929 [2d Dept. 2014]; David v New York City Bd. Of Educ. 19 AD3d 639 [2d Dept. 2005]). Counsel contends, therefore, that the plaintiff is entitled to partial summary judgment as to liability because the defendant driver was solely responsible for causing the accident while the plaintiff was free from culpable conduct.

In opposition to the motion, defendant's counsel, Robert E. Giovinazzi, Esq., states that although defendant struck the plaintiff's vehicle in the rear, the affidavit of the defendant raises triable issues of fact. Specifically, counsel contends that the testimony of the defendant that he was driving in the left lane of Queens Boulevard when the plaintiff's vehicle cut in front of him and then stopped suddenly in front of him raises a non-negligent explanation for the collision. Counsel claims that because the operator of plaintiff's vehicle also operated his vehicle in a negligent manner the issue of comparative negligence is for the jury to determine. In addition, counsel contends that the motion is premature as depositions have yet to be held and facts essential to oppose the motion may exist but cannot be stated without a deposition of the plaintiff.

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 with a stopped or stopping vehicle 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 Parra v Hughes, 79 AD3d 1113 [2d Dept. 2010][the defendant's claim that the vehicle immediately in front of him made a sudden stop, standing alone, was insufficient, under the circumstances of this case, to rebut the presumption of negligence]; DeLouise v S.K.I. Wholesale Beer Corp., 75 AD3d 489 [2d Dept. 2010]; Volpe v Limoncelli, 74 AD3d 795 [2d Dept. 2010]; Klopchin v Masri, 45 AD3d 737 [2d Dept.

2007]; Hakakian v McCabe, 38 AD3d 493 [2d Dept. 2007]; Velazquez v Denton Limo, Inc., 7 AD3d 787 [2d Dept. 2004]).

Here, plaintiff states that he was stopped in traffic on Queens Boulevard and was struck from behind by defendant's motor vehicle. Thus, the plaintiff satisfied his prima facie burden of establishing his entitlement to judgment as a matter of law on the issue of liability by demonstrating that his vehicle was stopped when it was struck in the rear by the vehicle operated by defendant (see Ramos v TC Paratransit, 96 AD3d 924 [2d Dept. 2012]; Napolitano v Galletta, 85 AD3d 881 [2d Dept. 2011]; Kastritsios v Marcello, 84 AD3d 1174 [2d Dept. 2011]).

Having made the requisite prima facie showing of entitlement to summary judgment, the burden then shifted to defendant to raise a triable issue of fact as to whether plaintiff was also negligent, and if so, whether his negligence contributed to the happening of the accident (see Goemans v County of Suffolk, 57 AD3d 478 [2d Dept. 2007]).

This court finds that the defendant failed to submit evidence as to any negligence on the part of plaintiff or to provide a non-negligent explanation for the accident sufficient to raise a triable question of fact (see Lampkin v Chan, 68 AD3d 727 [2d Dept. 2009]; Gomez v Sammy's Transp., Inc., 19 AD3d 544 [2d Dept. 2005]). If the operator of the moving vehicle cannot come forward with evidence to rebut the inference of negligence, the occupants and owner of the stationary vehicle are entitled to summary judgment on the issue of liability (see Kimyagarov v. Nixon Taxi Corp., 45 AD3d 736 [2d Dept. 2007]). The evidence demonstrated that the plaintiff, who was in a stopped vehicle, operated his vehicle in a nonnegligent manner and no evidence was presented to show that he contributed to the happening of the injury-producing event (see Aikens-Hobson v Bruno, 97 ad 3d 709 [2d Dept. 2012]; Daramboukas v Samlidis, 84 AD3d 719 [2d Dept. 2011]; Franco v Breceus, 70 AD3d 767 [2d Dept. 2010]; Shirman v Lawal, 69 AD3d 838 [2d Dept. 2010]). Further, although defendant contends that the accident was the result of the plaintiff driver coming to a sudden and unexpected stop, this does not explain his failure to maintain a safe distance from the vehicle in front of him [see Dicturel v Dukureh, 71 AD3d 558 [1st Dept. 2010]; Shirman v Lawal, 69 AD3d 838 [2d Dept. 2010]; Lampkin v Chan, 68 AD3d 727 [2d Dept. 2009]; Zdenek v Safety Consultants, Inc., 63 AD3d 918 [2d Dept. 2009]). Although the defendant claims that the defendant's vehicle merged or cut in front of him and then came to an abrupt stop, the defendant did not provide any evidence given the traffic conditions at the time, that he maintained a reasonably safe speed and reasonable safe distance behind the

plaintiffs' vehicle and that he attempted to exercise reasonable care to avoid colliding with the lead vehicle (see Hackney v Monge, 103 AD3d 844 [2d Dept. 2013]; Hearn v Manzolillo, 103 AD3d 689 [2d Dept. 2013]; Byrne v Calogero, 96 AD3d 704 [2d Dept. 2012]).

The defendant's contention that the motion for summary judgment is premature is without merit. The defendant failed to offer any evidentiary basis to suggest that discovery may lead to relevant evidence. The mere hope and speculation that evidence sufficient to defeat the motion might be uncovered during discovery is an insufficient basis upon which to deny the motion (see CPLR 3212[f]; Hanover Ins. Co. v Prakin, 81 AD3d 778 [2d Dept. 2011]; Essex Ins. Co. v Michael Cunningham Carpentry, 74 AD3d 733 [2d Dept. 2010]; Peerless Ins. Co. v Micro Fibertek, Inc., 67 AD3d 978 [2d Dept. 2009]; Gross v Marc, 2 AD3d 681 [2d Dept. 2003])

Accordingly, this court finds that in opposition to plaintiff's motion, defendant failed to submit evidence sufficient to raise a triable issue of fact (see Arias v Rosario, 52 AD3d 551 [2d Dept. 2008]; Smith v Seskin, 49 AD3d 628 [2d Dept. 2008]; Campbell v City of Yonkers, 37 AD3d 750 [2d Dept. 2007]). As the evidence in the record demonstrates that the defendant failed to provide a non-negligent explanation for the collision and as no triable issues of fact have been put forth as to whether plaintiff may have borne comparative fault for the causation of the accident, and based on the foregoing, it is hereby,

ORDERED, that the plaintiff's motion for partial summary judgment on the issue of liability is granted, and it is further,

ORDERED, that upon completion of discovery on the issue of damages, filing a note of issue, and compliance with all the rules of the Court, this action shall be placed on the trial calendar of the Court for a trial on serious injury and damages.

Dated: April 21, 2015
Long Island City, N.Y

ROBERT J. MCDONALD
J.S.C.