

Colon v Vermont Taxi Inc.

2015 NY Slip Op 31903(U)

September 23, 2015

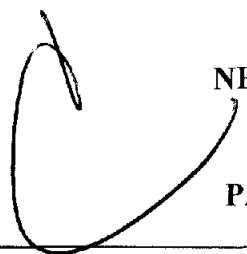
Supreme Court, Bronx County

Docket Number: 300901/2014

Judge: Alison Y. Tuitt

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NEW YORK SUPREME COURT-----COUNTY OF BRONX

PART IA - 5

GUILLERMO COLON,

INDEX NUMBER: 300901/2014

Plaintiff,

-against-

Present:
HON. ALISON Y. TUITT
Justice

VERMOUTH TAXI INC. and MATHIEU NYAMBA,

Defendants.

The following papers numbered 1-3,

Read on this Plaintiff's Motion for Partial Summary Judgment

On Calendar of 6/29/15

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 December 28, 2013 at the intersection of 7th Avenue and West 43rd Street, in the County and State of New York. At the time of the accident, plaintiff was in the course of his employment with Advance Transit Company as an Access-A-Ride and was transporting two passengers. He was traveling southbound on 7th Avenue in the second lane of traffic from the sidewalk on the right hand side. There was ongoing construction in the street and there were only two or three lanes for moving traffic. Plaintiff states that he stopped his vehicle for a red light. When the light turned green, he could not proceed forward as there were pedestrians still crossing the street. After all of the pedestrians passed, the light was still green and he started to proceed and all of a sudden, his vehicle was struck in the rear. Plaintiff

states that at the time of the impact, he was traveling approximately three miles per hour and had traveled a short distance after he started to move from a stopped position. It was his intention to travel southbound on 7th Avenue down to 42nd Street and then to make a right turn. Plaintiff further states that at the time of the impact, his vehicle was in a straight position facing southbound. Defendant Mathieu Nyamba (hereinafter “Nyamba”) testified at his deposition that the accident happened when plaintiff’s vehicle, while attempting to make a right turn, without warning, made a sudden stop. Nyamba testified that plaintiff’s vehicle was stopped at a red light ahead of his vehicle. When the light turned green, plaintiff attempted to make a right turn and proceeded to move his vehicle and defendant moved his vehicle. As the vehicles began to travel through the intersection, plaintiff made a sudden stop and defendant was unable to avoid contact.

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). “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). 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). Furthermore, it is not a sufficient defense to claim that the vehicle in front stopped short. See, Mitchell, 703 N.Y.S.2d at 124. See also, Figueroa v. Luna, 721 N.Y.S.2d 635 (1st Dept. 2001); Moustapha v. Riteway International Removal, Inc., 724 N.Y.S.2d 52 (1st Dept. 2001). See also, Rodriguez v. Chapman-Perry, 920 N.Y.S.2d 306 (1st Dept. 2011)(Defendant failed to provide a non-negligent explanation for his failure to maintain a reasonably safe speed and distance behind co-defendant’s vehicle. Under the circumstances, defendant’s explanation that the vehicle in front “stopped short” is insufficient to raise an issue of fact as to whether co-defendant was negligent in operating his vehicle); Woodley v. Ramirez, 810 N.Y.S.2d 125 (1st Dept. 2006)(A claim that the lead vehicle “stopped suddenly” is generally insufficient to rebut the presumption of non-negligence on the part of the lead vehicle); Verdejo v. Aguirre, 777 N.Y.S.2d 648 (1st Dept. 2004)(Appellant driver assertion that respondent's vehicle “suddenly and without warning attempted to come to an abrupt stop,” does not explain why appellant driver did not maintain a safe distance from the vehicle in front of him, and otherwise fails to adduce facts sufficient to raise a genuine issue of fact as to whether any negligence on respondent's part contributed to the accident); Rutledge v. Petrocelli Elec. Co., Inc., 763 N.Y.S.2d 612 (1st Dept. 2003)(Evidence that just before car he was following stopped short and he applied his brakes, truck driver was traveling at 20 miles per hour and only 15 feet behind the car on an avenue that had only one lane open to traffic due to construction established truck driver's negligence as a matter of law in motorist's action for personal injuries sustained in rear-end collision, even if truck skidded on ice into the rear of the car).

Plaintiff’s motion for summary judgment on the issue of liability must be granted. Regardless of whether plaintiff was making a right turn or proceeding straight immediately prior to the accident, defendant fails to provide a non-negligent explanation for rear-ending plaintiff’s vehicle and does not explain why he failed to maintain a safe distance from plaintiff’s vehicle. Defendant’s contention that plaintiff’s vehicle

stopped suddenly does not constitute a non-negligent explanation.

This constitutes the decision and order of this Court.

Dated: 9/23/15

A handwritten signature in black ink, appearing to read "A. Y. Tuitt", is written over a horizontal line.

Hon. Alison Y. Tuitt