

Jing-Bi Jiang v Torres
2015 NY Slip Op 32384(U)
November 16, 2015
Supreme Court, Bronx County
Docket Number: 303788/2013
Judge: Alison Y. Tuitt
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NEW YORK SUPREME COURT-----COUNTY OF BRONX

PART IA - 5

JING-BI JIANG,

INDEX NUMBER: 303788/2013

Plaintiff,

-against-

Present:

HON. ALISON Y. TUITT

Justice

**GIANNI TORRES and WHOLE FOODS MARKET
GROUP, INC.,**

Defendants.

The following papers numbered 1-3,

Read on this Plaintiff's Motion for Partial Summary Judgment

On Calendar of 7/13/15

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 October 7, 2012 at the intersection of Broadway and 100th Street in the County and State of New York. At the time of the accident, plaintiff's vehicle was rear ended by the vehicle operated by defendant Gianni Torres (hereinafter "Torres") and owned by defendant Whole Foods Market Group, Inc.

Defendant Torres testified at his deposition that at the time of the accident, he was operating his employer's van with a co-worker, Sanders Crucetts Declert, in the passenger seat. The accident occurred while turning left from Broadway onto West 100th Street. Defendant testified that he had been traveling south on

Broadway which had three lanes of travel and a parking lane. The northbound direction for Broadway had two lanes for moving traffic and a parking lane. The travel lanes of Broadway were separated by a raised cement median with trees in the median. 100th Street at that intersection was a one way street that travels eastbound. The intersection was controlled by a traffic light. Defendant testified that he was familiar with the intersection and knew that when the light was green for cars traveling on Broadway, cars making a left onto 100th Street would sometimes stop at the median before completing their turn. Traffic was very light, with very few cars on Broadway. As he approached the intersection, he was driving in the left lane, intending to turn left from Broadway onto 100th Street. Defendant Torres saw plaintiff's vehicle up ahead, at a complete stop in the area between the median on 100th Street. At the time, the traffic light on Broadway was green and the traffic light for cars on 100th Street was red. Defendant began to make his left turn but stopped behind plaintiff's vehicle which had stopped at the median. Defendant edged the front of the van leftward to be in position to make a left turn onto 100th Street. At that time, the distance between the front of defendant's vehicle and the rear of plaintiff's vehicle was only about a half to a third of a car length. The light for vehicles traveling on 100th Street then turned from red to green and had been green for about a second before the accident happened. As the light changed, plaintiff's vehicle began to move up from the median to proceed with the left turn and defendant also began to move his vehicle. Defendant then saw the rear lights of plaintiff's car illuminating and became aware that plaintiff was stopping his vehicle. Defendant immediately jammed his brakes, however, the front passenger side bumper of defendant's vehicle struck the rear of plaintiff's vehicle. Defendant Torres specifically testified that when he saw the traffic light for 100th Street turn green and plaintiff's brake lights dim, he released the brake and the van started to proceed to make a left turn onto 100th Street behind plaintiff's vehicle. Only a second or two later, while plaintiff's car was well in the process of turning onto 100th Street and was in the middle of the northbound lanes of Broadway, while the light for 100th Street was still green, plaintiff's brake lights flashed on and plaintiff's vehicle came to an abrupt and complete stop. Defendant was traveling no more than a few miles an hour at the time but plaintiffs' surprisingly immediate, abrupt and sudden stop in the middle of oncoming lanes caused defendant to lightly tap on the right side of plaintiff's rear bumper before both cars came to a complete stop. The impact caused damage to the rear of plaintiff's vehicle and the front headlight of defendant's vehicle.

Plaintiff testified at his deposition that he was traveling southbound on Broadway to its

intersection with 100th Street where he intended to make a left turn. Prior to making the left turn, plaintiff stopped his vehicle at the intersection and his vehicle was the first car stopped in the median to make the left turn and had been stopped for a few seconds when it was rear-ended. While his vehicle was stopped, there were other cars moving on both sides of Broadway and he saw vehicles approaching on the side of Broadway he intended to cross. Plaintiff testified that he was also waiting for the light for cars traveling on 100th Street to turn green so he could complete his turn. The impact caused plaintiff's vehicle to move forward about one meter.

Plaintiff moves for summary judgment on the issue of liability on the grounds that his vehicle was rear-ended while it was stopped and defendant fails to offer a non-negligent explanation for the happening of the accident. Defendants argue that plaintiff's motion must be denied because there are issues of fact regarding plaintiff's comparative negligence. Defendants argue that they have a non-negligent explanation in that plaintiff caused the accident by suddenly stopping, for no apparent, explained or foreseeable reason, while in the middle of making a left turn from Broadway onto West 100th Street. Defendants argue that this sudden stop creates a triable issue of fact since plaintiff's sudden stop could not have been reasonably anticipated or foreseen by the defendant. Defendant argues that he was traveling no more than a few miles an hour at the time of the impact, however, plaintiffs' surprisingly immediate, abrupt and sudden stop in the middle of oncoming lanes caused defendant to lightly tap on the right side of plaintiff's rear bumper before both cars came to a complete stop. Defendant claims that there was oncoming traffic in the northbound lanes of Broadway or any other apparent reason why plaintiff would have brought his car to a sudden stop while in the process of making a left turn.

The police accident report provides that "Veh #2 states that he was at median on 100th St & Bway when veh #1 rear-ended him leaving major dents & bumper unhinged. Veh #1 states that he was traveling S/B on Bway when he thought veh #2 was going to go past the median & go past Bway but stood stationary & veh#1 rear-ended veh #2 as he was trying to make left onto the median @ 100th & Bway." Defendants also submit the affidavit of Mr. Declert who states that he was a passenger in defendants' vehicle at the time of the accident. He states that right before the accident, defendant Torres was driving the truck southbound on Broadway towards 100th Street. There was very little traffic at the time of the accident. When their truck arrived at the intersection of 100th Street and Broadway, defendant began to make a slight left towards the median and came to a complete

stop behind the car ahead of them which was facing east on 100th Street and already stopped in the section of 100th Street located between the medians separating Broadway. The traffic light for traffic on Broadway was green and the light for traffic on 100th Street was red. Their truck stopped a half car length behind plaintiff's car at the traffic light on 100th Street and he saw plaintiff's brake lights were very bright. When the traffic light for 100th Street turned green, the brake lights on plaintiff's car dimmed and the car accelerated from its stopped position. Defendant Torres took his foot off the brake and began to move forward when a second or two later, plaintiff's car came to an immediate, abrupt and sudden stop in the middle of the northbound lanes on Broadway, as if he had slammed on his brakes when he was halfway through Broadway. Mr. Declert states that there was no discernable reason for why plaintiff slammed on his brakes as he had been watching the other side of Broadway for other vehicles and pedestrians and there were none. He yelled to defendant to be careful and defendant slammed on the brakes but it was too late to avoid the collision.

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 partial summary judgment on the issue of liability is granted as defendants’ proffered reason for rear-ending plaintiff’s vehicle, that it stopped suddenly, abruptly and without warning does not constitute a non-negligent explanation. In cases with similar facts, the Court has held that the sudden or abrupt stop does not constitute a non-negligent explanation. In Malone v. Morillo, 775 N.Y.S.2d 312 (1st Dept.

2004), the Court held that defendant's claim that the lead vehicle stopped suddenly and unexpectedly in the middle of the intersection was insufficient to constitute a non-negligent explanation for the rear-end collision

Regardless of whether defendants were already stopped at the red light, or stopped suddenly in the middle of the intersection while the light was yellow, we find no non-negligent explanation by plaintiff for striking defendants' vehicle in the rear under the present circumstances. In the instant matter, plaintiff's failure to observe traffic conditions and to maintain a safe stopping distance, particularly on a rainy night, was the sole proximate cause of the subject collision (see *Figueroa v. Luna*, 281 A.D.2d 204, 721 N.Y.S.2d 635; *Johnson v. Phillips*, 261 A.D.2d 269, 271, 690 N.Y.S.2d 545).

The result here should be no different as the evidence shows that defendant failed to maintain a proper distance behind plaintiff's vehicle, especially on a night when it was wet, rainy and dark as testified to by defendant.

Similarly, in *Cajas-Romero v. Ward*, 965 N.Y.S.2d 559 (2d Dept. 2013), a case with similar facts, the defendant claimed he came to a full stop behind the plaintiff at a red light and when the light turned green, he followed the plaintiff into the intersection at a speed of about five miles per hour. He further stated that upon entering the intersection, plaintiff's vehicle stopped short and he was unable to stop in time and struck the plaintiff's vehicle. The Court held

Although the defendant's version of the events leading to the subject rear-end collision differed from the plaintiffs' version of events, the defendant's version of events, even if accepted as true, did not raise a triable issue of fact as to the existence of a nonnegligent explanation for the rear-end collision. The fact that the defendant was traveling extremely close behind the plaintiffs' vehicle without leaving a reasonable distance created the possibility that a sudden stop would be necessary, and, by his own admission, the defendant clearly breached his duty to maintain a reasonably safe distance from the plaintiffs' vehicle, which he was following (see *Ayach v. Ghazal*, 25 A.D.3d 742, 808 N.Y.S.2d 759; *Pappas v. Opitz*, 262 A.D.2d 471, 692 N.Y.S.2d 127).

In the instant matter, defendant admitted that the distance between the front of defendant's vehicle and the rear of plaintiff's vehicle was only about a half to a third of a car length, thereby failing to leave a reasonable distance between the vehicles, creating the possibility that if a sudden stop was made, he would be unable to avoid colliding with the rear of the vehicle in front.

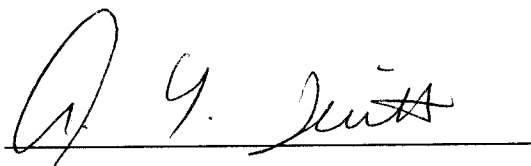
In *Chowdhury v. Matos*, 987 N.Y.S.132 (1st Dept. 2014), the Court reversed the denial of summary judgment by an occupant of the lead vehicle that was rear-ended at an intersection, holding that contrary to defendants' contention that an abrupt stop raises an issue of comparative negligence, a claim that the lead vehicle stopped suddenly is generally insufficient to rebut the presumption of negligence on the part of the

offending vehicle. The Court further held that “even crediting the testimony of defendant Torres that Jiang abruptly stopped in the middle of the intersection and not for a red light, defendants have failed to proffer a nonnegligent explanation for the rear-end collision.”

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

This constitutes the decision and Order of this Court.

Dated: 11/16/15

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

Hon. Alison Y. Tuitt