

Deweese v Bentley

2016 NY Slip Op 30028(U)

January 6, 2016

Supreme Court, New York County

Docket Number: 151586/2015

Judge: Michael D. Stallman

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: Hon. MICHAEL D. STALLMAN
Justice

PART 21

Index Number : 151586/2015
DEWEES, JEAN B.
vs.
BENTLEY, HARVEY SUMMERS
SEQUENCE NUMBER : 001
SUMMARY JUDGMENT

INDEX NO. 151586/2015
MOTION DATE 10/5/15
MOTION SEQ. NO. 001

The following papers, numbered 16-19, 23-30, were read on this motion for summary judgment

Notice of Motion —Affirmation — Exhibits A-C

█ No(s). 16-19

Affirmation in Opposition — Exhibits A-D; Affirmation in Opposition —Exhibit A—Affidavit of Service

█ No(s). 23-27; 28-30

Upon the foregoing papers, it is ordered that this motion for summary judgment by defendants Kiyoshi Sasaki, sued herein as Kiyoshi Sasaki, and Tato Taro Moving Corp. is granted, and the complaint is dismissed in its entirety as against said defendants, with costs and disbursements to said defendants as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of said defendants; and it is further

ORDERED that all cross claims by and against defendants Kiyoshi Sasaki, sued herein as Kiyoshi Sasaki, and Tato Taro Moving Corp. are dismissed, and the action is severed and continued against the remaining defendants.

In this motor vehicle action, plaintiff alleges that on February 21, 2014, she was a bus passenger on a M60 bus operated by defendant Bentley Harvey Summers, which made contact with an Isuzu van on the Queens-bound ramp of the RFK Bridge. The Isuzu van was allegedly owned by defendant Taro Taro Moving Corp. and operated by defendant Kiyoshi Sasaki.

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MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

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Taro Taro Moving Corp. and Sasaki now move for summary judgment dismissing the action as against them. Sasaki avers that he was operating his vehicle at 10-15 miles per hour, when the bus rear-ended his vehicle. (Grgas Affirm., Ex C [Sasaki Affirm.] ¶¶ 6-7.)

Defendants New York City Transit Authority, Metropolitan Transportation Authority, Manhattan and Bronx Surface Transit Operating Authority (collectively, the Authorities) and plaintiff oppose the motion. Bentley Harvey Summers states that Sasaki “entered my lane of travel and sped up so that there was approximately 3 car lengths between the front of the bus and the rear of his truck. Mr. Sasaki had only been completely in my lane of travel for approximately 5-6 seconds when he applied his brakes and stopped short.” (Berkson Opp. Affirm., Ex C [Summers Aff.] ¶¶ 4-5.)

“It is well settled that ‘[a] driver is expected to drive at a sufficiently safe speed and to maintain enough distance between himself and cars ahead of him so as to avoid collisions with stopped vehicles, taking into account the weather and road conditions.’” (*Malone v Morillo*, 6 AD3d 324, 325 [1st Dept 2004] [citations omitted].)

“It is well settled that a rear-end collision with a stopped or stopping vehicle establishes a prima facie case of negligence on the part of the driver of the rear vehicle, and imposes a duty on the part of the operator of the moving vehicle to come forward with an adequate nonnegligent explanation for the accident.”

(*Cabrera v Rodriguez*, 72 AD3d 553 [1st Dept 2010]; *Avant v Cepin Livery Corp.*, 74 AD3d 533 [1st Dept 2010]; see also *Dattilo v Best Transp. Inc.*, 79 AD3d 432, 433 [1st Dept 2010] [A rear-end collision with a vehicle that is slowing down establishes a prima facie case of

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negligence on the part of the driver of the rear vehicle.) “This rule [the presumption of negligence] has been applied . . . when the front car stopped after having changed lanes.” (*Johnson v Phillips*, 261 AD2d 269, 271 [1st Dept 1999] [internal citations omitted].)

As a corollary, a presumption also arises that no negligence on the part of the driver of the lead vehicle contributed to the collision. (*Soto-Marroquin v Mellet*, 63 AD3d 449, 450 [1st Dept 2009].)

In the Appellate Division, First Department, the vast majority of cases hold that a sudden stop, standing alone, is insufficient to rebut the presumption of negligence. (*Diako v Yunga*, 126 AD3d 567 [1st Dept 2015]; *Cruz v Lise*, 123 AD3d 514 [1st Dept 2014]; *Chowdhury v Matos*, 118 AD3d 488 [1st Dept 2014]; *Santana v Tic-Tak Limo Corp.*, 106 AD3d 572 [1st Dept 2013] [“Defendant driver’s testimony that plaintiff ‘stopped short’ and that he could not see her brake lights ‘is insufficient to rebut the presumption of negligence’”]; *Androvic v Metropolitan Transp. Auth.*, 95 AD3d 610, 610 [1st Dept 2012] [“That the bus came to a sudden stop was insufficient to raise a triable issue of fact”]; *but see Berger v New York City Hous. Auth.*, 82 AD3d 531 [1st Dept 2011].)

Here, a Surface Line Dispatcher who investigated the accident claims that Sasaki stated that “he was driving straight in lane #1 and went to merge into lane #2 because lane #1 was a merging lane. Mr. Sasaki stated that due to a van in lane #2 speeding up he could not merge into lane #2. As a result, Mr. Sasaki applied his brakes.” (Berkson Opp. Affirm., Ex D [Velazquez Aff.] ¶ 3.) This statement does not raise triable issues of fact as to whether the alleged sudden stop constituted negligent operation of Sasaki’s vehicle, which would therefore rebut the presumption of negligence of Summers’s operation of the M60 bus.


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Contrary to plaintiff's contention, the granting of summary judgment is not premature, as both drivers have submitted affidavits and the material facts are undisputed. (*Santos v Booth*, 126 AD3d 506 [1st Dept 2015].)

Therefore, Taro Taro Moving Corp. and Sasaki are entitled to summary judgment dismissing the action as against them, as well as any cross claims.

Dated: 1/6/16
New York, New York


_____, J.S.C.

- 1. Check one:.....
- 2. Check if appropriate:..... MOTION IS:
- 3. Check if appropriate:.....

- CASE DISPOSED NON-FINAL DISPOSITION
- GRANTED DENIED GRANTED IN PART OTHER
- SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

MICHAEL D. STALLMAN
J.S.C.