

Fournier v Jimenez
2016 NY Slip Op 30248(U)
January 7, 2016
Supreme Court, Bronx County
Docket Number: 305515/2014
Judge: Alison Y. Tuitt
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NEW YORK SUPREME COURT-----COUNTY OF BRONX

PART IA - 5

ANDY FOURNIER and STEPHANIE ROMANO,

INDEX NUMBER: 305515/2014

Plaintiffs,

-against-

Present:
HON. ALISON Y. TUITT
Justice

TONY JIMENEZ, LILIAN PENA and SONYA Y. ARIAS,

Defendants.

The following papers numbered 1-4,

Read on this Plaintiffs' Motion for Partial Summary Judgment

On Calendar of 8/10/15

Notice of Motion-Exhibits and Affirmation 1

Affirmations in Opposition 2, 3

Reply Affirmation 4

Upon the foregoing papers, plaintiffs' motion for 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 July 5, 2014 on Grand Concourse at its intersection with Burnside Avenue, County of Bronx, State of New York. Plaintiff Stephanie Romano (hereinafter "Romano") states that at the time of the accident, she was the owner and operator of a motor vehicle, and plaintiff Andy Fournier (hereinafter "Fournier") was a front seat passenger. Romano states that she was driving southbound on Grand Concourse and as she approached E. Burnside, she began to slow for the red light at the intersection, when her vehicle was rear ended. She further states that there were two impacts to the rear of her vehicle. Plaintiff Fournier submits an affidavit wherein he states that he was a passenger in

Romano's vehicle when it was struck in the rear while Romano was slowing down for a red light at the intersection of Grand Concourse and E. Burnside. He also states that there were two impacts to the rear of Romano's vehicle. Defendant Sonya Y. Arias (hereinafter "Arias") submits an affidavit wherein she states that she was involved in a three car motor vehicle accident on July 5, 2014. Arias states that the accident occurred when her vehicle was struck in the rear twice by a vehicle driven by defendant Tony Jimenez (hereinafter "Jimenez") while she was slowing down for a traffic light at the intersection with Burnside Avenue. She further states that she was traveling at approximately five miles per hour at the time of impact. Her vehicle was approximately one car length from the rear of the vehicle in front of her at the time of impact. Prior to the impact, she observed the vehicle being driven by defendant Jimenez approaching from behind her at approximately 50-60 miles per hour. As a result of the impact to the rear, her vehicle was pushed forward causing it to strike the vehicle in front of it. The police accident report provides, in relevant part, "[a]t T/P/O Operator Veh #2 states Veh #3 rear-ended her vehicle causing her vehicle to strike Veh #1 in front of her. Operator Veh #1 states her car was struck in rear by Veh #2. Operator of Veh #3 attempted to flee scene but was apprehended...".

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).

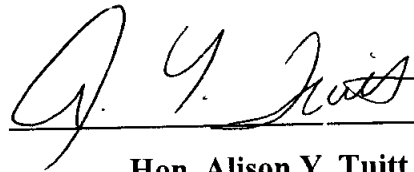
Here, plaintiffs’ motion for partial summary judgment on the issue of liability must be granted as there is no evidence of any negligence on the part of plaintiff Romano in the operation of her motor vehicle. Defendants’ claim that there are questions of fact that preclude summary judgment is without merit. Whether defendant Arias’ vehicle was hit once or twice in the rear does not raise any issues of comparative negligence on the part of Romano. Defendant is unable to offer any evidence of how plaintiff’s operation of her vehicle was negligent. Therefore, Romano should be granted summary judgment on the issue of liability because there is no negligence attributable to her. Moreover, with respect to plaintiff Fournier, as a passenger he is not guilty of any negligence. See, Garcia v. Tri-County Ambulette Service, 723 N.Y.S.2d 163 (1st Dept. 2001) (“Plaintiff, as an innocent rear-seat passenger... who cannot possibly be found at fault... is entitled to partial summary judgment... Since it is well settled that the right of an innocent passenger to summary judgment is not in any way restricted by potential issues of comparative negligence as between the drivers of the two vehicles, (see, Johnson v Phillips, 690 N.Y.S.2d 545 (1st Dept. 1999), plaintiff should have been granted summary judgment on the issue of liability.”)

Additionally, defendants’ argument that discovery has not been held in this action is unavailing. It is well-settled that a grant of summary judgment cannot be avoided by a claimed need for discovery unless some evidentiary basis is offered to suggest that discovery may lead to relevant information. Bailey v. New York City Transit Authority, 704 N.Y.S.2d 582 (1st Dept 2000). The mere hope that discovery will lead to evidence sufficient to defeat the motion is insufficient. Chalk & Vermillion, LLC V. Thomas F. McKnight,

LLC., 755 N.Y.S.2d 604 (1st Dept. 2003).

This constitutes the decision and Order of this Court.

Dated: 1/7/16



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

Hon. Alison Y. Tuitt