Auguste v City of New York
2016 NY Slip Op 31700(U)
September 7, 2016
Supreme Court, Kings County
Docket Number: 502353/2014
Judge: Lara J. Genovesi
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At an IAS Term, Part 22 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse thereof at 360 Adams St., Brooklyn, New York on the 7th day of September 2016.

P R E S E N T:
HON. LARA J. GENOVESI,
J.S.C.

----------x

WADSON AUGUSTE,

Plaintiff,

Index No.: 502353/2014

DECISION & ORDER

-against-

THE CITY OF NEW YORK and RUTH FADL,

Defendants.

----------x

Recitation, as required by CPLR §2219(a), of the papers considered in the review of this motion:

	Papers Numbered
Notice of Motion/Order to Show Cause/ Petition/Cross Motion And Affidavits (Affirmations)	1
Opposing Affidavits (Affirmations)	2
Reply Affidavits (Affirmations)	3

Introduction

Plaintiff moves by notice of motion, sequence number one, (1) pursuant to CPLR § 3212 for summary judgment as to liability; (2) setting the matter down for an immediate trial on damages; and (3) for such other and further relief as the court deems just and proper. Defendants the City of New York and Ruth Fadl oppose this application.

Background

Plaintiff allegedly sustained personal injuries on October 29, 2013, when he was involved in an automobile accident at the intersection of Eastern Parkway and Utica Avenue, in Brooklyn, New York. Plaintiff testified at an Examination Before Trial (EBT) on September 30, 2014 (*see* EBT of Wadson Auguste, Notice of Motion, Exhibit E). He testified that he was driving on Utica Avenue towards Eastern Parkway when the traffic light turned red and plaintiff stopped his vehicle (*see* Auguste EBT at 32). Plaintiff testified that when the light turned green and the vehicles in front of him started to move forward, "before [he] could even like leave because the vehicle in front of [him was] still making their way" he was rear-ended by the vehicle behind him (*see* Auguste EBT at 38). He stated that prior to the time of impact, his car did not move forward at all (*see* Auguste EBT at 39).

It is undisputed that defendant's vehicle, which is owned by the City of New York, and was operated by defendant Ruth Fadl, struck plaintiff's vehicle in the rear. However, Fadl testified that when the collision occurred, plaintiff was no longer stopped at the red light (*see* EBT of Ruth Fadl, Notice of Motion, Exhibit F, p 27). The light had turned green, and the vehicles in front of her, including plaintiff's vehicle, began to accelerate. Fadl "took her foot off the break" and "was rolling" when plaintiff's vehicle abruptly stopped (*see* Fadl EBT at 62). Defendant testified that the accident occurred quickly, and plaintiff's vehicle "stop[ped] short" (*see* Fadl EBT at 29).

Plaintiff efiled the note of issue and certificate of readiness on October 30, 2015, certifying that discovery is complete and the case is ready for trial.

Discussion

Summary Judgment

The proponent for the summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate absence of any material issues of fact (*see Gammons v. City of New York*, 24 N.Y.3d 562, 25 N.E.3d 958 [2014], citing *Alvarez v. Prospect Hospital*, 68 N.Y.2d 320, 501 N.E.2d 572 [1986]). "In determining a motion for summary judgment, the evidence must be viewed in the light most favorable to the nonmoving party" (*Boulos v. Lerner-Harrington,* 124 A.D.3d 709, 2 N.Y.S.3d 526 [2 Dept., 2015], citing *Pearson v. Dix McBride, LLC,* 3 A.D.3d 895, 883 N.Y.S.3d 53 [2 Dept., 2009]).

"Summary judgment is a drastic remedy that deprives a litigant of his or her day in court, and it 'should only be employed when there is no doubt as to the absence of triable issues' of material fact" (*Bonaventura v. Galpin,* 119 A.D.3d 625, 988 N.Y.S.2d 866 [2 Dept., 2014], citing *Andre v. Pomeroy,* 35 N.Y.2d 361, 320 N.E.2d 853 [1974]). "It is not the function of a court deciding a summary judgment motion to make credibility determinations or findings of fact, but rather to identify material triable issues of fact" (*Vega v. Restani Const. Corp.,* 18 N.Y.3d 499, *supra,* citing *Sillman v. Twentieth Century–Fox Film Corp.,* 3 N.Y.2d 395, 144 N.E.2d 387 [1957] ["Issue-finding, rather than issue-determination, is the key to the procedure"]). "[C]onflicting statements

submitted in support of [a] motion [for summary judgment], . . . raise an issue of credibility that must be resolved by the fact-finder" (*Staskiv v. Shlayan,* 132 A.D.3d 971, 18 N.Y.S.3d 686 [2 Dept., 2015]; *see Torres v. Saint Vincent's Catholic Med. Centers of New York*, 117 A.D.3d 717, 985 N.Y.S.2d 606 [2 Dept., 2014], citing *Kahan v. Spira,* 88 A.D.3d 964, 932 N.Y.S.2d 76 [2 Dept., 2011] ["Resolving questions of credibility, determining the accuracy of witnesses, and reconciling the testimony of witnesses are for the trier of fact"]; *see also Ruiz v. Griffin*, 71 A.D.3d 1112, 898 N.Y.S.2d 590 [2 Dept., 2010]).

Once a moving party has made a prima facie showing of its entitlement to summary judgment, the burden shifts to the opposing party to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action (*see Hoover v. New Holland N. Am., Inc.,* 23 N.Y.3d 41, 11 N.E.3d 693 [2014]; *see also Zuckerman v. City of New York,* 49 N.Y.2d 557, 404 N.E.2d 718 [1980]). Failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers (*see Chiara v. Town of New Castle*, 126 A.D.3d 111, 2 N.Y.S.3d 132 [2 Dept., 2015], citing *Vega v. Restani Const. Corp.,* 18 N.Y.3d 499, 965 N.E.2d 240 [2012]).

In the instant case, plaintiff is moving for summary judgment as to liability with respect to the rear-end collision. Plaintiff contends that rear-end collisions demonstrate, prima facie, the rear driver's negligence. Plaintiff avers that the failure to produce a non-negligent explanation for the collision requires the granting of summary judgment.

Plaintiff maintains that Fadl's excuse that plaintiff's vehicle was moving and abruptly stopped is conclusory and insufficient to rebut the prima facie showing of negligence. In opposition, the City contends that plaintiff failed to make a prima facie showing that no triable issues of fact exist. The City avers that they rebutted the presumption of negligence; Fadl provided a non-negligent explanation for the collision, as plaintiff's vehicle abruptly stopped. The City states that the conflicting version of the events creates a question of fact for the jury. Further, the City maintains that a plaintiff moving for summary judgment in a motor vehicle action must show that he is free from comparative negligence, and plaintiff has failed to do so.

"A rear-end collision with a stopped or stopping vehicle establishes a prima facie case of negligence on the part of the operator of the rear vehicle, thereby requiring that operator to rebut the inference of negligence by providing a nonnegligent explanation for the collision" (*Theo v. Vasquez,* 136 A.D.3d 795, 26 N.Y.S.3d 85 [2 Dept., 2016], citing *Le Grand v. Silberstein,* 123 A.D.3d 773, 774, 999 N.Y.S.2d 96 [2 Dept., 2014]; *see also Brothers v. Bartling,* 130 A.D.3d 554, 13 N.Y.S.3d 202 [2 Dept., 2015], quoting *Volpe v. Limoncelli,* 74 A.D.3d 795, 902 N.Y.S.2d 152 [2 Dept., 2010]). "One of several nonnegligent explanations for a rear-end collision [may be] a sudden stop of the lead vehicle" (*Le Grand v. Silberstein*, 123 A.D.3d 773, *supra,* quoting *Chepel v. Meyers*, 306 A.D.2d 235, 762 N.Y.S.2d 95 [2 Dept., 2003]; *see also Brothers v. Bartling,* 130 A.D.3d 554, *supra*).

"While a nonnegligent explanation for a rear-end collision may include evidence of a sudden stop of the lead vehicle, 'vehicle stops which are foreseeable under the prevailing traffic conditions, even if sudden and frequent, must be anticipated by the driver who follows, since he or she is under a duty to maintain a safe distance between his or her car and the car ahead'" (*De Castillo v. Sormeley,* 140 A.D.3d 918, 32 N.Y.S.3d 654 [2 Dept., 2016], quoting *Theo v. Vasquez,* 136 A.D.3d 795, *supra*; *see also Brothers v. Bartling,* 130 A.D.3d 554, *supra*).

In the instant case, plaintiff established a prima facie case of negligence on the part of defendant Fadl, as it is undisputed that Fadl's vehicle collided into the rear of plaintiff's vehicle. The only potential question of fact is whether plaintiff's vehicle was stopped at the red light or whether it began moving and then abruptly stopped when the collision occurred. However, this fact has no bearing on the presumption of negligence, as the Appellate Division, Second Department, has repeatedly stated that the presumption applies to vehicles that are "stopped" or "stopping" (*see generally Theo v. Vasquez,* 136 A.D.3d 795, *supra; Brothers v. Bartling,* 130 A.D.3d 554, *supra*).

In opposition, the City failed to raise a triable issue of fact. "The defendant driver's contention that the plaintiff's vehicle came to a sudden stop was conclusory and insufficient, in and of itself, to provide a nonnegligent explanation for the rear-end collision" (*Bene v. Dalessio,* 135 A.D.3d 679, 22 N.Y.S.3d 237 [2 Dept., 2016]; *see also Cortese v. Pobejimov,* 136 A.D.3d 635, 24 N.Y.S.3d 405 [2 Dept., 2016]). Furthermore, sudden vehicle stops are foreseeable under the prevailing traffic conditions, and should

have been anticipated by Fadl, who had a duty to maintain a safe distance between her and plaintiff's vehicles (*see De Castillo v. Sormeley,* 140 A.D.3d 918, *supra*).

Conclusion

Accordingly, plaintiff's motion for summary judgment is granted. Defendant failed to provide a non-negligent explanation for the rear-end collision and rebut the presumption of negligence. The matter is scheduled for a pre-trial conference in the City Trial Readiness Part on September 27, 2016.

The foregoing constitutes the decision and order of this Court.

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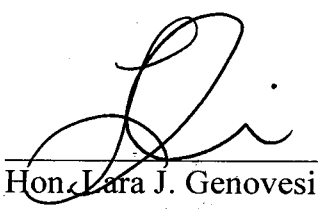

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