Santana v Perez
2016 NY Slip Op 32816(U)
July 7, 2016
Supreme Court, Bronx County
Docket Number: 21211/2014E
Judge: Betty Owen Stinson
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX
--x

MARTHA SANTANA,

Plaintiff(s),

DECISION AND ORDER

Index No: 21211/2014E

- against -

EDGAR R. PEREZ, SILVER BRICKS, INC., JOEL VENTURA AND R.A. VENTURA-VARGAS,

Defendant(s).
--x

Stinson, J.

In this action for personal injuries arising from an automobile accident defendants EDGAR R. PEREZ (Perez) and SILVER BRICKS, INC. (Silver) move seeking an order granting them summary judgment and dismissing the complaint and all cross-claims asserted against them. Movants contend that because the instant accident occurred when their vehicle was impacted by defendants JOEL VENTURA (VENTURA) and R.A. VENTURA-VARGAS' (Vargas) vehicle as it (Ventura's vehicle) suddenly exited a parking spot, movants are not liable as a matter of law. Ventura and Vargas oppose the instant motion arguing that there exist questions of fact with respect to whether movants' vehicle was speeding precluding summary judgment.

For the reasons that follow hereinafter, movants' motion is granted.

The complaint alleges the following. On December 19, 2013, on

Sedgwick Avenue near its intersection with 181st Street, Bronx, NY, plaintiff was involved in a motor vehicle accident. Specifically, the vehicle in which plaintiff MARTHA SANTANA was a passenger, owned by Silver and operated by Perez, came into contact with a vehicle owned by Vargas and operated by Ventura. Plaintiff alleges that defendants were negligent in the operation and ownership of their vehicles and said negligence caused her to sustain injuries.

Movants' motion is granted insofar as the record establishes that they were not negligent in the operation of their vehicle and that any negligence lies solely with Vargas and Ventura. To the extent that Ventura and Vargas contend that questions of fact regarding the speed of movants' vehicle preclude summary judgment, such contention is unsupported by the record.

The proponent of a motion for summary judgment carries the initial burden of tendering sufficient admissible evidence to demonstrate the absence of a material issue of fact as a matter of law (*Alvarez v Prospect Hospital*, 68 NY2d 320, 324 [1986]; *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). Thus, a defendant seeking summary judgment must establish *prima facie* entitlement to such relief as a matter of law by affirmatively demonstrating, with evidence, the merits of the claim or defense, and not merely by pointing to gaps in plaintiff's proof (*Mondello v DiStefano*, 16 AD3d 637, 638 [2d Dept 2005]; *Peskin v New York*

City Transit Authority, 304 AD2d 634, 634 [2d Dept 2003]). Once movant meets his initial burden on summary judgment, the burden shifts to the opponent who must then produce sufficient evidence, generally also in admissible form, to establish the existence of a triable issue of fact (*Zuckerman* at 562).

The Court's function when determining a motion for summary judgment is issue finding not issue determination (*Sillman v Twentieth Century Fox Film Corp.*, 3 NY2d 395, 404 [1957]). Lastly, because summary judgment is such a drastic remedy, it should never be granted when there is any doubt as to the existence of a triable issue of fact (*Rotuba Extruders v Ceppos*, 46 NY2d 223, 231 [1978]). When the existence of an issue of fact is even debatable, summary judgment should be denied (*Stone v Goodson*, 8 NY2d 8, 12 [1960]).

In the absence of evidence to the contrary, a defendant who establishes that he was not negligent in the operation of his motor vehicle is entitled to summary judgment (*Dinham v Wagner*, 48 AD3d 349, 350 [1st Dept 2008 [Court held that defendant established prima facie entitlement to summary judgment when she tendered evidence evincing that she was not at fault for the accident therein and could not have avoided the same.]; *Cerda v Parsley*, 273 AD2d 339, 339 [2d Dept 2000] [Defendants were entitled to summary judgment because the evidence presented established that defendant operator was not negligent in the operation of his vehicle.]).

Alternatively, a defendant can establish prima facie entitlement to summary judgment by demonstrating that the plaintiff or a co-defendant was negligent in the operation of his/her vehicle and that said negligence was the sole proximate cause of the accident (*Espinoza v Loor*, 299 AD2d 167, 168 [2d Dept 2002] [Defendant "made out a prima facie case that the accident resulted solely from (plaintiff's) negligence."]); *Borges v Zukowski*, 22 AD3d 439, 439 [2d Dept 2005]).

VTL § 1162 states that

> [n]o person shall move a vehicle which is stopped, standing, or parked unless and until such movement can be made with reasonable safety

(NY VEH & TRAF § 1162 [McKinney]). Thus, an accident caused when a parked vehicle pulls into a lane of moving traffic colliding with a vehicle traveling thereon is *prima facie* evidence of negligence as against the previously parked vehicle (*Adobea v Junel*, 114 AD3d 818, 820 [2d Dept 2014]; *Davis v Turner*, 132 AD3d 603, 603 [1st Dept 2015]; *Flores v City of New York*, 66 AD3d 599, 599 [1st Dept 2009]). Significantly, a defendant who establishes that he was involved in an accident when while driving on a roadway, he was impacted by a vehicle suddenly exiting a parking spot is entitled to summary judgment (*Adobea* at 820). In *Adobea*, defendant, a taxi, was sued by his passenger when defendant's vehicle was involved in a motor vehicle accident (*id.* at 818). The accident occurred as

defendant's vehicle traveled on a roadway and was impacted by a vehicle attempting to merge into the defendant's lane of travel from a parked position (id. at 819). In granting defendant's motion for summary judgment, the court noted that a parked vehicle suddenly entering the lane of moving traffic which collides with another vehicle violates VTL § 1162; such violation constituting negligence as a matter of law (*id.* at 819-820). The court also reiterated the well-settled principle that "[t]he driver with the right-of-way is entitled to anticipate that the other motorist will obey traffic laws which require him or her to yield" (*id.* at 819; *see also Williams v Hayes*, 103 AD3d 713, 714 [2d Dept 2013]; *Figueroa v Diaz*, 107 AD3d 754, 755 [2d Dept 2013]). Based on the foregoing, the court held that

> [h]ere, the defendants met their prima facie burden of demonstrating their entitlement to judgment as a matter of law. [defendant's] deposition testimony that the driver of the other vehicle suddenly, without signaling, attempted to merge from the parking lane into the lane in which [defendant] had been traveling, and that [defendant] saw that other vehicle only for a second before the impact occurred, established that the other driver violated Vehicle and Traffic Law §§ 1143 and 1162 so that the other driver was negligent as a matter of law

(*Adobea* at 820 [internal quotation marks omitted]).

In support of the instant motion, movants submit plaintiff's deposition transcript wherein she testified, in pertinent part, as

follows: On December 19, 2012, at approximately 6:45PM, plaintiff was involved in a motor vehicle accident on Sedgwick Avenue near its intersection with 181st Street in the Bronx. Plaintiff, a home health aid, was a passenger in a taxi. At the time of the accident, she was headed back to her patient's home after having accompanied her patient to a clinic in Manhattan. As plaintiff rode in the taxi, in the back seat behind the front passenger seat, she felt an impact from her right. Plaintiff did not see the vehicle which impacted the taxi.

Movants also submit Perez' deposition transcript wherein he testified, in pertinent part, as follows. On December 19, 2012, at approximately 6:30PM, Perez was involved in a motor vehicle accident on Sedgwick Avenue in the Bronx. At the time he was employed as a taxi driver and was operating a Toyota Camry owned by Silver. Perez had two passengers in the back of his car, one of which was plaintiff. As Perez drove down Sedgwick Avenue, a two-way road with one lane of travel in each direction and a parking lane on each side, he was impacted by a vehicle exiting a parking space to his right. Prior to the accident, Perez noticed that there were several vehicles parked to his right. As he drove, at approximately 25 miles per hour, he was impacted by a vehicle as his vehicle drove past the same. The front driver's side of the other vehicle impacted the right rear passenger door of Perez' vehicle. Perez did not see the vehicle until a second before

impact since the other car did not use any lights or signals.

Movants submit Ventura's deposition transcript wherein he testified, in pertinent part, as follows: On December 19, 2012, he was involved in an accident on the roadway located in front of 1514 Sedgwick Avenue. Ventura was operating his father's Toyota Camry. Prior to the accident he had double parked his car on the roadway of Sedgwick Avenue, a two-way road with a lane of travel in each direction and parking lanes on each side. When he double parked, he engaged his hazard lights and his girlfriend then exited his vehicle. Ventura then turned off his hazard lights and engaged his left turn signal, intending to move his vehicle forward and into the lane of moving traffic. Ventura looked into his side view mirror and saw several cars approaching his vehicle from the rear. He waited for those vehicles to pass him and then moved his vehicle into the lane. As Ventura moved his vehicle, he collided with another vehicle which he had not seen but which was traveling past him on Sedgwick Avenue. Ventura testified that the front left side of his vehicle came into contact with the right middle of the other vehicle. Ventura also stated that the posted speed limit on the roadway was 25 miles per hour and that the other vehicle was traveling at 30-35 miles per hour. Never having seen the other vehicle prior to impact, Ventura nevertheless testified that he was giving an "approximation" of its speed based on the fact that while he saw other vehicles prior to moving his vehicle, he "didn't

get to even catch [the other vehicle] on [his] side view mirror."

Based on the foregoing, movants establish *prima facie* entitlement to summary judgment. Significantly, a defendant who establishes that he was not negligent in the operation of his motor vehicle is entitled to summary judgment (*Dinham* at 350; *Cerda* at 339). Moreover, an accident caused when a parked vehicle pulls into a lane of moving traffic, colliding with a vehicle traveling thereon, is *prima facie* evidence of negligence as against the previously parked vehicle (*Adobea* at 820; *Davis* at 603; *Flores* at 599). Here, while there are factual discrepancies between Perez and Ventura's testimony, such discrepancies are immaterial. To be sure, while whether Ventura was parked in the parking lane or double parked and whether he used his lights and signals prior to moving his vehicle are indeed disputed facts. However, it is undisputed that the accident occurred when Ventura, who was parked, attempted to move his car into the lane of travel and on which Perez drove, thereby causing a collision. In fact, on this issue Ventura's testimony substantially corroborates that given by Perez, such testimony establishing *prima facie* evidence of negligence against Ventura (*Adobea* at 820). Moreover, because Perez was entitled, as the driver with the right-of-way, to anticipate that Ventura would obey traffic laws - here, VTL § 1162, requiring him not to move his vehicle from a parked position until it was safe to do so (*id.* at 819; *Williams* at 714; *Figueroa* at 755) - movants

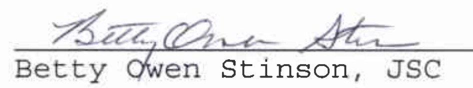
establish that Perez was not negligent.

Nothing submitted by Ventura and Vargas raises an issue of fact sufficient to preclude summary judgment. To the extent that Ventura and Vargas assert that the accident occurred because Perez was traveling in excess of the posted speed limit, the record is bereft of any concrete evidence supporting the same. To be sure, Perez testified that at the time of the accident he was traveling at 25 miles per hour. While Ventura testified that Perez was traveling at 30-35 miles per hour, his own testimony makes it clear that his assertion is nothing short of speculation, which is insufficient to preclude summary judgment (*Zuckerman* at 562["We have repeatedly held that one opposing a motion for summary judgment must produce evidentiary proof in admissible form sufficient to require a trial of material questions of fact on which he rests his claim or must demonstrate acceptable excuse for his failure to meet the requirement of tender in admissible form; mere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient."]). To be sure, Ventura testified that he *never* saw Perez' vehicle prior to impact such that it is hard to fathom how he could legitimately - absent speculation - testify as to its speed. It is hereby

ORDERED that the complaint and all cross-claims as against Perez and Silver are hereby dismissed. It is further

ORDERED that Perez and Silver serve a copy of this Decision and Order with Notice of Entry upon all parties within thirty (30) days hereof

Dated : July 7, 2016
Bronx, New York



Betty Owen Stinson, JSC