

**Reyes v Singh**

2017 NY Slip Op 31568(U)

June 9, 2017

Supreme Court, Queens County

Docket Number: 700523/2015

Judge: Robert J. McDonald

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This opinion is uncorrected and not selected for official publication.

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK
CIVIL TERM - IAS PART 34 - QUEENS COUNTY
25-10 COURT SQUARE, LONG ISLAND CITY, N.Y. 11101

P R E S E N T : HON. ROBERT J. MCDONALD
Justice

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JOSE REYES,

Index No.: 700523/2015

Plaintiff,

Motion Date: 5/19/17

- against -

Motion No.: 90

RAJBIR SINGH and EDDYS MOREL,

Motion Seq.: 2

Defendants.

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The following electronically filed documents read on this motion by defendant EDDYS MOREL for an Order pursuant to CPLR 3212, granting defendant summary judgment and dismissing the complaint and any and all cross claims against her; and on this cross-motion by plaintiff JOSE REYES for an Order pursuant to CPLR 3212, granting plaintiff summary judgment on liability to the extent that plaintiff is free of negligence in the cause of the accident and the liability of the defendants, if any, shall be decided at the time of trial:

Table with 2 columns: Document Name and Papers Numbered. Rows include Notice of Motion-Affirmation-Exhibits, Co-defendant's Affirmation in Opposition, Notice of Cross-Motion-Affirmation, Plaintiff's Affirmations in Opposition to Motion, and Reply Affirmations.

This is an action to recover damages for personal injuries allegedly sustained by plaintiff as a result of a motor vehicle accident that occurred on September 27, 2014 on Norfolk Street between Rivington and Street and Stanton Street, in New York County, New York. At the time of the accident, plaintiff was a passenger in the vehicle owned and operator by defendant Eddys Morel.

FILED
JUN 19 2017
COUNTY CLERK
QUEENS COUNTY

This action was commenced by the filing of a summons and complaint on January 20, 2015. Rajbir Singh (co-defendant) joined issue by serving a verified answer with cross-claim dated March 2, 2015. Eddys Morel (defendant) joined issue by serving a verified answer with cross-claim dated July 16, 2015. Defendant now moves for summary judgment, dismissing the complaint and all cross-claims. Plaintiff cross-moves for summary judgment on the issue of liability.

Plaintiff appeared for an examination before trial on March 1, 2016. He testified that at the time of the accident, he was the front seat passenger in defendant's vehicle. The accident occurred on Norfolk Street between Rivington Street and Stanton Street. Norfolk Street is a one-way street with one lane for moving traffic and a parking lane on each side. Defendant's vehicle was stopped at the time of the accident and had been stopped for approximately twenty or thirty seconds prior to the accident. Defendant's vehicle was stopped because there were people pushing a vehicle in front of defendant's vehicle. Defendant's vehicle was hit in the rear by a lime green taxi. He felt one hard impact to defendant's vehicle. Defendant's vehicle was pushed forward, but did not make contact with the vehicle in front of it.

Defendant Eddys Morel appeared for an examination before trial on March 1, 2016. She testified that at the time of the accident, she had five passengers in her vehicle. Plaintiff was seated in the front passenger seat. Prior to the accident, her vehicle was stopped for approximately fifteen or twenty seconds due to people pushing vehicle in front of her vehicle. At the time of the accident, her vehicle was stopped, and her right foot was on the brake pedal. She felt one strong impact to the rear of her vehicle. She did not hear any brakes, tires squealing, or any horns honking before the impact.

Co-defendant Rajbir Singh appeared for a deposition on November 29, 2016. He testified that he was involved in the subject accident. He was the owner and operator of a green cab. He had one passenger in his cab at the time of the accident. He traveled on Norfolk Street for approximately three blocks prior to the accident. His rate of speed was less than fifteen miles per hour. There was one vehicle in front of his vehicle. Defendant's vehicle was stopped at the time of the accident. He had no idea why defendant's vehicle was stopped. He was approximately one care length away from defendant's vehicle when he first observed defendant's vehicle stopped. He braked when he observed defendant's vehicle stopped. The front of his vehicle came in contact with the rear bumper of defendant's vehicle. He

did not honk his horn prior to the impact.

Based on the above deposition testimony, counsel for defendant, Lauren E. Marron, Esq., contends that defendant established a prima facie entitlement to summary judgment as her stopped vehicle was rear-ended by co-defendant's vehicle in violation of Vehicle and Traffic Law 1129(a).

In opposition, counsel for co-defendant, Cynthia Hung, Esq., contends that there are at least issues of fact regarding the sudden stop and whether defendant could have avoided the accident. Counsel for plaintiff, Huy (Tom) Le, Esq., also opposes the motion on the grounds that there is an issue of fact as to whether defendant was negligent by stopping in free flowing traffic.

The proponent of a summary judgment motion must tender evidentiary proof in admissible form, eliminating any material issues of fact from the case. If the proponent succeeds, the burden shifts to the party opposing the motion, who then must show the existence of material issues of fact by producing evidentiary proof in admissible form, in support of his or her position (see Zuckerman v City of New York, 49 NY2d 557 [1980]).

It is well established that when a driver "approaches another vehicle from the rear, he she is bound to maintain reasonably safe rate of speed, maintain control of his vehicle, and use reasonable care to avoid colliding with the other vehicle" (Barile v Lazzarini, 222 AD2d 635 [2d Dept. 1995]; see Williams v Spencer-Hall, 113 AD3d 759 [2d Dept. 2014]; Taing v Drewery, 100 AD3d 740 [2d Dept. 2012]).

Here, it is undisputed that defendant's vehicle was stopped at the time of the accident. Thus, defendant satisfied her prima facie burden of establishing entitlement to judgment as a matter of law on the issue of liability (see Volpe v Limoncelli, 74 AD3d 795 [2d Dept. 2010]; Vavoulis v Adler, 43 AD3d 1154 [2d Dept. 2007]).

Having made the requisite prima facie showing of entitlement to summary judgment, the burden then shifted to the opposing parties to raise a triable issue of fact as to whether defendant was also negligent, and if so, whether that negligence contributed to the happening of the accident (see Goemans v County of Suffolk, 57 AD3d 478 [2d Dept. 2007]).

This Court finds that the opposing parties failed to provide evidence sufficient to raise a triable question of fact (see Lampkin v Chan, 68 AD3d 727 [2d Dept. 2009]; Cavitch v Mateo, 58 AD3d 592 [2d Dept. 2009]; Garner v Chevalier Transp. Corp., 58 AD3d 802 [2d Dept. 2009]; Kimyagarov v Nixon Taxi Corp., 45 AD3d 736 [2d Dept. 2007]).

Although co-defendant and plaintiff maintain that the accident was at least in part the result of defendant's vehicle stopping suddenly, this does not explain co-defendant's failure to maintain a safe distance from the vehicle in front of him (see Dicturel v Dukureh, 71 AD3d 558 [1st Dept. 2010]; Shirman v Lawal, 69 AD3d 838 [2d Dept. 2010]; Lampkin v Chan, 68 AD3d 727 [2d Dept. 2009]; Zdenek v Safety Consultants, Inc., 63 AD3d 918 [2d Dept. 2009]). A bare claim that the driver of the lead vehicle suddenly stopped, standing alone, is insufficient to rebut the presumption of negligence, especially where, as here, co-defendant fails to explain why he did not maintain a safe following distance (see Ramirez v Konstanzer, 61 AD3d 837 [2nd Dept. 2009]; Morgan v Browner, 138 AD3d 560 [1st Dept. 2016] [finding that the assertion that plaintiff abruptly stopped in the middle of the intersection was insufficient to raise a triable issue of fact]; Malone v Morillo, 6 AD3d 324 [1st Dept. 2004] ["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"]). Moreover, this Court notes that defendant's testimony that her vehicle was stopped for people pushing another vehicle in front of her was corroborated by plaintiff's own deposition testimony.

Regarding the cross-motion, as an innocent passenger, plaintiff is free from negligence in the cause of the accident and thus, is entitled to summary judgment (see Median v Rodriguez, 92 AD3d 850 [2d Dept. 2012]).

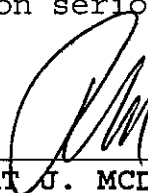
Accordingly, and based on the above reasons, it is hereby,

ORDERED, that the motion by defendant EDDYS MOREL is granted, and the complaint and cross-claims are dismissed as against defendant EDDYS MOREL; and it is further

ORDERED, that the cross-motion by plaintiff JOSE REYES for partial summary judgment on the issue of liability is granted; and it is further

ORDERED, that upon completion of discovery on the issue of damages, filing a Note of Issue, and compliance with all the rules of the court, this action shall be placed on the trial calendar of the court for a trial on serious injury and damages.

Dated: 6/9/, 2017  
Long Island City, N.Y

  
ROBERT J. MCDONALD  
J.S.C.

**FILED**  
JUN 19 2017  
COUNTY CLERK  
QUEENS COUNTY