

Mitchell v Jimenez
2017 NY Slip Op 33450(U)
July 6, 2017
Supreme Court, Orange County
Docket Number: Index No. EF000528-2017
Judge: Catherine M. Bartlett
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SUPREME COURT-STATE OF NEW YORK
IAS PART-ORANGE COUNTY

Present: HON. CATHERINE M. BARTLETT, A.J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

-----X
JAMES MITCHELL,

Plaintiff,

-against-

JAVIER A. JIMENEZ,

Defendant.

To commence the statutory time period for appeals as of right (CPLR 5513 [a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

Index No. EF000528-2017
Motion Date: June 29, 2017
-----X

The following papers numbered 1 to 5 were read on this motion by Plaintiff for partial summary judgment on the issue of liability only:

Notice of Motion - Affirmation / Exhibits - Affidavit 1-3
Affirmation in Opposition 4
Reply Affirmation 5

Upon the foregoing papers it is ORDERED that the motion is disposed of as follows:

This is a personal injury action stemming from a rear-end motor vehicle accident which occurred on August 29, 2016. Plaintiff's affidavit states *inter alia*,

2. On August 29, 2016 I was the driver of a 2003 Jeep motor vehicle on Route 208 in the Town of Montgomery, County of Orange, State of New York.
3. As I cautiously and slowly reduced my speed and stopped for a traffic signal, the Defendant suddenly and without warning struck the rear of my vehicle.

4. The collision was heavy, extensive and violent. As a direct result of the Defendant's negligent actions, I sustained injuries to my neck, back and right shoulder.

Based on the foregoing, Plaintiff moves for partial summary judgment on the issue of liability only. Defendant submits no affidavit or other evidence in opposition, claiming instead that Plaintiff's motion is premature and that "Plaintiff has absolutely no admissible evidence to establish that defendant does not have a non-negligent reason for the rear-end accident because discovery is woefully incomplete."

Defendant's argument is predicated on a mistaken view of the parties' respective burdens of proof on a summary judgment motion in a rear-end accident case.

Vehicle and Traffic Law §1129(a) provides:

The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon and the condition of the highway.

Section 1129(a) requires that "[a] driver of a vehicle approaching another vehicle from behind is required to maintain a reasonably safe distance and rate of speed under the prevailing conditions to avoid colliding with the other vehicle." *Cajas-Romero v. Ward*, 106 AD3d 850, 851 (2d Dept. 2013). Hence, the Second Department has consistently held that "[a] rear-end collision with a stopped or stopping vehicle creates 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 non-negligent explanation for the collision." *Amador v. City of New York*, 120 AD3d 526 (2d Dept. 2014). *See, e.g., Le Grand v. Silberstein*, 123 AD3d 773 (2d Dept. 2014) (same); *Rodriguez v. Farrell*, 115 AD3d 929, 930 (2d Dept. 2014) (same).

Therefore, Plaintiff's averment that he was rear-ended by Defendant's vehicle after he had cautiously slowed to a full stop at a red light established his *prima facie* entitlement to summary judgment and shifted the burden to Defendant to rebut the resulting inference of negligence by coming forward with a non-negligent explanation for the collision. This Defendant has plainly failed to do.

Furthermore, Defendant's contention that summary judgment is premature because depositions have not yet been conducted in this case is unavailing. CPLR §3212(f) states:

Should it appear from affidavits submitted in opposition to the motion that facts essential to justify opposition may exist but cannot then be stated, the court may deny the motion or may order a continuance to permit affidavits to be obtained or disclosure to be had and may make such other order as may be just.

"A party who contends that a summary judgment motion is premature is required to demonstrate that discovery might lead to relevant evidence or that the facts essential to justify opposition to the motion were exclusively within the knowledge and control of the movant [cit.om.]." *Singh v. Avis Rent A Car System, Inc.*, 119 AD3d 768, 770 (2d Dept. 2014). An "evidentiary basis" justifying resort to CPLR §3212(f) is required. *See, Martinez v. Kreychmar*, 84 AD3d 1037 (2d Dept. 2011). The evidence before the court shows that Plaintiff was simply stopped at a red light when Defendant approached and struck him from the rear. It was quite plainly Defendant's obligation to come forward, explain how the accident occurred, and demonstrate why under those circumstances he requires additional discovery. In the absence of Defendant's affidavit, defense counsel's speculation fails to demonstrate any likelihood that there is relevant evidence exclusively within Plaintiffs' knowledge and control that could affect the outcome of this case. *See, Alvord & Swift v. Muller Constr. Co.*, 46 NY2d 276 (1978); *Prado v. Bowne & Sons*,

207 AD2d 875 (2d Dept. 1994); *Curilae v. AIG Multi-Line Syndicate, Inc.*, 204 AD2d 237 (1st Dept. 1994). Hence, Plaintiff's motion is not properly deniable as premature. *See, Le Grand v. Silberstein, supra; Rodriguez v. Farrell, supra; Garner v. Chevalier Transportation Corp.*, 58 AD3d 802 (2d Dept. 2009); CPLR §3212(f).

Defendant having failed to rebut the inference of negligence arising from his rear ending a stopped vehicle, partial summary judgment on liability is warranted.

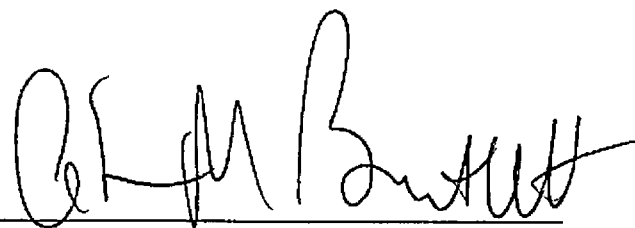
It is therefore

ORDERED, that Plaintiff's motion for partial summary judgment against Defendant on the issue of liability only is granted.

The foregoing constitutes the decision and order of this Court.

Dated: July 6, 2017
Goshen, New York

ENTER



HON. CATHERINE M. BARTLETT, A.J.S.C.

HON. C. M. BARTLETT
JUDGE NY STATE COURT OF CLAIMS
ACTING SUPREME COURT JUSTICE