

Marfo v Castillo

2018 NY Slip Op 31244(U)

June 21, 2018

Supreme Court, New York County

Docket Number: 156442/2017

Judge: Adam Silvera

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK – NEW YORK COUNTY
PRESENT: Hon. Adam Silvera** **Part 22**

EDMUND MARFO,

Plaintiff,

-against-

ANDRES CASTILLO,

Defendant,

DECISION/ORDER

**Index No. 156442/2017
MOTION SEQ NO 001**

ADAM SILVERA, J. :

Upon the foregoing papers, it is ordered that Plaintiff Edmund Marfo’s motion is granted and defendant Andres Castillo’s cross-motion is denied for the reasons set forth below. Before the court is plaintiff’s motion for summary judgment, pursuant to CPLR 3212, on the issue of liability against defendant. Defendant opposes the motion and cross-moves for summary judgment to dismiss plaintiff’s Summons and Complaint pursuant to CPLR 3126, for spoliation of evidence, for sanctions, or in the alternative to compel plaintiff to provide previously demanded discovery.

BACKGROUND

The suit at bar stems from a rear-end motor vehicle collision that occurred on December 3, 2016, on Jerome Avenue at the intersection with Marcy Place in the County of Bronx, City and State of New York, when plaintiff’s stopped vehicle was struck in the rear by defendant’s vehicle and allegedly resulted in the serious injury of plaintiff. Defendant alleges that the impact was “a very low impact accident” and that he suspects “fraud or lack of causation by plaintiff in

claiming these injuries resulted from this incident, defendant served a Demand for Preservation of Evidence dated, November 2, 2017” (Cross-Mot., ¶ 8). Defendant’s Demand requested that plaintiff preserve the vehicle as it was on the date of the incident and not repair it until defendant is able to inspect the vehicle (Cross-Mot, Exh. F). Defendant further demands that plaintiff comply with defendant’s request for information as to prior claims for injury listed in a “Supplemental Discovery and Inspection Demand dated September 13, 2017, demanding authorizations for plaintiff’s medical records from his September 2003 claim, his May 2008 claim, his August 2008 claim, his April 2011 claim and his June 2003 claim” (Cross-Mot, ¶ 6).

DISCUSSION

Cross-Motion

As a preliminary matter the Court shall address defendant’s cross-motion. Defendant’s cross-motion is denied. The branch of defendant’s cross-motion requesting the above-mentioned authorizations has already been complied with by plaintiff who has attached the requested authorizations to his Affirmation in Opposition (Aff in Op, Exh 1). Further, the branch of defendant’s cross-motion seeking to dismiss plaintiff’s Complaint for spoliation of evidence is denied.

“A party seeking spoliation sanctions must prove (i) control and a duty to preserve; (ii) culpability; and (iii) relevance” (*Pegasus Aviation I, Inc. v Varig Logistica S.A.*, 26 NY3d 545 [2015] [internal citations omitted]). A defendant does not meet its burden for spoliation sanctions when it fails to detail any follow-up investigations as to the auto body shop where a vehicle was repaired and does not rely on other evidence such as parties’ deposition testimony, photographs taken by plaintiff and defendant at the scene of the accident, and the police report (*Gutierrez v Reiser* 159 AD3d 592, 593 [2018] [finding that such evidence are “sufficient substitutes for

another inspection of the vehicle”]).

Here, plaintiff has affirmed that the vehicle in question was towed from the scene of the accident and repaired 11 months prior to defendant’s Demand. Additionally, defendant has not made a request for authorizations to obtain the property damage records from Geico Insurance Company as to the repair estimates, payments issued, and photographs of the vehicle in question. Thus, defendant has not met its burden and the cross-motion is denied.

Summary Judgment (Liability)

Plaintiff’s motion for summary judgment on the issue of liability is granted. The motion, which alleges that plaintiff’s vehicle was stopped when it was rear-ended by plaintiff’s vehicle, has made a prima facie case of negligence, and the burden shifts to defendant to raise a triable issue of fact (*See Winegrad v New York University Medical Center*, 64 NY2d 851, 853 [1985]; *see also Zuckerman v City of New York*, 49 NY2d 557, 560 [1980]). “[A] rear-end collision with a stopped ... vehicle establishes a prima facie case of negligence on the part of the driver of the rear vehicle, ... [and] shift[s] the burden to defendant to come forward with an adequate nonnegligent explanation for the accident”. *Cruz v Lise*, 123 AD3d 514 [1st Dep’t 2014] (internal quotations omitted).

Defendant’s cross-motion fails to raise an issue of fact. The cross-motion does not contest the existence of the collision, in fact it specifically acknowledges that defendant’s vehicle struck plaintiff’s vehicle from behind. Defendant merely states that “this was a very low impact accident” (Cross-Mot., ¶ 8). Thus, there is no issue of fact as to the occurrence of the rear-end collision and defendant fails to offer a nonnegligent explanation for the accident such that plaintiff’s motion as to liability against defendant is granted.

Accordingly, it is

ORDERED that defendant's cross-motion is denied; and it is further

ORDERED that plaintiff's motion for summary judgment on the issue of liability against defendant is granted; and it is further

ORDERED that all parties appear for a compliance conference on July 2, 2018 at 9:30 am in room 103 of 80 Centre Street NY, NY; and it is further

ORDERED that within 30 days of entry, plaintiff shall serve a copy of this decision/order upon all parties with notice of entry.

This constitutes the Decision/Order of the Court.

Dated:

JUN 21 2018

ENTER:



Hon. Adam Silvera, J.S.C.