Luna v Milian
2018 NY Slip Op 34158(U)
June 28, 2018
Supreme Court, Westchester County
Docket Number: Index No. 64016/2017
Judge: Charles D. Wood

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.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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JOSE LUNA,

Plaintiff,

-against-

DECISION & ORDER
Index No. 64016/2017
Sequence No. 1

HUGO R. MILIAN and H&M EXPRESS CORP.,

Defendants.

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WOOD, J.

The following papers were read and considered in connection with plaintiff's motion for partial summary judgment on the issue of liability, which is opposed by defendant:

Plaintiff's Notice of Motion, Counsel's Affirmation, Exhibits, Memorandum of Law.
Defendant's Counsel's Affirmation in Opposition, Milian Affidavit, Exhibits.
Plaintiff's Counsel's Reply Affirmation, and Supplemental Reply Affirmation.

This is an action for personal injuries arising out of a tractor trailer accident that occurred on December 18, 2015, southbound on Interstate 87. Plaintiff commenced this action by filing the summons and verified complaint on September 14, 2017. After joinder of issue, but before depositions were conducted, plaintiff moves for summary judgment pursuant to CPLR 3212, on the issue of liability, and setting this matter down for a trial on the issue of damages.

Upon the foregoing papers, the motion is decided as follows:

It is well-settled that a proponent of a summary judgment motion must make a "prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact" (Alvarez v Prospect Hospital, 68 NY2d 320, 324 [1986]; Orange County-Poughkeepsie Ltd. Partnership v Bonte, 37 AD3d 684, 686-687 [2d Dept 2007]; Rea v Gallagher, 31 AD3d 731 [2d Dept 2007]). Moreover, failure to make such a prima facie showing requires a denial of the motion, regardless of the sufficiency of the motion papers (Winegrad v New York University Medical Center, 64 NY2d 851, 853 [1986]; Jakabovics v Rosenberg, 49 AD3d 695 [2d Dept 2008]; Menzel v Plotkin, 202 AD2d 558, 558-559 [2d Dept 1994]). Once the movant has met this threshold burden, the opposing party must present the existence of triable issues of fact (Zuckerman v New York, 49 NY2d 557, 562 [1980]; Khan v Nelson, 68 AD3d 1062 [2d Dept 2009]). In deciding a motion for summary judgment, the court is "required to view the evidence presented in the light most favorable to the party opposing the motion and to draw every reasonable inference from the pleadings and the proof submitted by the parties in favor of the opponent to the motion" (Yelder v Walters, 64 AD3d 762, 767 [2d Dept 2009]; Nicklas v Tedlen Realty Corp., 305 AD2d 385, 386 [2d Dept 2003]). Summary judgment is a drastic remedy and should not be granted where there is any doubt as to existence of a triable issue (Alvarez v Prospect Hospital, 68 NY2d 320,324 [1986]).

Generally, Vehicle and Traffic Law §1129(a) imposes a duty on all drivers to drive at a safe speed and maintain a safe distance between vehicles, always compensating for any known adverse road conditions (Ortega v City of New York, 721 NYS2d 790 [2d Dept 2000]). "When a driver approaches another vehicle from the rear, he is bound to maintain a reasonably safe rate of speed and to maintain control of his vehicle and use reasonable care to avoid colliding

with the other vehicle" (Young v City of New York, 113 AD2d 833, 834 [2d Dept 1985]). "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" (Fernandez v Babylon Mun. Solid Waste, 117 AD3d 678 [2d Dept 2014]). In other words, proof of a rear-end collision establishes a prima facie case of negligence on the part of the driver of the vehicle that strikes the forward vehicle and imposes a duty upon said offending vehicle to come forward with admissible proof to establish an adequate, non negligent explanation for a rear-end collision (Parise v Meltzer, 204 AD2d 295 [2d Dept 1994]; Moran v Singh, 10 A.D.3d 707, 708 [2d Dept 2004]); Cerda v Parsley, 273 AD2d 339 [2d Dept 2000]). In addition, where a vehicle is lawfully stopped, there is a duty imposed on the operators of vehicles traveling behind it in the same direction to come to a timely halt (Carter v Castle Elec. Contr. Co., 26 A.D.2d 83 [2d Dept 1966]). The operator of the moving vehicle is required to rebut the inference of negligence created by an unexplained rear-end collision because he or she is in the best position to explain whether the collision was due to a reasonable, non-negligent cause (Carter v Castle Elec. Contr. Co., at 85).

The sudden stop of a lead car is one of the non-negligent explanations of a rear-end collision, because the operator of that car has a duty to avoid stopping suddenly without properly signaling to avoid a collision "when there is opportunity to give such signal" (Vehicle and Traffic Law § 1163; *see id.;* Colonna v Suarez, 278 AD2d 355, [2d Dept 2000]) ; Taveras v Amir, 24 AD3d 655, 656 [2d Dept 2005]). "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" (Cajas-Romero v Ward, 106 AD3d 850 [2d Dept 2013]). A claim that the lead vehicle made a sudden stop is insufficient to overcome the burden of providing a non-negligent explanation for the happening of an accident (Robayo v Aghaabdul, 109AD3d 892 [2d Dept 2013]).

Here, according to the complaint, plaintiff's vehicle came to a complete stop heading southbound on I-87, when it was rear ended by a vehicle owned by defendant, H&M Express Corp., and operated by defendant, Hugo R. Milian. Following the collision, defendant allegedly said that he had struck plaintiff's vehicle because he had not noticed that plaintiff's vehicle had come to a complete stop. Specifically, plaintiff's affidavit provides that at the time of the accident he was driving his employer's vehicle southbound on I-87. He slowed down gradually and came to a complete stop. While at a complete stop for approximately 5-10 seconds he sustained a heavy impact to the rear of the vehicle he was driving. Defendant had allegedly told him that he had not noticed that plaintiff had come to a stop. Thus, plaintiff argues that defendant breached his duty to maintain a reasonably safe distance from plaintiff's vehicle in violation of Vehicle and Traffic Law Section 1129(a).

Accordingly, a rear-end collision establishes a prima facie case of negligence against the driver of the rear vehicle, thereby requiring that driver to rebut the inference of negligence by providing a nonnegligent explanation for the collision (Ortiz v Hub Truck Rental Corp., 82 AD3d 725, 726, [2d Dept 2011]). Significantly, evidence that a plaintiff's vehicle made a sudden lane change directly in front of a defendant's vehicle, forcing that defendant to stop suddenly, is sufficient to rebut the inference of negligence (Ortiz v Hub Truck Rental Corp., 82 A.D.3d 725, 726 [2d Dept 2011]).

Through his affidavit, defendant's version is that on the day of the accident, he was employed by defendant H&M Express Corp as a tractor trailer driver. He explains that the accident occurred at about 11:00 A.M. on I-87 South in Bethlehem, New York. The road is two lanes, flat and straight, and traffic was light. Defendant's tractor trailer was in the left lane. Ahead of him in the right lane was a tractor trailer operated by plaintiff. Plaintiff's tractor trailer turned on its left turn signal indicating his intent to move in front of defendant into the left lane. Defendant slowed his truck to 50 mph to let plaintiff's tractor trailer over. Just as plaintiff's tractor trailer moved into the left lane it slammed on its brakes attempting to come to an abrupt stop. Defendant slammed on his brakes, but could not avoid coming into contact with plaintiff's trailer. According to defendant, after the trucks came to a rest, plaintiff told defendant that as he moved into the left lane, the traffic in front of him came to a stop so he had to brake hard.

Under these circumstances, defendant, offers a "non-negligent" explanation for, and a different version of the subject accident. Plaintiff's conduct—allegedly changing lanes, raises issues of fact with respect to his culpability, and the culpability or non-culpability of defendant. The parties are not in agreement as to the events leading to the subject accident; and it is unclear as to what facts would be testified to, as depositions have not been submitted with this motion.

In conclusion, based upon the record, defendant provides a non-negligent explanation for the accident sufficient to raise a triable question of fact (Grimm v Bailey, 105 AD3d 703 [2d Dept 2013]). Thus, the determination of each party's negligence, and the respective apportionment of fault, are properly left to the jury.

For the above stated reasons, it is hereby

ORDERED, that plaintiff's motion for summary judgment on the issue of liability is Denied; and it is further

ORDERED, that the parties are directed to appear in the Compliance Conference Part on 8/22/18, 2018, at 9:30AM in Room 800 of the Westchester County Courthouse, 111 Dr. Martin Luther King Jr. Blvd., White Plains, New York 10601.

All matters not herein decided are denied. This constitutes the Decision and Order of the court.

Dated: June 28, 2018
White Plains, New York

HON. CHARLES D. WOOD
Justice of the Supreme Court

TO: All Parties by NYSCEF