

Acevedo v Chowdhury

2018 NY Slip Op 34471(U)

October 5, 2018

Supreme Court, Kings County

Docket Number: Index No. 503160/2018

Judge: Peter P. Sweeney

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

Index No.: 503160/2018
Motion Dates: 09-17-08
Mot. Cal. No.: 1

-----X
ENRIQUE ACEVEDO,
Plaintiff,

-against-

DECISION/ORDER

JAHANARA TANIA CHOWDHURY,
Defendant,

-----X

The following papers numbered 1 to 3 were read on these motions:

Papers:	Numbered
Notice of Motion/Order to Show Cause	
Affidavits/Affirmations/Exhibits.....	1
Answering Affirmations/Affidavits/Exhibits.....	2
Reply Affirmations/Affidavits/Exhibits.....	3
Other.....	

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

In this action to recover damages for personal injuries arising out of a motor vehicle accident, the plaintiff, ENRIQUE ACEVEDO, moves for an order granting him partial summary judgment on the issue of liability.

In support of the motion, the plaintiff submitted his own affidavit wherein he averred that he was operating his motor vehicle on 61st Street in Flushing, New York when it was struck in the rear by a motor vehicle owned and operated by the defendant, JAHANARA TANIA CHOWDHURY. Plaintiff did not state in his affidavit that he was stopped or stopping at the moment of impact.

Plaintiff also submitted a copy of an uncertified police report reflecting that the parties

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described the accident to the reporting police officer as follows: "AT T/P/O VEH1 [defendant] STATES WHILE GOING S/B ON 61 RD VEH2 STOP SUDDENLY CAUSING HER TO REAR END VEH2 [plaintiff]. VEH2 STATES WHILE GOING S/B ON 61 RD UNINVOLVED VEHICLE MADE AN ILLEGAL U TURN CAUSING HIM TO STOP SUDDENLY AT THIS TIME VEH1 DID REAR END HIM." The defendant did not submit any proof in admissible form in opposition to the motion.

The proponent of a motion for summary judgment has the initial burden of making a prima facie showing of entitlement to judgment as a matter of law by tendering sufficient proof eliminating any material issues of fact (see, *Winegrad v. New York Univ. Med. Ctr.*, 64 N.Y.2d 851, 853; *Zuckerman v. City of New York*, 49 N.Y.2d 557, 562; *Sillman v. Twentieth Century-Fox Film Corp.*, 3 N.Y.2d 395, 404). If the proponent meets this burden, the burden shifts to any party opposing the motion to come forward with proof in admissible form raising a triable issue of fact (see *Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324; *Zuckerman*, 49 N.Y.2d at 562; *Friends of Animals v. Associated Fur Mfrs.*, 46 N.Y.2d at 1068). If the proponent fails to meet its initial burden, the Court must deny the motion regardless of the sufficiency of the opposition papers (see *Winegrad*, 64 N.Y.2d at 853; *New York & Presbyt. Hosp. v. Allstate Ins. Co.*, 29 A.D.3d 547).

"A rear-end collision is sufficient to create a prima facie case of liability and imposes a duty of explanation with respect to the operator of the offending vehicle" (*Macauley v. Elrac, Inc.*, 6 A.D.3d 584, 585, 775 N.Y.S.2d 78 [2nd Dept 2004] [internal quotation omitted]). To make out a prima facie case of liability against the rear-ending driver, there is no requirement that the lead vehicle be stopped or decelerating (*Leguen v. City of New York (Dep't of Sanitation)*, 30

Misc. 3d 1235(A), 927 N.Y.S.2d 817, citing *Maccauley v. Elrac, Inc., supra*). As the Court in *Lequen* stated: “[t]he New York Pattern Jury Instruction relating to rear-end collisions (PJI 2:82) states, in relevant part, ‘The plaintiff AB claims that (his, her) vehicle was struck in the rear by a vehicle driven by the defendant CD. Since AB's vehicle was struck in the rear, you must find that CD was negligent, unless CD has provided an adequate explanation that does not involve any negligence on (his, her) part’” (id.). Accordingly, plaintiff sufficiently demonstrated a prima facie case of entitlement to summary judgment. It was therefore incumbent upon the defendant to submit admissible proof raising a triable issue of fact. Defendant failed to do so.

Here, even if the court were to consider the statement made by the plaintiff in the uncertified police report that he came to a sudden stop prior to the accident to avoid colliding into a vehicle that was making or had made an illegal U-Turn, this, “did not, standing alone, provide a nonnegligent explanation for [defendant’s] conduct or raise a triable issue of fact as to whether the plaintiff was comparatively at fault” (*Lopez v. Dobbins*, 164 A.D.3d 776, 79 N.Y.S.3d 566, 567, citing *Comas–Bourne v. City of New York*, 146 A.D.3d at 855, 45 N.Y.S.3d 182; *Waide v. ARI Fleet, LT*, 143 A.D.3d 975, 976, 39 N.Y.S.3d 512; *Cajas–Romero v. Ward*, 106 A.D.3d 850, 852, 965 N.Y.S.2d 559).

Finally, the plaintiff's motion was not premature (*see* CPLR 3212[f]; *Brown v. City of New York*, 162 A.D.3d 733, 79 N.Y.S.3d 255; *Lynn v. McCormick*, 153 A.D.3d 688, 689, 60 N.Y.S.3d 316).

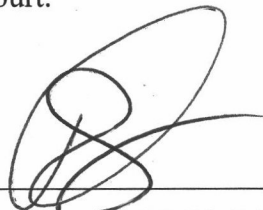
Accordingly, it is hereby

ORDERED that plaintiff's motion for partial summary judgment on the issue of liability

is **GRANTED**.

This constitutes the decision and order of the Court.

Dated: *October* 15, 2018



PETER P. SWEENEY, J.S.C.

KINGS COUNTY CLERK
FILED

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