

Gonzalez v Reliant Transp. Inc.

2018 NY Slip Op 34497(U)

September 7, 2018

Supreme Court, Bronx County

Docket Number: Index No. 31598/2017E

Judge: Wilma Guzman

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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX**

Index No.: 0031598/2017E
Motion Calender No. 19
Motion Date: 7/30/18

LEONCIO GONZALEZ,

Plaintiff,

-Against-

RELIANT TRANSPORTATION INC. and BLANCA
GONZALEZ,

Defendants,

DECISION/ ORDER

Present:

Wilma Guzman

Justice Supreme Court,

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion to grant plaintiff Summary Judgment on liability.

Papers

Numbered

| | |
|--|----------|
| Plaintiff's Notice of Motion, Affirmation in Support, and Exhibits Thereto..... | 1 |
| Affirmation in Opposition..... | 2 |
| Reply Affirmation..... | 3 |

Motion decided as follows: Upon deliberation of the application made by plaintiff, LEONCIO GONZALEZ, by **NOTICE OF MOTION**, and all the papers in connection therewith, for an Order, pursuant to CPLR §3212, granting plaintiff summary judgment, on the issue of liability with respect to the claims of plaintiff asserted against defendants, RELIANT TRANSPORTATION INC and BLANCA GONZALEZ, is heretofore granted.

This is an action for personal injuries sustained as a result of a March 29, 2017 motor vehicle accident which occurred on East Bedford Park Boulevard at or near Valentine Avenue, Bronx, New York. Plaintiff alleges that his motor vehicle was slowing for a red light when he was rear-ended by a school bus owned by defendant, RELIANT TRANSPORTATION INC, and operated by defendant, BLANCA GONZALEZ.

A party seeking summary judgment must demonstrate, *prima facie*, entitled to judgment as a matter of law by presenting sufficient evidence to negate any material issue of fact. See Winegrad v. New York Univ. Med. Ctr., 64 N.Y. 2d 851 (1985). If the movement meets this burden, the opponent must rebut the *prima facie* showing by submitting admissible evidence demonstrating

the existence of factual issues requiring a trial. *See Zuckerman v. City of New York*, 49 N.Y. 2d 557 (1980).

A rear-end collision with a motor vehicle creates a presumption of negligence. The injured occupant of the front vehicle is entitled to summary judgment on liability unless the driver of the second vehicle provides a non-negligent explanation for the collision. This rule may be applied where the front vehicle stops suddenly in slow-moving traffic. *See Agramonte v. City of New York*, 288 A.D.2d 75 (1st Dept. 2001). The failure of an opposing party to rebut the presumption of negligence will entitle the moving party to summary judgment on the issue of liability. *Toulson v. Young Han Pae*, 6 A.D.3d 292 (1st Dept. 2004).

Here, plaintiff has made a *prima facie* showing of entitlement to summary judgment. It is not disputed that plaintiff's vehicle was struck in the rear by the vehicle operated by the defendant. As such, the burden shifts to the defendants to demonstrate an issue of fact and a non-negligent explanation for the occurrence of the accident.

In opposition to the motion, defendant submit a copy of a police accident report, a copy of a motor vehicle accident report and an affidavit of defendant Gonzalez. The police report states that the defendant "stepped on the brakes and the bus continued to roll" into plaintiff's vehicle. Defendant's affidavit stated that the plaintiff abruptly and unexpectedly stopped while approaching the traffic light and this, coupled with broken pieces of asphalt and potholes, caused the defendant to make contact with the rear bumper of the plaintiff's vehicle.

Defendants argue that the alleged sudden and abrupt stop of plaintiff's vehicle represents a non-negligent explanation of the rear end collision. *citing Taveras v Amir*, 24 AD3d 655 (2d Dept 2005) (non-negligent explanation granted because plaintiff made "unexplained stop" in traffic); *Chepel v Meyers*, 306 AD2d 235 (2d Dept 2003) (non-negligent explanation granted because plaintiff "came to sudden stop for no reason"); *Gaeta v Carter*, 6 AD3d 576 (2d Dept 2004) (non-negligent explanation granted because plaintiff stopped to make right hand turn from the left lane). These cases, however, are distinguishable from the case at hand.

Here, plaintiff's affidavit states that he was slowing his vehicle as he approached a red traffic light. This assertion is not contested by the defendant in her affidavit. The deceleration of the plaintiff's vehicle upon approach of a red traffic light is neither unexplained nor for no reason. Further, defendants do not assert that plaintiff was attempting to switch lanes or make an illegal

turn prior to the accident. Therefore, defendants have failed to offer a non-negligent explanation of the rear end collision.

Accordingly, it is:

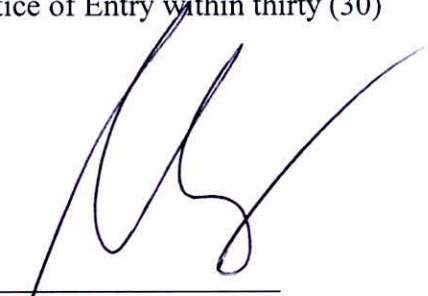
ORDERED that plaintiff's application for an Order, pursuant to CPLR §3212, granting plaintiff summary judgment on the issue of liability, is heretofore granted. It is further

ORDERED that this matter proceed to trial on the issue of damages upon the filing of the Note of Issue and payment of all applicable fees.

ORDERED that plaintiff shall serve a copy of this Order with Notice of Entry within thirty (30) days of entry of this Order.

This constitutes the decision and order of the Court.

Dated: 9/7/18



HON. WILMA GUZMAN, JSC