

Stoddard v Yakovov

2018 NY Slip Op 34506(U)

September 24, 2018

Supreme Court, Bronx County

Docket Number: Index No. 23786/2018E

Judge: John R. Higgitt

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: I.A.S. PART 14

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STODDARD ANTHONY,

Plaintiff,

DECISION AND ORDER

- against -

Index No. 23786/2018E

YAKOVOV HAGAY,

Defendant.

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John R. Higgitt, J

This is a negligence action to recover damage for personal injuries plaintiff sustained in a motor vehicle accident that took place on January 15, 2017. Plaintiff had been stopped due to stopped traffic ahead of him for about five seconds on Flatbush Avenue when the accident occurred. At the time, the vehicle operated by defendant struck plaintiff's vehicle in the rear. Plaintiff now moves for summary judgment on the issue of liability. For the reasons that follow, plaintiff's motion for summary judgment on the issue of defendant's liability is granted.

"A rear-end collision with a stationary vehicle creates a prima facie case of negligence requiring a judgment in favor of the stationary vehicle unless defendant proffers a nonnegligent explanation for the failure to maintain a safe distance . . . A driver is expected to drive at a sufficiently safe speed and to maintain enough distance between himself [or herself] and cars ahead of him [or her] so as to avoid collisions with stopped vehicles, taking into account weather and road conditions" (*LaMasa v Bachman*, 56 AD3d 340, 340 [1st Dept 2008]). The happening of a rear-end collision is itself a prima facie case of negligence against of the rearmost driver in a chain confronted with a stopped or stopping vehicle (*see Cabrera v Rodriguez*, 72 AD3d 553 [1st Dept 2010]).

Vehicle and Traffic Law § 1129(a) states that a "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” (*see Darmento v Pacific Molasses Co.*, 81 NY2d 985, 988 [1993]). Based on the plain language of the statute, a violation is clear when a driver follows another too closely without adequate reason and that conduct results in a collision (*id.*).

Plaintiff satisfied his prima facie burden, establishing his entitlement to judgment as a matter of law on the issue of liability (*see* CPLR 3212[b]). Plaintiff submitted a copy of the pleadings, a bill of particulars and an affidavit of merit. Plaintiff’s affidavit of merit sets forth sufficient detail as to how the accident occurred, namely that plaintiff’s vehicle was stopped for approximately five seconds due to traffic ahead of him when he was rear-ended by a vehicle operated by defendant, causing plaintiff’s injuries.

In opposition, defendant failed to raise a triable issue of material fact (*see Zuckerman v City of New York*, 49 NY2d 557 [1980]). Defendant argues that the motion should be denied because the plaintiff made a sudden stop at the time of the accident. The general rule regarding liability for rear-end accidents “has been applied when the front vehicle stops suddenly in slow-moving traffic; even if the sudden stop is repetitive; when the front vehicle, although in stop-and-go traffic, stopped while crossing an intersection; and when the front car stopped after having changed lanes” (*Johnson v Phillips*, 261 AD2d 269, 271 [1st Dept 1999]). The sudden stop of the lead vehicle, without more (*see Cabrera, supra*), “is generally insufficient to rebut the presumption of non-negligence on the part of the lead vehicle” (*see Woodley v Ramirez*, 25 AD3d 451, 452 [1st Dept 2006]). Furthermore, defendant avers that he was close enough to plaintiff’s vehicle that there was only “approximately one second from the time the vehicle in front of me stopped and my vehicle made contact ...,” demonstrating that defendant violated Vehicle and Traffic Law § 1129(a). Because defendant failed to rebut the presumption of his

negligence (*see Dattilo v Best Transp. Inc.*, 79 AD3d 432 [1st Dept 2010]), the motion is granted.

The court notes that plaintiff did not seek a finding that he was free of comparative fault as a matter of law and the court does not address that issue here.

Accordingly, it is

ORDERED, that plaintiff's motion for partial summary judgment on the issue of defendant's liability for causing the subject motor vehicle accident is granted.

This constitutes the decision and order of the court.

Dated: September 24, 2018



John R. Higgitt, A.J.S.C.