

Carrero v New York City Tr. Auth.

2019 NY Slip Op 31104(U)

April 11, 2019

Supreme Court, New York County

Docket Number: 160218/2017

Judge: Kathryn E. Freed

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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. KATHRYN E. FREED PART IAS MOTION 2EFM

Justice

-----X INDEX NO. 160218/2017

LAZARO CARRERO,

Plaintiff,

MOTION SEQ. NO. 001

- v -

NEW YORK CITY TRANSIT AUTHORITY, METROPOLITAN
TRANSPORTATION AUTHORITY, MTA BUS COMPANY,
RICHARD RAINES,

DECISION AND ORDER

Defendants.

-----X
The following e-filed documents, listed by NYSCEF document number (Motion 001) 13, 14, 15, 16, 17,
18, 19, 20, 21, 22, 23, 24, 25

were read on this motion to/for SUMMARY JUDGMENT

Upon the foregoing documents, it is ordered that the motion is granted.

Plaintiff Lazaro Carrero moves, pursuant to CPLR 3212, for an order granting him
summary judgment on the issue of liability against the defendants New York City Transit
Authority, Metropolitan Transportation Authority, MTA Bus Company (the "MTA defendants")
and Richard Raines (Raines). Defendants opposes the motion.

The underlying action involves serious personal injuries allegedly sustained by plaintiff
in a motor vehicle accident on May 10, 2017, wherein plaintiff was a passenger in the front seat
of a vehicle which was rear ended while stopped by a City bus owned by the MTA defendants
and driven by defendant Raines. Plaintiff initiated the within action by service of a summons and
complaint on November 15, 2017. Issue was joined by defendants by service of their answer on
January 13, 2018 and an amended answer, served on January 12, 2018. (Docs 7 and 9).

Plaintiff testified at his 50-h hearing that he was a passenger in a vehicle which was at a complete stop, waiting for the vehicle in front of him to make a turn, when it was rear-ended by the City bus. He further testified that he was wearing a seatbelt at the time. Doc. 20. Plaintiff also submits the Police Accident Report, which indicates that the City bus “Did Rear End” the vehicle in which plaintiff was a passenger. Doc. 19. The Report also indicates that defendant Raines was the driver of the bus and that the vehicle stopped in front of plaintiff’s vehicle, indicated as vehicle 3, left the scene.

Plaintiff asserts that he is entitled to summary judgment as to liability pursuant to Vehicle and Traffic Law § 1129(a) since the defendants’ vehicle struck his vehicle from behind and defendants have failed to proffer a non-negligent explanation for the occurrence. Plaintiff further argues that, as a matter of law, the driver of a stopped vehicle is entitled to summary judgment on the issue of liability where the moving vehicle which hit him cannot provide a non-negligent explanation for the collision. See *Cortes v Whelan*, 83 AD3d 763. Doc. 14 ¶19.

Defendants assert that plaintiff’s vehicle came to an abrupt stop after it allegedly struck the lead vehicle, which then fled the scene. Doc. 22, ¶3. Defendants argue that the within motion is premature, that plaintiff’s testimony is “strikingly” inadequate and, therefore, defendant must be allowed to conduct discovery to investigate factors which could lead to a non-negligent explanation. Defendants also want time to identify the driver of the lead vehicle or possibly implead the driver of plaintiff’s vehicle. Defendant additionally argues that the motion is premature because no discovery has been held and there had not even been a preliminary conference. See *Gao v City of New York*, 29 AD3d 449 (1st Dept. 2006); *McGlynn v Palace Co.*, 262 AD2d 116 (1st Dept. 1999).

In reply, plaintiff argues that defendants have failed to provide any evidence of a non-negligent explanation and note that mere hope that discovery could uncover such evidence is not enough. Moreover, he asserts that defendants fail to demonstrate that further discovery would lead to any additional evidence.

LEGAL CONCLUSIONS:

A party moving for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law on the undisputed facts. (*See Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985].) The movant must produce sufficient evidence to eliminate any issues of material fact. (*Id.*) If the moving party makes a prima facie showing of entitlement to judgment as a matter of law, the burden then shifts to the party opposing the motion to present evidentiary facts in admissible form which raise a genuine, triable issue of fact. (*See Mazurek v Metro. Museum of Art*, 27 AD3d 227, 228 [1st Dept 2006].) If, after viewing the facts in the light most favorable to the non-moving party, the court concludes that a genuine issue of material fact exists, then summary judgment will be denied. (*See Vega v Restani Constr. Corp.*, 18 NY3d 499, 503 [2012]; *Rotuba Extruders, Inc. v Ceppos*, 46 NY2d 223, 231 [1978].)

“It is well settled that when a rear-end collision occurs, ‘the driver of the front vehicle is entitled to summary judgment on liability, unless the driver of the following vehicle can provide a nonnegligent explanation for the collision’ (*Santana v Tic - Tak Limo Corp.*, 106 AD3d 572, 573-574 [1st Dept 2013]).” *Santana v Danco Inc.*, 115 AD3d 560,560 (1st Dept 2014).

Here, the facts are even more persuasive, since plaintiff was a passenger in the rear-ended vehicle. “[I]t is well settled that the right of an innocent passenger to summary judgment is not in any way restricted by potential issues of comparative negligence as between defendants and

the driver of the vehicle in front. *Johnson v Phillips*, 261 AD2d 269, 269 91st Dept. 1999, citing *Silberman v Surrey Cadillac Limousine, Inc.*, 109 AD2d 833, 833-834.

This Court also notes that, while defendants annex to their papers an MTA Supervisor's Accident Report, which was signed by Raines' Supervisor (Doc. 23), they have failed to annex an affidavit from defendant Raines, the driver of the bus, to raise any potential discovery issues or set forth a non-negligent explanation for the collision, even though Raines was a witness and certainly in the best position to raise any such issues. "[D]efendant's failure to raise any factual issues to absolve him of liability or even submit a sworn statement of facts or to credibly explain the failure to do so defeats the need for discovery." *Johnson*, 261 AD2d at 269.

Based on the above, plaintiff has established his prima facie entitlement to summary judgment on liability and defendants have failed to raise an issue of fact as to whether there was a non-negligent explanation for the collision.

In light of the foregoing, it is hereby:

ORDERED that plaintiff Carrero Lazaro's motion for an order granting him summary judgment on the issue of liability against the defendants New York City Transit Authority, Metropolitan Transportation Authority, MTA Bus Company and Richard Raines is granted; and it is further

ORDERED that the issue of plaintiff's damages shall be determined at the time of trial or other final settlement; and it is further

ORDERED that, within 30 days after this order is filed with NYSCEF, counsel for the plaintiff shall serve a copy of this order, with notice of entry, upon all parties, and upon the General Clerk's Office at 60 Centre Street, Room 119; and it is further

ORDERED that such service upon the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh).

ORDERED that the Clerk shall enter judgment accordingly; and it is further

ORDERED that the parties are to appear for a compliance conference to address discovery issues related to damages on July 30, 2019 at 80 Centre Street, Room 280, at 2:15 p.m.; and it is further

ORDERED that this constitutes the decision and order of this Court.

4/11/2019
DATE


KATHRYN E. FREED, J.S.C.

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
APPLICATION:	<input checked="" type="checkbox"/> GRANTED	<input type="checkbox"/> GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT
	<input type="checkbox"/> DENIED	<input type="checkbox"/> OTHER
		<input type="checkbox"/> REFERENCE