

Ceron v Hurtado

2019 NY Slip Op 31481(U)

May 29, 2019

Supreme Court, New York County

Docket Number: 151916/2017

Judge: Adam Silvera

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART IAS MOTION 22

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JOHN CERON,

Plaintiff,

- v -

LUIS HURTADO, HERTZ VEHICLES LLC

Defendant.

INDEX NO. 151916/2017

MOTION DATE 03/08/2019

MOTION SEQ. NO. 001

DECISION AND ORDER

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HON. ADAM SILVERA:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 11, 12, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 25, 26

were read on this motion to/for JUDGMENT - SUMMARY.

Upon the foregoing documents, it is for ORDERED that plaintiff's motion for summary judgment, pursuant to CPLR 3212, is granted on the issue of liability against defendant Luis C. Hurtado. Plaintiff John E. Ceron's motion, which contends that on October 19, 2016, he was the operator of a motor vehicle which was stopped at a stop sign while traveling on Woodhaven Boulevard at or near the intersecting street of 63 Road, County of Queens, State of New York, when it was struck from behind by a vehicle owned by defendant Hertz Vehicles, LLC and operated by defendant Luis C. Hurtado, has made out a prima facie case of negligence, and the burden shifts to defendant to raise a triable issue of fact (*See Winegrad v New York University Medical Center*, 64 NY2d 851, 853 [1985]; *see also Zuckerman v City of New York*, 49 NY2d 557, 560 (1980)).

"The 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 eliminate any

material issues of fact from the case” (*Winegrad v New York University Medical Center*, 64 NY2d 851, 853 [1985]). Once such entitlement has been demonstrated by the moving party, the burden shifts to the party opposing the motion to “demonstrate by admissible evidence the existence of a factual issue requiring a trial of the action or tender an acceptable excuse for his failure ... to do [so]” (*Zuckerman v City of New York*, 49 NY2d 557, 560 [1980]). “A rear-end collision with a stopped vehicle, or a vehicle slowing down, establishes a prima facie case of negligence on the part of the operator of the rear-ending vehicle, which may be rebutted if that driver can provide a non-negligent explanation for the accident” (*Baez v MM Truck and Body Repair, Inc.*, 151 AD3d 473, 476 [1st Dep’t 2017]).

Here, it is undisputed that plaintiff was stopped when his vehicle was rear ended by defendant’s vehicle. Plaintiff attaches his affidavit in which he states that his vehicle was completely stopped at a school bus stop sign when defendants’ vehicle made “violent contact with the rear end of my completely stopped vehicle” (Mot, Exh C). Thus, plaintiff has made a prima facie showing of entitlement to summary judgment on the issue of liability and the burden shifts to defendants to raise an issue of fact or non-negligent explanation for the accident.

In opposition defendants bring to the Courts attention that pursuant to a Partial Stipulation of Discontinuance dated June 28, 2017, signed by all parties, this action was discontinued, with prejudice, against defendant Hertz Vehicle, LLC. Thus, the Court will consider the present motion solely as against defendant Luis C. Hurtado. As to the remaining defendant, the opposition alleges that this motion is premature as discovery is not complete and depositions have not been held. Defendants’ assertion that the instant case is premature for summary judgment, the Court has continuously held that summary judgment is permissible

notwithstanding the fact that depositions have yet to be held (*Avant v Cepin Livery Corp.*, 74 AD3d 533 [1st Dep't 2010]; *see also Rosario v Vasquez* 93 AD3d 509 [1st Dep't 2012]).

Defendants further oppose the motion on the grounds that plaintiff has failed to comply with CPLR 3212(b). Defendants' claim that plaintiff's uncertified Police Accident Report is inadmissible; however, the Court finds that plaintiff's affidavit in itself is sufficient to establish a prima facie showing of entitlement to judgment as a matter of law. Defendants' assertions that plaintiff failed to state the rate of speed he was travelling at prior to stopping deems the affidavit as insufficient to establish a prima facie showing of entitlement to judgment as a matter of law is unavailing.

Defendants note that the affidavit does not mention the speed of the vehicle prior to stopping, the distance between the two vehicles, whether he heard "screeching tires," and the amount of time he was stopped; however, any such information would be necessary in determining whether or not plaintiff stopped short prior to the accident. The Court notes that the law is clear that a claim that the vehicle in front stopped suddenly, standing alone, is insufficient to raise a triable issue of fact (*Cruz v Lise*, 123 AD3d 514 [1st Dept 2014]). Thus, defendants' argument that the affidavit does not make a prima facie showing of negligence is devoid of merit. Defendants have failed to raise an issue of fact and/or provide a non-negligent explanation for the incident. Plaintiff's motion is granted solely as against defendant Luic C. Hurtado

Accordingly, it is

ORDERED that plaintiff's motion for summary judgment is granted on the issue of liability as against defendant Luic C. Hurtado; and it is further

ORDERED that plaintiff's motion for summary judgment as against defendant Hertz Vehicles, LLC is denied as moot; and it is further

ORDERED that the complaint is dismissed in its entirety as against defendant Hertz Vehicles, LLC and the Clerk is directed to enter judgment accordingly in favor of said defendant; and it is further

ORDERED that the action is severed and continued against the remaining defendant; and it is further

ORDERED that the caption be amended to reflect the dismissal and that all future papers filed with the court bear the amended caption; and it is further

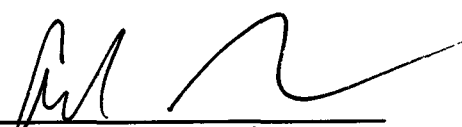
ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the County Clerk (Room 141B) and the Clerk of the Trial Support Office (Room 158), who are directed to mark the court's records to reflect the change in the caption herein; and it is further

ORDERED that the remaining parties appear for a compliance conference on July 29, 2019, in room 106 of 80 Centre Street at 9:30 AM; and it is further

ORDERED that within 30 days of entry, plaintiff shall serve a copy of this decision/order upon defendant with notice of entry.

This constitutes the Decision/Order of the Court.

5/29/2019
DATE


ADAM SILVERA, J.S.C.

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> GRANTED		<input checked="" 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"/> REFERENCE