Brito v Kwang Choi
2019 NY Slip Op 34281(U)
August 20, 2019
Supreme Court, Bronx County
Docket Number: Index No. 21156/2019E
Judge: Shawndya L. Simpson
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FILED: BRONX COUNTY CLERK 09/04/2019 10:50 AM INDEX NO. 21156/2019E
NYSCEF DOC. NO. 22 RECEIVED NYSCEF: 09/04/2019

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: PART 17

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RAMON BRITO,

Plaintiff,

- against –

KWANG CHOI,

Defendants.

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DECISION AND ORDER

Index No. 21156/2019E

Shawndya L. Simpson, J.:

INTRODUCTION

On June 19, 2018, plaintiff operated a vehicle said to have been in an accident with a vehicle operated by defendant. Plaintiff alleges he was rear-ended as he was stopped in his vehicle at a red light at or near the intersection of Queens Boulevard and 32nd Place in Queens county. By notice of motion dated April 23, 2019, and the affirmation and exhibits submitted in support thereof along with all the pleadings and proceedings heretofore, plaintiff seeks summary judgment pursuant to Civil Practice Law and Rules (CPLR) against defendant on the issue of liability. Defendant filed an affirmation in opposition dated June 18, 2019. A reply affirmation dated July 2, 2019, was filed by the plaintiff.

In support of the motion, plaintiff submits his bill of particulars, summons, complaint, notice of appearance, answer, and an affidavit from plaintiff. , a certified police report, the summons, complaint, answer,, notice for discovery and demands. In opposition, the defendants submit their counsel's affirmation. No other documents or exhibits are attached. For the foregoing reasons, after review and consideration of the filings and proceedings, plaintiff's motion for summary judgment on the issue of liability is granted.

DISCUSSION

Plaintiff has established his entitlement to summary judgment on the issue of liability against defendants (*see Bajrami v. winkle Cab Corp.*, 147 A.D.3d 649 [App. Div., 1st Dept. 2017]). It is alleged that defendant struck plaintiff from the rear as plaintiff was stopped at a red traffic light. It is undisputed that while plaintiff operated a vehicle stopped at a red light traffic sign he was struck by a vehicle owned and operated by defendant. Defendant's vehicle is said to have struck plaintiff after failing to properly observe and maintain a reasonable safe distance from plaintiff's vehicle. Plaintiff argues that defendant does not have a non-negligent excuse for the accident. Plaintiff's motion invites an explanation from the defendant as to the cause of the accident. However, no contrary version of the facts in the form of admissible evidence is offered by the defense to counter the instant motion. It is undisputed that defendant rear-ended the plaintiff's vehicle stopped at a red traffic light and that defendant is at fault for the accident. Under these circumstances, plaintiff is entitled to summary judgment on the issue of liability against defendant (*see Kuehne & Nagel, Inc. v. Baiden*, 36 N.Y.2d 539 [1975]).

"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 A.D.3d 340, 340 [App. Div., 1st Dept. 2008], *citing Mitchell v. Gonzalez*, 269 A.D.2d 250, 251[App. Div., 1st Dept. 2000]). The rear-end collision of a vehicle itself provides a *prima facie* showing of negligence on the part of the rearmost driver in a collision with a stopped or stopping vehicle (*see Cabrera v. Rodriguez*, 72 A.D.3d 553 [App. Div., 1st Dept.

2010]). "[T]he burden shifts to the party opposing the motion to produce evidentiary proof in admissible form sufficient to raise material issues of fact which require a trial of the action" (*Id.* at 553, *citing Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324,[1986]). In this case, no admissible evidence is offered in opposition.

The general rule on 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 A.D.2d 269, 271 [App. Div., 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" (*Woodley v. Ramirez*, 25 A.D.3d 451, 452 [App. Div, 1st Dept. 2006] [citations omitted]). 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 N.Y.2d 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.*).

As stated, defendants did not attach firsthand sworn testimony to controvert plaintiff's evidence that the vehicle he drove was stopped and that defendant unreasonably caused the accident. No evidence is offered to controvert plaintiff's evidence that defendant unreasonably caused the accident. Additionally, plaintiff's motion was not premature due to the lack of discovery because the information as to why defendant's car collided reasonably rests within the drivers' own knowledge (*see Castaneda v. DO&CO N.Y. Catering, Inc.*, 144 A.D.3d 407 [App. Div., 1st Dept 2016]; *Johnson v. Phillips*, 261 A.D.2d 269, 272 [App. Div., 1st Dept. 1999]),

Rodriguez v. Garcia, 154 A.D.3d 581 [App. Div., 1st Dept 2017]). "Facts appearing in the movant's papers which the opposing party does not controvert, may be deemed to be admitted" (*Kuehne & Nagel, Inc. v. Baiden*, supra at 544,; *Tortorello v. Carlin*, 260 A.D.2d 201 [App. Div., 1st Dept. 1999]), and defendant did not rebut plaintiff's assertion with any evidence to undermine the claim of culpability.

The evidence submitted in support of the motion has established a *prima facie* case that plaintiff was not at fault for the accident and defendant is the sole cause for the collision. Defendant failed to rebut the presumption of his negligence (*see Dattilo v. Best Transp. Inc.*, 79 A.D.3d 432 [App. Div., 1st Dept. 2010]), and the presumption of the non-negligence of the rear-ended stopped driver, plaintiff (*see Francisco v. Schoepfer*, 30 A.D.3d 275 [App. Div., 1st Dept. 2006]; *Woodley v. Ramirez*, 25 A.D.3d 451, 452 [App. Div, 1st Dept. 2006]). Consequently, the motion for summary judgment against the defendant on the issue of liability is granted.

CONCLUSION

Accordingly, it is:

ORDERED, that plaintiff's motion for summary judgment on the issue of liability against the defendants for the subject accident is granted., and it is further

ORDERED, that plaintiff's motion to strike defendants' affirmative defense of culpable conduct is granted.

This constitutes the decision and order of the court.

Dated: Bronx, New York
August 20, 2019

The Honorable Shawndya L. Simpson
Justice of the Supreme Court