

Cardi v Deriel

2019 NY Slip Op 34650(U)

March 27, 2019

Supreme Court, Westchester County

Docket Number: Index No. 59103/2018

Judge: Terry Jane Ruderman

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This opinion is uncorrected and not selected for official publication.

To commence the statutory time for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
JULIO CARDI,

Plaintiff,

-against-

GERMAN DERIEL,

Defendant.

DECISION and ORDER
Motion Sequence No. 1
Index No. 59103/2018

-----X
RUDERMAN, J.

The following papers were considered in connection with plaintiff's motion for summary judgment on the issue of defendant's liability:

<u>Papers</u>	<u>Numbered</u>
Notice of Motion, Affirmation, Exhibits A - E	1
Affirmation in Opposition	2

Plaintiff commenced this negligence action to recover damages for injuries he sustained when his vehicle was struck in the rear by defendant's vehicle while he was driving southbound on the Major Deegan Expressway on February 26, 2015. In this motion for summary judgment on the issue of liability, plaintiff contends that he has established defendant's liability as a matter of law, relying on the parties' depositions.

Plaintiff, in his deposition, described the collision as follows: he was driving his employer's Ford 350 box truck in the middle lane of the Major Deegan Expressway southbound, going approximately 40 miles per hour, when, in the side-view mirror on his passenger side, he saw a white vehicle in the right lane heading into the middle lane; he testified that white vehicle

struck the back of his truck before the white vehicle had completed its lane change. Plaintiff stated that his truck then began to tip over toward his left side, and that while it was on two wheels, a black sedan struck his passenger side, his truck tipped over onto its driver's side and slid into the median divider, coming to a stop in the left lane.

Defendant provided a different description of the events leading up to the collision. He testified that before the accident he was traveling in the middle lane at approximately 50 miles per hour, with plaintiff's truck in front of him going the same speed. Intending to move into the left lane, he put his directional signal on and checked his side-view mirror, where he observed a Mercedes Benz approaching from behind in the left lane, really fast. Defendant stated that as the Mercedes Benz passed him on the left, he swerved slightly to the right but did not leave the middle lane. At that point, plaintiff's truck in front of him also swerved to the right, and hit its brakes. Then, defendant hit his brakes, but skidded and struck plaintiff's truck. Defendant explained that the distance between his car and plaintiff's truck when he started applying his brakes was "very close," and that he had been driving "two cars behind the truck which is normal for a person to be driving." He also testified that the roadway was wet.

Analysis

"A rear-end collision with a stopped or stopping vehicle establishes a prima facie case of negligence on the part of the operator of the rear vehicle, thereby requiring that operator to rebut the inference of negligence by providing a nonnegligent explanation for the collision" (*Spinosa v Golden Touch Transp. of NY, Inc.*, 122 AD3d 916, 917 [2d Dept 2014]). While "[a] claim that the driver of the lead vehicle made a sudden stop, standing alone, is insufficient to rebut the presumption of negligence" (*Franco v Breceus*, 70 AD3d 767, 768 [2d Dept 2010]), summary

judgment has been denied where there is evidence that the plaintiffs' vehicle came to an abrupt stop for no apparent reason, when there was no traffic in front of it, just before the collision (*see Sokolowska v Song*, 123 AD3d 1004, 1004 [2d Dept 2014])

In seeking summary judgment on the issue of defendant's liability, plaintiff relies on defendant's acknowledgment that his vehicle struck plaintiff's truck in the rear. Defendant relies on the dispute between the testimony of the two parties' describing the events leading up to the collision; he also relies on the case law that a non-negligent explanation may be provided where the lead vehicle came to a sudden and abrupt stop.

As to the existence of an issue of fact, such an issue does not necessarily mean that the dispute is material. Here, the parties' differences regarding the events prior to the collision – i.e. whether defendant simply hit plaintiff's truck or whether a Mercedes Benz sped by in the left lane, prompting plaintiff to suddenly hit his brakes, is immaterial. Even if defendant's description of the events is accepted, his assertion that he was two car lengths behind plaintiff's truck while driving at a speed of 50 miles per hour, and skidded on the wet roadway when he tried to brake, establishes as a matter of law that defendant failed to maintain a safe distance between the two vehicles with no non-negligent explanation for that failure (*see Vehicle and Traffic Law § 1129[a]*). This is so regardless of whether the actions of an unidentifiable third party caused plaintiff to react and hit his brakes.

All issues relating to damages remain for trial.

Based upon the foregoing, it is hereby,

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

ORDERED that the parties are directed to appear in the Settlement Conference Part on Tuesday, May 7, 2019 at 9:15 a.m. at room 1600 of the Westchester County Courthouse located at 111 Dr. Martin Luther King Jr. Boulevard, White Plains, New York, 10601 to schedule a damages trial.

This constitutes the Decision and Order of the Court.

Dated: White Plains, New York
March ~~21~~, 2019


HON. TERRY JANE RUDERMAN, J.S.C.