Deaza v Piantini
2019 NY Slip Op 35028(U)
November 15, 2019
Supreme Court, Bronx County
Docket Number: Index No. 34650/2018E
Judge: Mary Ann Brigantti
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: I.A.S. PART 15

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JODENIS DEAZA,

Plaintiff,

- against -

CHRISTINE M. PIANTINI, JOHN K. HOLLINS, MIGUEL A. DOMINGUEZ-MORALES and JPP LIMO, INC.,

Defendants.

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DECISION AND ORDER

Index No. 34650/2018E

Mary Ann Brigantti, J.

Upon the foregoing papers, plaintiff seeks summary judgment on the issue of liability against defendants Christine M. Piantini and John K. Hollins (collectively "the Piantini defendants") and defendants Miguel A. Dominguez-Morales and JPP Limo Inc. (collectively "the Morales defendants")[1] in this hit in the rear motor vehicle accident, that occurred on August 6, 2016. Plaintiff also seeks dismissal of defendants' affirmative defenses based on plaintiff's alleged comparative negligence.

The Morales defendants cross-move for summary judgment on the issue of liability dismissing all claims and cross-claims asserted against them.

In support of summary judgment, plaintiff submitted the pleadings and his affidavit dated April 2, 2019. Plaintiff avers that on August 6, 2106 he was a passenger in a four door Toyota sedan being operated by defendant Miguel Dominquez-Morales ("Morales") on the eastbound George Washington Bridge. Plaintiff avers that the Toyota had its headlights on, came to a gradual stop in traffic entirely within its lane of travel and was stopped for two to three seconds when plaintiff felt an impact to the rear of the Toyota. The impact propelled the Toyota forward and

[1] Defendant JPP Limo, Inc. admits that it owned the vehicle operated by defendant Miguel A. Dominguez-Morales.

into the vehicle to its front. Plaintiff avers that he did not hear any horns honking within five second of the accident. Plaintiff's submissions contain no further evidence as to the parties involved in the subject accident or the how the accident occurred.

"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 NY Univ Med Ctr*, 64 NY2d 851 [1985] [citations omitted]). "Once this showing is made, the burden shifts to the opposing party to produce evidentiary proof in admissible form sufficient to establish the existence of triable issues of fact" (*Melendez v Parkchester Med. Servs., P.C.*, 76 AD3d 927 [1st Dept 2010], citing *Zuckerman v New York*, 49 NY2d 557, 562 [1980]). However, failure to make such prima facie showing requires a denial of the motion, regardless of the sufficiency of the opposing papers (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). The evidence submitted on a motion for summary judgment is construed in the light most favorable to the opponent of the motion (*see Branham v Loews Orpheum Cinemas, Inc.*, 8 NY3d 931, 932 [2007]).

While is it "well settled that a rear-end collision with a stopped or stopping vehicle establishes a prima facie case of negligence on the part of the driver of the rear vehicle" here plaintiff submitted no admissible evidence identifying the rear-most driver. Indeed, plaintiff's affidavit, the only evidence submitted, provided no description regarding the offending rear-most vehicle or the driver of such vehicle. Because plaintiff presented no admissible evidence demonstrating that the Piantini defendants were involved in the subject accident, plaintiff's motion seeking summary judgment against the Piantini defendants is denied without consideration of the opposition.

The presumption of negligence as to the rear driver in rear-end collisions has been applied

when the front vehicle stops suddenly in slow-moving traffic, even if the stop is repetitive; in stop-and-go traffic, when the front vehicle stopped while crossing an intersection; and when the front vehicle stopped after changing lanes (*see Johnson v Phillips*, 261 AD2d 269, 271 [1st Dept 1999] [citations omitted]). Plaintiff's affidavit demonstrated prima facie that the Morales defendants' vehicle was stopped in traffic when it was struck in the rear by another vehicle. Plaintiff's affidavit failed to demonstrate that defendant Morales' actions in any way contributed to this accident and therefore failed to demonstrate the Morales defendants' liability for plaintiff's injuries.

However, plaintiff established as a matter of law his lack of culpable conduct, as an undisputed innocent passenger and, therefore, is entitled to summary judgment on the issue of plaintiff's lack of fault pursuant to CPLR 3212 (g) (*Oluwatayo v Dulinayan*, 142 AD3d 113, 120 [1st Dept 2016]). Defendants' affirmative defenses based upon plaintiff's comparative fault are dismissed.

In support of their cross motion, the Morales defendants submit an uncertified police accident report dated August 6, 2016 and reference plaintiff's affidavit submitted on his motion. The Morales defendants contend that they share no liability for plaintiff's injuries as their vehicle was stopped in traffic at the time it was stuck in the rear by the Piantini defendants' vehicle. Plaintiff and the Piantini defendants oppose the cross motion on the grounds that summary judgment is premature because depositions have not been conducted, that no admissible evidence is submitted in support of the cross motion and point out an affidavit from the defendant driver Morales is not submitted. In reply, the Morales defendants argue that no issues of fact have been raised in opposition to their cross motion regarding their fault for the subject accident.

"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-Pena v MM Truck & Body Repair, Inc.*, 151 AD3d 473, 476 [1st Dept 2017]). Plaintiff's affidavit made a prima facie showing of negligence on the part of the rear-ending vehicle (*see Perdomo v Llanos*, 158 AD3d 580, 580 [1st Dept 2018]; *Medina-Ortiz v Seda*, 157 AD3d 499, 499 [1st Dept 2018]; *Downey v Mazzioli*, 137 AD3d 498, 499 [1st Dept 2016]) and the absence of defendant Morales' fault. Moreover, "[t]he mere hope that evidence sufficient to defeat a motion for summary judgment may be uncovered during the discovery process is insufficient to deny such a motion" (*Downey v Mazzioli*, 137 AD3d 498, 499 [1st Dept 2016] [alteration in original], quoting *Davis v Turner*, 132 AD3d 603, 603 [1st Dept 2015]).

These conclusions are reached without considering the uncertified police accident report as it was not in admissible form (*Coleman v Maclas*, 61 AD3d 569, 569 [1st Dept 2009]; *see also Zuckerman v New York*, 49 NY2d at 562).

Accordingly, it is hereby,

ORDERED, that plaintiff's motion for summary judgment on the issue of liability is granted in part on the issue of plaintiff's lack of comparative fault only; and it is further

ORDERED, that the cross motion of defendants Miguel A. Dominguez-Morales and JPP Limo, Inc. is granted and all claims and cross claims against such defendants are dismissed, and the Clerk of the Court is hereby directed to enter judgment accordingly.

This constitutes the decision and order of the Court.

Dated: 11/15/19

ENTER,

Mary Ann Brigantti

MARY ANN BRIGANTTI, J.S.C.