Kokofu v Soliman
2019 NY Slip Op 35030(U)
October 7, 2019
Supreme Court, Bronx County
Docket Number: Index No. 20607/2019E
Judge: John R. Higgitt

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: I.A.S. PART 14

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ERNEST KOKOFU,

Plaintiff,

- against -

MAY SOLIMAN, AHMAD HASSAN and BETRAND PAULEMON,

Defendants.

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DECISION AND ORDER

Index No. 20607/2019E

John R. Higgitt, J.

Upon plaintiff's June 7, 2019 notice of motion and the affirmation, affidavit, and exhibits submitted in support thereof; the July 5, 2019 affirmation in opposition of defendants Soliman and Hassan ("the Hassan defendants") and the exhibits submitted therewith; and due deliberation; plaintiff's motion for partial summary judgment on the issue of the Hassan defendants' liability for causing the subject accident is denied.

This is a negligence action to recover damages for personal injuries plaintiff sustained in a motor vehicle accident that took place on May 23, 2018. In support of his motion, plaintiff submits the pleadings and his two-page affidavit.

"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 AD3d 340, 340 [1st Dept 2008]). A rear-end collision constitutes a prima facie case of negligence against the rearmost driver in a chain confronted with a stopped or stopping vehicle (*see Cabrera v Rodriguez*, 72 AD3d 553 [1st Dept

2010]).

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 NY2d 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.*).

Plaintiff satisfied his prima facie burden, establishing his entitlement to judgment as a matter of law on the issue of defendants' liability (*see* CPLR 3212[b]). Plaintiff submitted a copy of the pleadings and his affidavit. Plaintiff averred that his vehicle had been stopped for several seconds due to heavy traffic when defendants' vehicle struck plaintiff's vehicle in the rear.

In opposition to plaintiff's prima facie showing of his entitlement to judgment as a matter of law on the issue of defendants' liability, the Hassan defendants raised a triable issue of fact. The Hassan defendants submitted the affidavit of defendant Soliman in which he averred that he was traveling behind plaintiff's vehicle when plaintiff's vehicle stopped for no reason. Defendants' vehicle, which had begun to move forward after coming to a stop behind plaintiff's vehicle, struck the rear of plaintiff's vehicle.

The general rule regarding 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 AD2d 269, 271 [1st Dept 1999]). However, a sudden stop may, under certain circumstance provide the rear-

ending driver with a non-negligent explanation for a hit-in-the-rear accident (*see Animah v Agyei*, 63 Misc 3d 783, 786 (n3), 787-789 [Sup Ct, Bronx County 2019]).

Given the minimal facts provided by the parties, the court cannot say that defendant Soliman's sudden-stop claim is insufficient to rebut the presumption of the Hassan defendants' negligence. Because the existence of a triable issue of fact as to whether defendant Soliman has a non-negligent explanation for the accident is at least arguable (*see Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395 [1957]), summary judgment in plaintiff's favor is inappropriate.

The court notes that plaintiff did not seek (and the court has not considered) dismissal of the Hassan defendants' affirmative defense of plaintiff's comparative fault (*see* CPLR 2214[a]; *cf. Poon v Nisanov*, 162 AD3d 804 [2d Dept 2018]).

Accordingly, it is

ORDERED, that plaintiff's motion for partial summary judgment on the issue of the Hassan defendants' liability is denied; and it is further

ORDERED, that the Clerk of the Court shall issue a case scheduling order on **November 22, 2019.**

This constitutes the decision and order of the court.

Dated: October 7, 2019

John R. Higgitt, A.J.S.C.