Tavarez v Linda Transp. Corp.
2019 NY Slip Op 35044(U)
October 9, 2019
Supreme Court, Bronx County
Docket Number: Index No. 23416/2018E
Judge: John R. Higgitt
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: I.A.S. PART 14
---X
RANDY TAVAREZ,

Plaintiff,

- against -

LINDA TRANSPORTATION CORP., ROBERTO C. RODRIGUEZ and NICOLAS NUNEZ,

Defendants.
---X

DECISION AND ORDER

Index No. 23416/2018E

John R. Higgitt, J.

Upon plaintiff's September 3, 2019 notice of motion and the affirmation, affidavit and exhibits submitted in support thereof; defendants' October 7, 2019 affirmation in opposition, being considered although untimely served (*see* CPLR 2001, 2214[b]); and due deliberation; plaintiff's motion for partial summary judgment on the issue of defendants' liability and for dismissal of defendants' affirmative defense alleging plaintiff's culpable conduct, contributory negligence and assumption of risk is granted.

Plaintiff avers that, while the vehicle he was driving was stopped on an on- or off-ramp, he sustained personal injuries when his vehicle was struck in the rear by defendants' vehicle.

"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]). The happening of a rear-end collision is itself a prima facie case of negligence on the part of the rearmost driver in a chain confronted with a stopped or stopping vehicle (*see Cabrera v Rodriguez*, 72 AD3d 553 [1st Dept 2010]).

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]). 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 AD3d 451, 452 [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 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 (*see id.*).

The fact that the lead vehicle is stopped when rear-ended is prima facie evidence that its driver was not negligent (*see Falcone v Dorius*, 160 AD3d 578 [1st Dept 2018]). Thus, the claim of the sudden stop of the lead vehicle, without more, is insufficient to overcome the dual presumptions of the negligence of the rear driver and the non-negligence of the front driver (*see Giap v Hathi Son Pham*, 159 AD3d 484 [1st Dept 2018]), and plaintiff's affidavit was sufficient to meet his prima facie burden (*see Garcia v McCrea*, 170 AD3d 513 [1st Dept 2019]; *Santana v Danco Inc.*, 115 AD3d 560 [1st Dept 2014])).

"[T]he information as to why [defendants' vehicle] struck the rear end of [plaintiff's vehicle] reasonably rests within [defendants'] own knowledge," and defendants failed to submit an affidavit or other admissible proof sufficient to raise an issue of fact (*Rodriguez v Garcia*, 154 AD3d 581, 581 [1st Dept 2017]; *see Castaneda v DO & CO New York Catering, Inc.*, 144 AD3d

407 [1st Dept 2016]).

Defendants oppose summary judgment as premature because issues as to the parties' respective negligence have not been explored through discovery. The mere hope that a party might be able to uncover some evidence during the discovery process is insufficient to deny summary judgment (*see Castaneda, supra*; *Avant v Cepin Livery Corp*., 74 AD3d 533 [1st Dept 2010]; *Planned Bldg. Servs., Inc. v S.L. Green Realty Corp.*, 300 AD2d 89 [1st Dept 2002]). "[Defendants], as the [owner and driver of the rear vehicle], ha[ve] knowledge of how the accident occurred and did not show any need for discovery on that issue" (*Estate of Bachman v Hong*, 169 AD3d 436, 437 [1st Dept 2019]).

That discovery remains outstanding does not warrant the denial of the motion, particularly where the opposition fails to indicate what discovery might be expected that would raise an issue of fact as to defendants' liability (*see Doherty v City of New York*, 16 AD3d 124 [1st Dept 2005]). The opposition "advanced no non-speculative basis to believe that additional discovery might yield evidence warranting a different disposition" (*Rosario v N.Y. City Transit Auth.*, 8 AD3d 147, 148 [1st Dept 2004]). Defendants' "mere expressions of hope" that disclosure might yield relevant information are insufficient to raise an issue of fact (*Piccinich v New York Stock Exch*., 257 AD2d 438, 439 [1st Dept 1999]; *see also A & E Stores, Inc. v U.S. Team, Inc.*, 63 AD3d 486, 486-87 [1st Dept 2009] ["speculation that useful information may be learned during discovery does not constitute grounds for denying the motion"]).

Defendants thus failed to rebut the presumption of their negligence and the presumption of plaintiff's non-negligence (*see Dattilo v Best Transp. Inc.*, 79 AD3d 432 [1st Dept 2010]; *see also Buchanan v Keller*, 169 AD3d 989, 992 [2d Dept 2019]; *Little v Morillo*, 168 AD3d 433 [1st Dept 2019]; *Vasquez v Chimborazo*, 155 AD3d 432 [1st Dept 2017]; *Torres v Kalmar*, 136 AD3d 457 [1st Dept 2016]).

Accordingly, it is

ORDERED, plaintiff's motion for partial summary judgment on the issue of defendants' liability and for dismissal of defendants' affirmative defense alleging plaintiff's culpable conduct, contributory negligence and assumption of risk is granted; and it is further

ORDERED, that defendants' second affirmative defense is dismissed.

The parties are reminded of the October 11, 2019 compliance conference before the undersigned.

This constitutes the decision and order of the court.

Dated: October 9, 2019

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