Tillman v Wei Cui
2020 NY Slip Op 31112(U)
March 11, 2020
Supreme Court, Bronx County
Docket Number: 21235/2019E
Judge: John R. Higgitt

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

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RENEE TILLMAN,

Plaintiff,

- against -

WEI CUI,

Defendant.

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DECISION AND ORDER

Index No. 21235/2019E

John R. Higgitt, J.

Upon plaintiff's November 14, 2019 notice of motion and the affirmation, affidavit and exhibits submitted in support thereof; defendant's December 4, 2019 affirmation in opposition and the exhibits submitted therewith;[1] plaintiff's December 18, 2019 affirmation in reply; and due deliberation; plaintiff's motion for partial summary judgment on the issue of defendant's liability for causing the subject accident and for summary judgment dismissing defendant's first affirmative defense alleging culpable conduct is granted.

This is a negligence action to recover damages for personal injuries that plaintiff allegedly sustained in a motor vehicle accident that took place on July 27, 2018. In support of her motion, plaintiff submitted the pleadings, the police accident report, and her affidavit. Plaintiff averred that at the time of the accident she was traveling on University Avenue with the intention of making a right turn onto Burnside Avenue when she had to come to a stop to allow a pedestrian to cross the street; at that time, defendant's vehicle stuck the rear of plaintiff's vehicle.

[1] The court notes that defendant purports to cross-move for dismissal of the action based on plaintiff's failure to effect proper service of process. However, defendant failed to file and serve a notice of cross motion (*see* CPLR 2214, 2215); defendant simply seeks dismissal relief in his affirmation in opposition. Although the court is allowed to search the record on a summary judgment motion on issues that are the subject of the underling motion, the issue of service was not raise in plaintiff's summary judgment motion (*see* CPLR 3212[b]; *see also Dunham v Hilco Constr. Co.*, 89 NY2d 425 [1996]).

"A rear-end collision with a stationary vehicle creates a prima facie case of negligence requiring 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.*).

In opposition to plaintiff's prima facie showing of entitlement to judgment as a matter of law on the issue of liability, defendant failed to provide a non-negligent explanation for the accident or otherwise raise a triable issue of fact as to his liability.

Defendant averred that at the time of the accident he was traveling behind plaintiff's vehicle when plaintiff made a sudden stop, without activating her turn signal, causing the accident. Generally, a claim that the driver of a rear-ended vehicle made a sudden stop is insufficient to constitute a non-negligent explanation for the accident (*see Bajrami v Twinkle Cab Corp.*, 147 AD3d 649[1st Dept 2017]). Thus, 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]). Additionally, "[a] driver of a vehicle approaching another vehicle from the rear is required to maintain a reasonably safe distance and rate of speed under the prevailing conditions to avoid colliding with the other vehicle" (*Nsiah-Ababio v Hunter*, 78 AD3d 672, 672 [2d Dept 2010]). The court notes too that the accident occurred on a local public roadway within the City of New York (*see Animah v Agyei*, 63 Misc 3d 783 [Sup Ct, Bronx County 2019]). Thus, defendant's claim that plaintiff made a sudden stop is insufficient to raise a triable issue of fact.

Defendant further asserts that the motion is premature because depositions have not been completed. This motion, however, is not premature because "the information as to why the defendant'[s] vehicle struck the rear end of plaintiff's car reasonably rests within defendant driver's own knowledge" (*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]). 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]). As discussed above, defendant's conclusory explanation regarding how the accident occurred does not afford him a non-negligence explanation, and defendant has not demonstrated that discovery might yield evidence relevant to the issue of whether he was negligent and whether that negligence was a proximate cause of the accident.

As to the aspect of plaintiff's motion seeking dismissal of defendant's first affirmative defense alleging plaintiff's comparative fault, plaintiff made a prima facie showing that she bears no such fault (*see Soto-Maroquin v Mellet*, 63 AD3d 449 [1st Dept 2009]). Because defendant failed to raise a triable issue of fact, the aspect of plaintiff's motion seeking dismissal of defendant's first affirmative defense alleging plaintiff's comparative fault is granted.[2]

Accordingly, it is

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

ORDERED, that the aspect of plaintiff's motion seeking the dismissal of defendant's first affirmative defense is granted, and that defense is dismissed; and it is further

ORDERED, that the Clerk of the Court shall issue a case scheduling order on **April 24, 2020.**

This constitutes the decision and order of the court.

Dated: March 11, 2020

John R. Higgitt, J.S.C.

[2] After plaintiff's motion was fully submitted, defendant moved to dismiss the complaint under CPLR 3211(a)(8). That motion has a stipulated return date of April 6, 2020. Given the absence of any stipulation adjourning plaintiff's summary judgment motion, or a request to do so, the court adjudicates plaintiff's motion. If defendant is ultimately successful in seeking dismissal under CPLR 3211(a)(8), the court will consider vacating this decision and order.