

Jackson v ARC Steel Supply, Inc.

2020 NY Slip Op 32858(U)

July 24, 2020

Supreme Court, Bronx County

Docket Number: 32770/2019E

Judge: Ben R. Barbato

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX Part 14

Michael Jackson,

Plaintiff(s),

DECISION

Index # 32770/2019E

-against-

ARC Steel Supply, Inc. and Ahron Sharir,

Defendant(s).

HON. BEN R. BARBATO

In this matter, plaintiff Michael Jackson ("plaintiff") alleges that he sustained serious injuries in a motor vehicle accident which took place on May 28, 2019 at approximately 5:40 PM on Laurelton Parkway near its intersection with Linden Blvd. in Queens, NY. At that time, he contends that his vehicle was struck in the rear by another vehicle owned by defendant ARC Steel Supply and operated by defendant Ahron Sharir ("defendants").

Plaintiff now moves for summary judgment on the issue of liability. He contends that because his vehicle was struck in the rear by the defendant's vehicle, a prima facie case of negligence on the part of the defendants has been established, and that there is no evidence of any non-negligence reason for the accident to have occurred. Defendants oppose the motion and argue that plaintiff is improperly relying on a supposed admission contained in an unverified police report, and that, further, the plaintiff's motion is premature because depositions have not yet been held and evidence of a non--negligent reason for the occurrence of the accident and/or evidence of comparative fault on the part of plaintiff may yet be demonstrated. In reply, plaintiff argues that the motion is not premature because he has presented an affidavit of merit showing

that he is entitled to judgment on the issue of liability and that, in response, the defendant has submitted only an affirmation of his attorney who has no personal knowledge of the happening of the accident. Therefore, under the terms of CPLR §3212 (f), the motion is not "premature". By failing to provide an affidavit from someone with actual knowledge which demonstrates that a question of fact exists, plaintiff contends, he is entitled to summary judgment on the issue of liability.

The court's function on this motion for summary judgment is issue finding rather than issue determination. (*Sillman v. Twentieth Century Fox Film Corp.*, 3 N.Y.2d 395 [1957]). "[T]he 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 demonstrate the absence of any material issues of fact. . . . Failure to make such prima facie showing requires a denial of the motion, regardless of the sufficiency of the opposing papers. . . . Once this showing has been made, however, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action." (*Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324, 501 N.E.2d 572, 574, 508 N.Y.S.2d 923, 925-926 [1986] [citations omitted].)

Since summary judgment is a drastic remedy, it should not be granted where there is any doubt as to the existence of a triable issue. (*Rotuba Extruders v. Ceppos*, 46 N.Y.2d 223 [1978].) The burden on the movant is a heavy one, and the facts must be viewed in the light most favorable to the non-moving party. (*Jacobsen v. New York City Health & Hosps. Corp.*, 22 N.Y.3d 824 [2014].) As stated in *Scott v. Long Island Power Auth.* (294 A.D.2d 348, 348, 2002 N.Y. App. Div. LEXIS 4864, *1-2 [2d Dept. 2002]):

"It is well established that on a motion for summary judgment the court is not to engage in the weighing of evidence. Rather, the court's function is to determine whether 'by no rational process could the trier of facts find for the nonmoving party' (*Jastrzebski v North Shore School Dist.*, 223 AD2d 677, 678 [internal quotation marks omitted]). It is equally well established that the motion should not be granted where the facts are in dispute, where conflicting inferences may be drawn from the evidence, or where there are issues of credibility (see *Dolitsky v Bay Isle Oil Co.*, 111 AD2d 366)."

Where a plaintiff moves for summary judgment in an action in which the plaintiff's comparative negligence is at issue, the plaintiff need not establish his or her freedom from comparative negligence. Once the plaintiff establishes the defendant's negligence, the plaintiff

is entitled to judgment, as the plaintiff's negligence, if any, does not affect the defendant's liability but relates only to the amount of damages, if any. "To be entitled to partial summary judgment a plaintiff does not bear the double burden of establishing a prima facie case of defendant's liability and the absence of his or her own comparative fault." (*Rodriguez v. City of New York*, 31 N.Y.3d 312, 324-325, 101 N.E.3d 366, 374, 76 N.Y.S.3d 898, 906 [2018].)

Here, it is not controverted that the defendant's vehicle struck plaintiff's vehicle in its rear. "When the driver of an automobile approaches another automobile from the rear, he or she is bound to maintain a reasonably safe rate of speed and control over his vehicle, and to exercise reasonable care to avoid colliding with the other vehicle. A rear-end collision with a stopped "or stopping" vehicle creates a prima facie case of liability with respect to the operator of the rearmost vehicle, thereby requiring that operator to rebut the inference of negligence by providing a non-negligent explanation for the collision." (*Gaeta v. Carter*, 6 A.D.3d 576 [2d Dept. 2004].)

"A nonnegligent explanation for a rear-end collision may include evidence of a sudden stop of the lead vehicle." (*Brothers v. Bartling*, 130 A.D.3d 554, 555 [2d Dept. 2015] [deposition testimony demonstrated that traffic was moving slowly, and that lead vehicle was merging onto the parkway when it was struck in the rear; rear driver's assertion of sudden stop insufficient]; *Salako v. Nassau Inter-County Express*, 131 A.D.3d 687 [2d Dept. 2015] [allegations that the collision occurred because the vehicle abruptly and unexpectedly stopped in the roadway with no warning and for no apparent reason, even though traffic was moving well and nothing was blocking its progress, was sufficient to raise an issue of fact].) Nevertheless, "vehicle stops which are foreseeable under the prevailing traffic conditions, even if sudden and frequent, must be anticipated by the driver who follows, since he or she is under a duty to maintain a safe distance between his or her car and the car ahead." (*Shamah v Richmond County Ambulance Serv.*, 279 A.D.2d 564, 565 [2d Dept. 2001].) Moreover, "[a] conclusory assertion by the operator of the following vehicle that the sudden stop of the vehicle caused the accident is insufficient, in and of itself, to provide a nonnegligent explanation." (*Gutierrez v Trillium, USA, LLC*, 111 A.D.3d 669, 670 – 671 [2d Dept. 2013].)

An inference of negligence which emanates from a rear end collision may be rebutted by a reasonable excuse such as "mechanical failure or a sudden stop of the vehicle ahead, or an

unavoidable skidding on wet pavement.” (See, *Baule v. Lanzzarini*, 222 A.D.2d 635, 636 [1st Dept. 1995]; but see, *Ng v. Reid*, 259 A.D.2d 601 [2d Dept. 1999] [driver who was able to safely stop her own vehicle when vehicle in front of her stopped abruptly was not liable for injuries sustained by motorist who collided with rear end of driver's automobile]). However, the presumption can only be rebutted by evidentiary submissions; conclusory allegations or the hope that discovery may uncover evidence will not suffice (*Rainford v. Han*, 18 A.D.3d 638 [2d Dept. 2005] [driver's conclusory allegation of sudden stopping was insufficient to rebut presumption]; *Pampris v. Egnasher*, 20 A.D.3d 746 [3d Dept. 2005] [allegation that decedent did not have opportunity to question witnesses insufficient]).

In this case, the presumption created by the evidence that plaintiff's vehicle was struck in the rear has not been rebutted by the defendants since they have submitted no evidence in admissible form to rebut the presumption, merely an affirmation of their attorney containing legal argument. Likewise, defendants' contention that further discovery may yield some evidence of comparative negligence on plaintiff's part, or provide a non-negligent explanation for the defendant's driver's actions, is also insufficient to rebut the presumption.

Accordingly, plaintiff's motion for summary judgment on the issue of liability is granted.

The foregoing constitutes the decision and order of the court.

Dated: July 24, 2020


HON. BEN. R. BARBATO, J.S.C.
JSC