

Cuenca v Padilla
2020 NY Slip Op 34081(U)
December 9, 2020
Supreme Court, New York County
Docket Number: 452275/2018
Judge: J. Machelles Sweeting
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. J. MACHELLE SWEETING PART IAS MOTION 62

Justice

-----X

ANGEL CUENCA,

Plaintiff,

- v -

CARLOS PADILLA, THE CITY OF NEW YORK, NYC
DEPARTMENT OF ENVIRONMENTAL PROTECTION

Defendant.

-----X

INDEX NO. 452275/2018

MOTION DATE 06/03/2020

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42

were read on this motion to/for

JUDGMENT - SUMMARY

Pending before the court is a motion filed by plaintiff seeking an order granting Summary Judgment on the issue of liability to plaintiff, against defendant Carlos Padilla (“Padilla”), pursuant to CPLR §3212; and setting this matter down for trial on the issue of damages, on the grounds that no triable issues of fact exist with regard to the issue of liability against defendant Padilla. Defendants (collectively, the “City”) oppose. Upon the foregoing documents, this motion is GRANTED.

Plaintiff argues that “Defendant PADILLA simply ran his vehicle into Plaintiff’s vehicle from the rear from following too closely, maintaining an excessive and imprudent speed and failing to observe that which he had a duty to observe. Therefore, Plaintiff was not negligent as a matter of law [and ...] Plaintiff is entitled to summary judgment on the grounds that no triable issue of fact exists with regard to the liability herein.”

In opposition, the City argues that:

[...] at the time of the accident, Plaintiff stopped abruptly without signaling in any manner, which creates a question of fact as to whether Plaintiff's own negligence, stopping abruptly without any signals, contributed to the accident. Therefore, a question of fact exists as to whether Plaintiff's culpable conduct contributed to the accident [...]

[...] questions of fact remain, including plaintiff's actions in stopping short without warning [...] there are questions of fact regarding plaintiff's operation of his vehicle, including speed, use of appropriate signals, and distance between the DEP vehicle, and plaintiff's vehicle.

The City also submitted an affidavit by defendant Padilla, that states:

When I turned my head forward a moment later, the truck [plaintiff] with license plate #16705 had suddenly stopped in front of me. I immediately applied my brakes to come to a stop. Due to the sudden, short stop of Mr. Cuenca's 2007 Kenworth truck, I was unable to avoid the collision.

The City relies on a number of cases from the Second, Third and Fourth Departments. However, the First Department has consistently held that in a rear-end collision, a "sudden stop" by a vehicle in front is insufficient to rebut the presumption of liability of the vehicle in the rear. See e.g. Rodriguez v. Sharma, 178 A.D.3d 508 (Sup. Ct. App. Div. 1st Dept. 2019) (holding that a rear-end collision with a stopped vehicle creates a *prima facie* case of negligence on the part of the operator of the moving vehicle unless the operator presents evidence sufficient to rebut the inference of negligence. A sudden stop of the front vehicle is a non-negligent explanation for a rear-end collision); Agramonte v. City of New York, 288 A.D.2d 75 (Sup. Ct. App. Div. 1st Dept. 2001) (finding that plaintiff's sudden stop was insufficient to rebut the presumption of negligence since defendants failed to offer a non-negligent explanation for the happening of the accident); Morales v. Consol. Bus Transit, Inc., 167 A.D.3d 457 (Sup. Ct. App. Div. 1st Dept. 2018) (concluding that the driver's excuse for rear-ending a bus, namely, that the bus made a sudden stop, mid-block, is insufficient to rebut the presumption of negligence); Morgan v. Browner, 138 A.D.3d 560 (Sup. Ct. App. Div. 1st Dept. 2016) (claiming that the lead vehicle made a sudden stop, standing alone, is insufficient to rebut the presumption of negligence on the part of the rear driver);

Johnson v. Phillips, 261 A.D.2d 269 (Sup. Ct. App. Div. 1st Dept. 1999) (upholding the principle that drivers must maintain safe distances between their cars and cars in front of them and that drivers have a “duty to see what should be seen and to exercise reasonable care under the circumstances to avoid an accident . . . 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”).

Contrary to the City’s argument that this summary judgment motion is premature, this court finds that further discovery is not required, in light of Padilla’s admission, and in application of the law as stated above. *See e.g. Johnson v. Phillips*, 261 A.D.2d 269 (Sup. Ct. App. Div. 1st Dept. 1999) (applying the law to the essential facts as asserted by defendant and upholding the trial court’s finding that the defendant’s failure to raise any factual issues to absolve him of liability defeated the need for discovery. Since the defendant is the party with knowledge of the factual circumstances as to how he collided with the front vehicle, discovery would serve no purpose); Soto-Marouquin v. Mellet, 63 A.D.3d 449 (Sup. Ct. App. Div. 1st Dept. 2009) (finding defendant’s argument that summary judgment was prematurely granted prior to plaintiff’s deposition unavailing, whereas here, defendant’s passenger provided no information concerning road conditions other than plaintiff’s alleged sudden stop and the defendant driver is the party with knowledge of any non-negligent reasons for the accident); Jeffrey v. DeJesus, 116 A.D.3d 574 (Sup. Ct. App. Div. 1st Dept. 2014) (concluding that the trial court erred in denying, as premature, plaintiff’s motion for partial summary judgment on the issue of liability where plaintiff driver averred that the accident at issue occurred when defendant’s vehicle struck the back of the vehicle she was operating).

For all of the aforementioned reasons, this motion is GRANTED. Summary Judgment is awarded to plaintiff on the issue of liability as against defendant Padilla, and this matter is set down for trial on the issue of damages.

This is the decision of the court.

<u>12/9/2020</u>			
DATE		J. MACHELLE SWEETING, J.S.C.	
CHECK ONE:	☐ CASE DISPOSED	☒ NON-FINAL DISPOSITION	
	☒ GRANTED ☐ DENIED	☐ GRANTED IN PART	☐ OTHER
APPLICATION:	☐ SETTLE ORDER	☐ SUBMIT ORDER	
CHECK IF APPROPRIATE:	☐ INCLUDES TRANSFER/REASSIGN	☐ FIDUCIARY APPOINTMENT	☐ REFERENCE