

Evans v Flag Star Limousine, Inc.
2020 NY Slip Op 35323(U)
December 17, 2020
Supreme Court, Kings County
Docket Number: Index No. 508672/2018
Judge: Reginald A. Boddie
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2020 DEC 21 AM 10:20



At an IAS Trial Term, Part 95 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at 360 Adams Street, Borough of Brooklyn, City and State of New York, on the 17th day of December 2020.

P R E S E N T:

Honorable Reginald A. Boddie, JSC

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DIMITRA EVANS,

Plaintiff,

Index No. 508672/2018
Cal. No. 10, 11 MS 5, 6

-against-

DECISION AND ORDER

FLAG STAR LIMOUSINE, INC., LUIGGI PEREZ
and WASHINGTON CAAMANO,

Defendants.
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Papers Numbered
MS 5, 6 Docs. # 53-83

Upon the foregoing cited papers, the decision and order on defendant Washington Caamano's motion for summary judgment (MS 5) on the issue of liability, pursuant to CPLR 3212, and plaintiff's cross-motion for summary judgment (MS 6) on the issue of liability, pursuant to CPLR 3212, is as follows:

Plaintiff commenced this action to recover for personal injuries allegedly sustained in a motor vehicle accident on August 23, 2017, at approximately 6:10 AM, in the left lane on the Hutchinson River Parkway, in the Bronx, New York, north of the Whitestone Bridge toll booths. The first vehicle in line in this three-car collision was the vehicle owned and operated by plaintiff, the second/middle vehicle was owned and operated by defendant Washington Caamano (Caamano), and the third/last vehicle was owned by defendant, Flag Star Limousine, Inc. (Flag Star) and operated by defendant Luigi Perez (Perez).

Caamano moved for summary judgment on the ground that he bore no liability for the accident. Plaintiff opposed on the ground that there is a question of fact as to whether Caamano is

partially responsible for the accident. Plaintiff cross-moved for summary judgment on the issue of liability against Caamano and Perez. Flag Star and Perez opposed both motions.

“A driver approaching another vehicle from the rear is required to maintain a reasonably safe distance and rate of speed under the prevailing conditions, including weather and road conditions, to avoid colliding with the other vehicle” (*Buchanan v Keller*, 169 AD3d 989, 991 [2d Dept 2019] [citations omitted]). A rear-end collision with a stopped or stopping vehicle creates a prima facie case of negligence with respect to the operator of the rear vehicle, and imposes a duty on that operator to rebut the inference of negligence by providing a non-negligent explanation for the collision (*Buchanan*, 169 AD3d at 991). Sudden stops which are not foreseeable under the prevailing conditions may constitute a non-negligent explanation for the collision (*see Buchanan*, 169 AD3d at 991 [citations omitted]).

Plaintiff alleged that shortly after paying the toll for the bridge, defendant Caamano began flashing his high-beam headlights into her vehicle and continued to do so for approximately one minute. Caamano concedes that he was traveling behind plaintiff after going through the toll and flashed his high-beam headlights into the plaintiff’s vehicle a “couple of times.” Plaintiff averred she slowed her vehicle and stopped because she felt it was “unsafe [for her] to keep traveling with [Caamano’s] lights in [her] mirror.” Plaintiff alleged that after she came to a stop, Caamano continued to flash his high-beams into her vehicle until the accident ultimately occurred.

Plaintiff argued Caamano was partially liable for causing the accident. She further argued that at no point prior to the accident, did Caamano attempt to switch lanes to go around her vehicle. She averred that while stopped, her vehicle was struck in the rear by the Caamano vehicle and then immediately thereafter on the right side by the Perez vehicle. Plaintiff argued that although it is undisputed that both plaintiff and defendant Caamano were stopped when defendant Perez collided

with the rear of both vehicles, the underlying reason both vehicles were stopped was exclusively due to the actions of defendant Caamano.

Caamano averred he was traveling behind plaintiff after going through the Whitestone Bridge toll when plaintiff suddenly, and without warning, slammed on her brakes and stopped in the left lane. He averred he immediately applied his brakes and was able to stop his vehicle without making contact with plaintiff's vehicle. He averred he turned on his emergency flashers. He averred there were approximately two car lengths between his vehicle and plaintiff's vehicle when they were stopped in the left lane. He averred he could not move to the right, as there were fast moving vehicles to his right. He alleged he was stopped for approximately 25 seconds when he observed the Perez vehicle, approaching from behind, moving at approximately 55 mph. He alleged the front of the Perez vehicle came into contact with the right rear of his vehicle. He alleged the impact was heavy and propelled his vehicle forward and into the rear of plaintiff's vehicle and then into the center divider.

Defendant Caamano proffered the dashcam video that purportedly shows the circumstances leading up to the accident. Plaintiff argued the video corroborates her testimony that the only reason she came to a stop was because Caamano was flashing his high-beams into her vehicle. Upon review of the video, plaintiff and Caamano can be seen passing through the toll and merging into the left lane. Caamano was traveling behind plaintiff and flashed his high beams at her twice and then left them on as plaintiff came to a stop in the left lane, which was a moving lane of traffic on the highway. Caamano averred he put his hazards on when he stopped behind plaintiff. However, the video does not eliminate questions of fact as to whether Caamano used his hazard lights as he averred. Caamano also averred that he was unable to go around plaintiff because there were fast moving vehicles in the lane to his right. The video does not eliminate questions of fact

as to whether Caamano failed to take advantage of an opportunity to go around plaintiff. On these facts, the are triable issues as to whether Caamano was liable for causing the accident. Accordingly, plaintiff's motion for summary judgment against Caamano is denied. Further, Caamano's motion for summary judgment is denied on the ground that there are questions of fact as to whether Caamano was at fault for stopping in a moving lane of traffic (*cf. Prosen v Mabella*, 107 AD3d 870, 871 [2d Dept 2013]).

Plaintiff also sought summary judgment against Perez alleging he rear-ended a stopped vehicle and caused the accident. Perez alleged he could not see plaintiff's or Caamano's vehicles stopped in the left lane ahead due to the presence of an uninvolved SUV that was traveling directly in front of his vehicle. Perez averred he only saw Caamano's car when the uninvolved SUV "swerved to the right, [and] the accident happened." Perez averred he instinctively attempted to swerve to the right, as well, but struck the right rear of Caamano's vehicle. Here, Perez proffered a non-negligent explanation for the cause of accident, thus precluding summary judgment.

Accordingly, both motions are denied.

ENTER:

RA HON. REGINALD A. BODDIE
J.S.C.

Honorable Reginald A. Boddie
Justice, Supreme Court

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