

Ruiz v L & M
2021 NY Slip Op 30014(U)
January 4, 2021
Supreme Court, Kings County
Docket Number: 1765/2016
Judge: Peter P. Sweeney
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SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF KINGS, PART 73

Index No.: 1765/2016
 Motion Date: 8-10-20
 Mot. Seq. No.: 6

-----X
 LUIS ALFREDO RUIZ,

Plaintiff,

-against-

DECISION/ORDER

L & M, and JOCELYN BIENAIME,

Defendant.

-----X

The following e-filed documents, listed by NYSCEF as item numbers 2-19 were read on this motion:

The plaintiff, Luis Alfredo Ruiz, moves for partial summary judgment on the issue of liability against the defendants and for an order dismissing any claim for comparative negligence.

In support of the motion, plaintiff's attorney submitted an affirmation stating as follows:

It is well settled that, in an auto case, a plaintiff is entitled to summary judgment as to liability when defendant strikes plaintiff in the rear and provides no non-negligent explanation for the collision. *Matos v. Sanchez*, 147 Ad3d 585, (1" Dept 2017). Even assertions of an abrupt stop are insufficient to constitute a non-negligent explanation for the collision because the offending vehicle was required to keep a safe distance and failed to do so. *Cabrera v. Rodriguez*, 72 AD3d 553 (1" Dept 2010). Here, Plaintiff testified at deposition that he had stopped and a red light and just began to proceed when Defendants struck Plaintiff in the rear. See P.'s Dep. 49:7-10, Exhibit 5. The police report also confirms Plaintiff's account of the events herein. See Exhibit 4

Contrary to the above, the testimony of both the plaintiff and defendant Bienaime, defendants' vehicle came into contract with the driver's side of plaintiff's vehicle, not in its rear. Apparently, both vehicles were making a left turn at the time of the accident. Defendants' vehicle was in the left lane and plaintiff's vehicle was in the lane to defendant's right. According to defendant Bienaime, the plaintiff did not signal that he was making a left turn anytime prior to the accident.

It is axiomatic that to succeed on a motion for summary judgment, the moving party must first “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” (*Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324, 508 N.Y.S.2d 923, 501 N.E.2d 572, citing *Winegrad v. New York Univ. Med. Ctr.*, 64 N.Y.2d 851, 853, 487 N.Y.S.2d 316, 476 N.E.2d 642; *see also* CPLR 3212[b]). If the movant makes such a showing, in order to defeat the motion “the burden shift[s] 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*, 68 N.Y.2d at 324, 508 N.Y.S.2d 923, 501 N.E.2d 572). If the movant fails to make such a showing, the motion must be denied regardless of the sufficiency of the opposing papers” (*Vega*, 18 N.Y.3d at 503, 942 N.Y.S.2d 13, 965 N.E.2d 240 [internal quotation marks and alterations omitted]). In deciding a motion for summary judgment, the evidence must be viewed in the light most favorable to the party opposing the motion and all reasonable inferences must be drawn in that party’s favor (*see McNulty v. City of New York*, 100 N.Y.2d 227, 230, 762 N.Y.S.2d 12, 792 N.E.2d 162; *Boyd v. Rome Realty Leasing Ltd. Partnership*, 21 A.D.3d 920, 921, 801 N.Y.S.2d 340; *Erikson v. J.I.B. Realty Corp.*, 12 A.D.3d 344, 783 N.Y.S.2d 661).

Here, plaintiff’s submissions did not establish his prima facie entitlement to summary judgment . Accordingly, the motion must be denied regardless of the sufficiency of defendants’ opposition.

For the above reasons, it is hereby

ORDRED that the motion is **DENIED**.

This constitutes the decision and order of the Court.

Dated: January 4, 2021



PETER P. SWEENEY, J.S.C.

Note: This signature was generated electronically pursuant to Administrative Order 86/20 dated April 20, 2020

Upon the foregoing papers, the motion is decided as follows: This is an action to recover for personal injuries sustained by Plaintiff , Luis Alfredo Ruiz, on July 21, 2015, when he was hit in the rear by Defendant's vehicle. Plaintiff suffered left shoulder tears and herniated discs requiring back surgery, among other injuries. This affirmation is respectfully submitted in support of Plaintiff's motion for summary judgment on the issue of liability as against Defendants and to dismiss any claim for comparative negligence on account of Plaintiff. Defendant struck Plaintiff in the rear and failed to provide any non-negligent explanation for the collision. Plaintiff, on the other hand, did not contribute to causing the accident. Thus, as will be shown below, this motion should be grant

Accordingly, it is hereby

ORDRED that

This constitutes the decision and order of the Court.

Dated:



PETER P. SWEENEY, J.S.C.

Note: This signature was generated electronically pursuant to Administrative Order 86/20 dated April 20, 2020