Carrasquillo v Miles
2021 NY Slip Op 31034(U)
March 17, 2021
Supreme Court, Kings County
Docket Number: 523808/2019
Judge: Carl J. Landicino

At an IAS Term, Part 81 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 17th day of March, 2021.

PRESENT:
HON. CARL J. LANDICINO,
Justice.

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DAVID CARRASQUILLO,

Plaintiff,

-against-

MIGUEL C. MILES,

Defendants.

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Index No. 523808/2019

DECISION AND ORDER
Motion Sequence #1

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion:

Papers Numbered (NYSCEF)

Notice of Motion/Cross Motion and
Affidavits (Affirmations) Annexed 6-11
Opposing Affidavits (Affirmations)..... 18
Reply Affidavits (Affirmations) 19

After a review of the papers and oral argument, the Court finds as follows:

The instant action is a claim for personal injuries arising from a motor vehicle collision that allegedly occurred on July 2, 2019. On that day, the Plaintiff, David Carrasquillo (hereinafter the "Plaintiff") was operating his vehicle, when it was struck in the rear by a vehicle owned and operated by Defendant Miguel C. Miles (hereinafter the "Defendant") The accident occurred on Linden Boulevard, at or near its intersection with Alabama Avenue, in the County of Kings, and State of New York.

The Plaintiff now moves (motions sequence #1) for an order pursuant to CPLR 3212 granting him summary judgment on the issue of liability and proceeding to trial on the issue of damages. The Plaintiff

contends that summary judgment should be granted because the Defendant's vehicle was the sole proximate cause of the collision. Specifically, the Plaintiff contends that summary judgment should be granted given that there is *prima facie* evidence that the Plaintiff's vehicle was stopped at the time the Defendant's vehicle hit his vehicle in the rear.

The Defendant opposes the motion, arguing that the motion is premature, because none of the parties have been deposed and depositions are necessary to determine how the collision occurred. What is more, the Defendant contends that there is an issue of fact raised by the Police Accident Report.

Summary judgment is a drastic remedy that deprives a litigant of his or her day in court, and it "should only be employed when there is no doubt as to the absence of triable issues of material fact." *Kolivas v. Kirchoff*, 14 AD3d 493 [2d Dept 2005], citing *Andre v. Pomeroy*, 35 NY2d 361, 364, 362 N.Y.S.2d 1341, 320 N.E.2d 853[1974]. The proponent for summary judgment 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. See *Sheppard-Mobley v. King*, 10 AD3d 70, 74 [2d Dept 2004], citing *Alvarez v. Prospect Hospital*, 68 NY2d 320, 324, 508 N.Y.S.2d 923, 501 N..E.2d 572 [1986], *Winegrad v. New York Univ. Med. Ctr.*, 64 NY2d 851, 853, 487 N.Y.S.2d 316, 476 N.E.2d 642 [1985]. "In determining a motion for summary judgment, evidence must be viewed in the light most favorable to the nonmoving party, and all reasonable inference must be resolved in favor of the nonmoving party." *Adams v. Bruno*, 124 AD3d 566, 566, 1 N.Y.S.3d 280, 281 [2d Dept 2015] citing *Valentin v. Parisio*, 119 AD3d 854, 989 N.Y.S.2d 621 [2d Dept 2014]; *Escobar v. Velez*, 116 A.D.3d 735, 983 N.Y.S.2d 612 [2d Dept 2014].

Once a moving party has made a *prima facie* showing of its entitlement to summary judgment, "the burden shifts to the opposing party to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action"*Garnham & Han Real*

Estate Brokers v Oppenheimer, 148 AD2d 493 [2d Dept 1989]. Failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers. *See Demshick v. Cmty. Hous. Mgmt. Corp.*, 34 AD3d 518, 520, 824 N.Y.S.2d 166, 168 [2d Dept 2006]; *see Menzel v. Plotnick*, 202 AD2d 558, 558–559, 610 N.Y.S.2d 50 [2d Dept 1994]. However, "[a] plaintiff is no longer required to show freedom from comparative fault in establishing his or her *prima facie* case..." if they can show "...that the defendant's negligence was a proximate cause of the alleged injuries." *Tsyganash v. Auto Mall Fleet Mgmt., Inc.*, 163 AD3d 1033, 1034, 83 N.Y.S.3d 74, 75 [2d Dept 2018]; *Rodriguez v. City of New York*, 31 N.Y.3d 312, 320, 101 N.E.3d 366, 371 [2018].

Turning to the merits of the instant motion, the Court finds that sufficient evidence has been presented by the Plaintiff to establish, *prima facie*, that the Defendant's vehicle hit the Plaintiff's vehicle in the rear while the Plaintiff's vehicle was stopped. In support of his application, the Plaintiff relies primarily on the Plaintiff's affidavit. In his affidavit, the Plaintiff states that "I was at a complete stop due to a red traffic light, when my vehicle was struck in the rear by the vehicle which was owned and operated by Defendant, Miguel C. Miles." (See Plaintiff's motion, Exhibit "D", Paragraph 4). This statement is sufficient for the Plaintiff to establish a *prima facie* showing. *See Martinez v. Allen*, 163 AD3d 951, 82 N.Y.S.3d 130 [2d Dept 2018]. This is because "[a] rear-end collision with a stopped or stopping vehicle creates a *prima facie* case of negligence against the operator of the rear vehicle, thereby requiring that operator to rebut the inference of negligence by providing a non-negligent explanation for the collision." *Klopchin v. Masri*, 45 A.D.3d 737, 737, 846 N.Y.S.2d 311, 311 [2nd Dept, 2007].

In opposition to the motion, the Defendant has failed to raise a material issue of fact that would prevent this Court from granting the motion. First, it should be noted that "the plaintiff's motion was not premature since the defendant[s] failed to demonstrate that discovery might lead to relevant evidence or that facts essential to justify opposition to the motion were exclusively within the knowledge and control

of the plaintiff." *Turner v. Butler*, 139 AD3d 715, 716, 32 N.Y.S.3d 174, 175 [2d Dept 2016]. Although, the certified Police Accident Report relied upon by the Defendant is admissible, that admissibility relates only to the Defendant's admission that he hit the Plaintiff's vehicle in the rear. *See Yassin v. Blackman*, 188 AD3d 62, 66, 131 N.Y.S.3d 53, 56 [2d Dept 2020]. The Defendant contends that the Police Accident Report raises an issue of fact as it reflects that the Defendant stated that the vehicles in front of him stopped short thereby causing the subject accident. Even assuming that this statement is admissible, even though it is not an admission, a conclusory allegation of a short stop does not constitute a non-negligent defense. Moreover, in this case the Defendant also states that he was approaching a red light. See *Tumminello v. City of New York*, 148 AD3d 1084, 1085, 49 N.Y.S.3d 739, 741 [2nd Dept, 2017]. As such the Plaintiff's motion for partial summary judgment on the issue of liability, in that the Defendant was negligent and the proximate cause of the accident, is granted.

Based on the foregoing, it is hereby ORDERED as follows:

The Plaintiff's motion (motion sequence #1) for partial summary judgment is granted. The matter will proceed to trial on the issue of damages.

The foregoing constitutes the Decision and Order of the Court.

ENTER:

Carl J. Landicino, J.S.C.

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KINGS COUNTY CLERK
FILED