

Munoz v Elzoeiry

2021 NY Slip Op 33071(U)

November 12, 2021

Supreme Court, Bronx County

Docket Number: Index No. 35308-2019e

Judge: Veronica G. Hummel

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This opinion is uncorrected and not selected for official publication.

To commence the statutory time for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX IAS PART 31**

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JOSEFINA MUNOZ

Plaintiff

-against -

**Index No. 35308-2019e
DECISION/ORDER
Motion Seqs. 1,2**

MOHAMED ELZOEIRY and GILDA FATA,
Defendants.

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VERONICA G. HUMMEL, A.S.C.J.

In accordance with CPLR 2219 (a), the decision herein is made upon consideration of all papers filed by the parties in NYSCEF regarding: the motion by plaintiff JOSEFINA MUNOZ, made pursuant to CPLR 3212, seeking an order granting plaintiff partial summary judgment on the issue of liability as against defendants MOHAMED ELZOEIRY and GILDA FATA [Mot. Seq. 1]; and the motion by defendant Fata, made pursuant CPLR 3212, for an order granting said defendant summary judgment dismissing the complaint and all cross-claims alleged against him [Mot. Seq. 2]. The motions are decided in the order that best serves the legal analysis herein.

This is a personal injury action arising out of a two-vehicle rear-end accident that occurred on July 22, 2019, on Ocean Parkway, in Kings County. Ocean Parkway is a two-way roadway with three lanes of travel in the direction that the parties were travelling. The Accident occurred at an intersection that is controlled by a traffic light.

At the time of the Accident, plaintiff was a passenger in the Fata Vehicle, which was being driven by defendant Fata. The Fata Vehicle was hit in the rear by the Elzoeiry Vehicle. The motion and cross-motion are supported and opposed based on the submission the pleadings and affidavits from the parties.

Plaintiff avers that at the time of the Accident, she was a backseat passenger in the Fata Vehicle. The Fata Vehicle was struck in the rear by the Elzoeiry Vehicle. At the time of the Accident, the weather was clear, and plaintiff was wearing a seatbelt. The Fata Vehicle came to a complete stop at the intersection, which had a red traffic light. The vehicle was stopped for approximately thirty-five seconds before plaintiff felt a heavy impact to its rear. There was only one impact. Following the impact, plaintiff exited the vehicle and observed damage to the rear bumper of the Fata Vehicle and to the front end of the Elzoeiry Vehicle. Plaintiff avers that she suffered serious injuries as the result of the Accident.

In her affidavit, defendant Fata states that on the day of the Accident, it was sunny and clear. The Fata Vehicle was traveling in the lane and the brake lights were in proper working order. As she approached the relevant intersection, defendant Fata observed that the traffic light was red. Defendant Fata gradually brought the vehicle to a complete stop for the red light. While the vehicle was at a complete stop for approximately 30-45 seconds, with the foot on the brake, defendant felt a heavy impact of the rear of the vehicle. There was no time to avoid the Accident, and the Elzoeiry Vehicle struck the Fata Vehicle in the rear.

Defendant Elzoeiry submits an affidavit stating that, at the time of the Accident, he was travelling straight on Ocean Parkway. The Fata Vehicle “for no reason, hit her brakes and came to an abrupt and sudden stop on a yellow traffic light. The vehicle in front of me was stopped for under one (1) or two (2) seconds before the front of my vehicle contact the rear of the vehicle in front of me”. Defendant avers that the Accident would not have occurred had the Fata Vehicle not suddenly stopped on a yellow traffic light.

Motions for Summary Judgment

The 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 eliminate any material issues of fact “ (*Winegrad v New York Univ. Med Ctr.*, 64 NY2d 851 [1985]). The moving party is entitled to summary judgment only if it tenders evidence sufficient to eliminate all material issues of fact from the case (*Winegrad v New York University Medical Center, supra*; *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]) If a party makes a *prima facie* showing of its

entitlement to summary judgment, the opposing party bears the burden of establishing the existence of a triable issue of fact (*Zuckerman v City of New York, supra*). Only then does the burden shift to the motion's opponent to "present evidentiary facts in admissible form sufficient to raise a genuine, triable issue of fact" (*Casper v Cushman & Wakefield, 74 AD3d 669 [1st Dept 2010]; Mazurek v Metropolitan Museum of Art, 27 AD3d 227 [1st Dept (2006)]*).

Motion Seq. 2-Defendant Fata's Motion for Summary Judgment

Since there can be more than one proximate cause of an accident, a defendant moving for summary judgment is required to make a *prima facie* showing that he or she is free from fault (*see Harrigan v Sow, 165 AD3d 463 [1st Dept 2018]; Hilago v Vasquez, 187 AD3d 683 [1st Dept 2020]*). In order for a defendant driver to establish entitlement to summary judgment on the issue of liability in a motor vehicle collision case, therefore, the driver must demonstrate, *prima facie*, that he or she kept the proper lookout, or that his or her alleged negligence, if any, did not contribute to the accident (*see Harrigan v Sow, supra; Hilago v Vasquez, supra*).

Vehicle and Traffic Law §1129(a) provides that, a "driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon and the condition of the highway(*Urena v GVC Ltd., 160 AD3d 467, 467 [1st Dept 2018]*).

It is well settled, therefore, that a rear-end collision with a stopped or stopping vehicle establishes a *prima facie* case of negligence on the part of the driver of the rear vehicle, and imposes a duty on the part of the operator of the moving vehicle to come forward with an adequate non-negligent explanation for the accident (*see Cabrera v Rodriguez, 72 AD3d 553 [1st Dept 2010]; Tutrani v County of Suffolk, 10 NY3d 906, 908 [2008]; Agramonte v City of New York, 288 AD2d 75, 76 [1st Dept 2001]*). Furthermore, in a chain reaction collision, responsibility presumptively rests with the rearmost driver (*Mustafaj v Driscoll, 5 AD3d 138 [1st Dept 2004]; Chuk Hwa Shin v Correale, 142 AD3d 518, 519 [2d Dept 2016]; Skura v Wojtowski, 165 AD3d 1196, 1199 [2d Dept 2018]*).

First Department case law is also clear that a claim by the rear driver that the lead vehicle made a sudden stop, standing alone, is insufficient to rebut the presumption of negligence (*Bajrami v Twinkle Cab Corp.*, 147 AD3d 649 [1st Dept 2017]; *Cabrera v Rodriguez, supra*; see *Ly Giap v Hathi Son Pham*, 159 AD3d 484, 485 [1st Dept 2018] (“A claim that the lead driver came to a sudden stop, standing alone, is insufficient to rebut the presumption that the rearmost driver was negligent, and the stopped vehicle was not negligent”). Hence, the happening of a rear-end collision with a vehicle stopped at a red light is itself a *prima facie* case of negligence of the rearmost driver (*Vasquez v Chimborazo*, 155 AD3d 432 [1st Dept 2017]; see *Smyth v Murphy*, 177 AD3d 492 [1st Dept 2019]; *Corrigan v Porter Cab Corp.*, 101 AD3d 471 [1st Dept 2012]; *LaMasa v Bachman*, 56 AD3d 340 [1st Dept 2008]). Furthermore, a claim that plaintiff had stopped at a yellow light does not constitute a nonnegligent explanation for the accident (see *Smyth v Murphy, supra*; *Elihu v Nicoleau*, 173 AD3d 578 [1st Dept. 2019]; *Matos v Sanchez*, 147 AD3d 585 [1st Dept 2017]).

On this motion, defendant Fata establishes *prima facie* entitlement to judgment as a matter of law by submitting evidence that she was driving safely, stopped at a red light and her vehicle, the first in the chain, was struck in the rear by the Elzoeiry Vehicle (*Vasquez v Chimborazo, supra*; *Smyth v Murphy, supra*; *Corrigan v Porter Cab Corp., supra*; *LaMasa v Bachman, supra*; see *Martinez v Kuhl*, 165 AD3d 774 [2d Dept 2018]). The moving papers therefore demonstrate that the movant defendant acted without negligence and her actions did not contribute to causing the Accident.

In opposition, defendant Elzoeiry fails to generate an issue of fact warranting denial of the motion. Defendant’s allegation that movant stopped at a yellow light is insufficient to generate an issue of fact as defendant Fata was entitled to stop at the yellow light (*Grier-Key v Lyons*, 195 AD3d 798 [2d Dept 2021; *Hakakian v McCabe*, 38 AD3d 493 [2d Dept 2007]), and the claim that movant stopped at a yellow light does not constitute a nonnegligent explanation for the accident (see *Smyth v Murphy, supra*; *Elihu v Nicoleau, supra*). As such, it was defendant Elzoeiry’s failure to maintain a proper distance from the Fata Vehicle that solely caused the Accident (see *Grier-Kay v Lyones, supra*).

The argument made in the opposition papers that defendant negligently failed to evade the collision is speculative (*see Jenkins v Alexander*, 9 AD3d 286, 288 [1st Dept 2018]; *Hidalgo v Vasquez, supra*), and no other evidence was proffered to support the claim that moving defendant failed to take reasonable steps to avoid the collision (*Hidalgo v Vasquez, supra*). Moreover, any contention that the motion was premature is without merit because the parties do not demonstrate the need for any discovery concerning how the accident occurred (*see Rodriguez v Beal*, 191 AD3d 617, [1st Dept 2021]; *Fernandez v Ortiz*, 183 AD3d 443, 442 [1st Dept 2020]).

Consequently, the motion by defendant Fata is granted (*see Sirlin v Schreib*, 117 AD3d 819, 819-820 [2d Dept 2014]). Of note, an “innocent ... driver exists in a case where the ... driver did not contribute to the happening of the accident in any way. A typical example is the case at bar where ... [the] driver, while stopped, was rear-ended by the following driver” (*Oluwatayo v Dulinayan*, 142 AD3d 113, 119 [1st Dept 2016]).

Plaintiff's Motion [Mot. Seq. 1] for Partial Summary Judgment

Similarly, plaintiff demonstrates entitlement to partial summary judgment on the issue of liability against defendant Elzoeiry by showing that the Fata Vehicle was stopped at a red or yellow light when it was struck in the rear by defendant Elzoeiry's vehicle (*Vasquez v Chimborazo, supra; Smyth v Murphy, supra; Corrigan v Porter Cab Corp., supra; Martinez v Kuhl*, 165 AD3d 774 [2d Dept 2018]). Defendant Elzoeiry's claim of a short stop, for the reasons set forth above, is insufficient to generate an issue of fact as to liability.

In any event, plaintiff, as an innocent passenger, sets forth *prima facie* showing of entitlement to summary judgment. In *Garcia v. Tri-County Ambulette Service, Inc.*, 282 A.D.2d 206 [1st Dept. 2001], the court ruled that “Plaintiff, as an innocent rear-seat passenger in one of the vehicles who cannot possibly be found at fault under either defendant's version of the accident is entitled to partial summary judgment (*Id.* at 207). Plaintiff's motion for partial summary judgment on the issue of liability is granted.

The court has considered the additional contentions of the parties not specifically addressed herein. To the extent any relief requested by either party was not addressed by the court, it is hereby denied. Accordingly, it is hereby

ORDERED that the motion by plaintiff JOSEFINA MUNOZ, seeking an order granting plaintiff partial summary judgment on the issue of liability as against defendants MOHAMED ELZOEIRY and GILDA FATA [Mot. Seq. 1] is granted as against defendant Elzoeiry and denied as to defendant Fata; and it is further

ORDERED that the motion by defendant Fata [Mot. Seq. 2], made pursuant CPLR 3212, for an order granting said defendant summary judgment dismissing the complaint and all cross-claims alleged against him is granted; and it is further

ORDERED that the Clerk shall enter judgment dismissing the complaint and all cross-claims against defendant Fata and severing the remaining action; and it is further

ORDERED that the caption shall henceforth read as:

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JOSEFINA MUNOZ

Plaintiff,

Index No. 35308/2019e

-against-

MOHAMED ELZOEIRY,

Defendant.

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The foregoing constitutes the Decision/Order of the court.

Dated: Bronx, New York

November 12 2021

ENTER,

s/Hon. Veronica G. Hummel/signed 11/12/2021

HON. VERONICA G. HUMMEL, A.J.S.C.

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- 1. CHECK ONE..... CASE DISPOSED IN ITS ENTIRETY CASE STILL ACTIVE
 - 2. MOTION 1 is granted in part,
MOTION 2 is granted.. SETTLE ORDER SUBMIT ORDER SCHEDULE APPEARANCE
 - 3. CHECK IF APPROPRIATE..... FIDUCIARY APPOINTMENT REFEREE APPOINTMENT