Castilla v Clark
2021 NY Slip Op 33331(U)
May 17, 2021
Supreme Court, Westchester County
Docket Number: Index No. 52628/2019
Judge: Mary H. Smith
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

To commence the statutory time period 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.

P R E S E N T:
HON. MARY H. SMITH
JUSTICE OF THE SUPREME COURT

JOSE L. CASTILLA and JEANNETTE CASTILLA, h/w,

Plaintiffs,

- against -

JASON A. CLARK, MAGGIE CLARK, RICHARD A. PALKA and NORTHBROOK CONTRACTING ASSOCIATION,

Defendants.

DECISION & ORDER
Index No.: 52628/2019

Plaintiffs move (Motion #2) under CPLR 3212 for summary judgment on the issue of liability regarding a hit in the rear to Plaintiffs' vehicle by Defendants in an automobile collision on October 6, 2017 and to strike certain Affirmative Defenses.

The following papers were read:

Notice of Motion, Affirmation in Support, and Exhibits (11)	1-13
Affirmations in Opposition (2)	14-15
Affirmations in Reply (2)	16-17

On a Motion for Summary Judgement, the Court is to determine whether triable issues of fact exist or whether judgment can be granted to a party on the proof submitted as a matter of law (*see Andre v. Pomeroy* 35 NY2d 361, 364 [1964]). The movant must set forth *a prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issue of fact (*see Alvarez v Prospect Hospital*, 68 NY2d 320, 324 [1986]). Once the movant sets forth a prima facie case, the burden of going forward shifts to the opponent of the motion to produce evidentiary proof in admissible form sufficient to establish the existence of a material issue of fact (see *Zuckerman v City of New York*, 49 NY2d 557, 557 [1980]).

The Plaintiff Castillo has adduced the following facts to establish his claim: Mr. Castillo was driving his vehicle, a 2011 Mercedes Benz C300, on his way to work at about

6:15 a.m. on the normal route taken by him, Route 9A to the Mercedes Benz dealership in White Plains NY, where he worked as a customer service advisor. He was continuing on Route 9A, approaching an intersection with a green light in his direction at Chappaqua Road, in Briarcliff, when he heard a wailing siren and saw the flashing lights of an ambulance about 500 feet ahead at Chappaqua Road. Anticipating that the ambulance, an emergency vehicle, would enter Route 9A in front of him, plaintiff slowed his vehicle to about five miles per hour, and then stopped his vehicle in the middle lane about 200 to 300 feet away from the ambulance. He had his seatbelt on, and his vehicle lights were on. At this time, he saw no other vehicle on the road, which was straight, there was no rain or snow, and the road was dark but clear. Without notice, he suddenly felt a "very hard impact" at the rear of his vehicle, and then in what seemed like seconds, he felt a second hard impact in the rear of his vehicle by the same car, a 2007 four door Mitsubishi driven by Defendant Jason A. Clark. He felt intense pain in his neck and back and awaited the arrival of the police and ambulance who carried the Plaintiff from the car on a stretcher. Plaintiff learned later that a third vehicle, a 2011 Chevy Tahoe SUV driven by the second Defendant, Jason A. Palko, had rear ended Mr. Clark almost immediately after Clark had hit the Plaintiff's car the first time, causing Clark car to boomerang back into the Plaintiff's rear bumper the second time. He reports that his car was totaled.

The Plaintiff, having stated facts of suffering a rear end collision to his vehicle has proffered a prima facie case of negligence as a matter of law against both Defendants. He is entitled to summary judgment on liability unless Defendants can produce non-negligent explanations on their part as to the cause of the collision raising a triable issue of facts.

As for his part, Mr. Clark, who is a road maintenance worker with the City of Ossining, related that he was on his way to work on this regular route. He knew Route 9A well. He reported that his fastest speed on Route 9A that morning was fifty five miles per hour, the legal limit, but he was doing forty or forty five miles per hour when he first saw the Plaintiff's vehicle when it was about five or six car lengths away. Ahead, the Castillo vehicle was stopped in the middle of the intersection at Chappaqua Road with a green light facing the plaintiff. Defendant Clark tried mightily to stop his vehicle by slamming onto his brakes to no avail. He hit the rear of Plaintiff's car and crashed into his bumper. Later, Clark claimed he never saw the ambulance with flashing lights or heard the siren wailing as described by the Plaintiff before the collision (although the certified Police Report, indicated differently, *Compare Yassin v Blackman,* 188 AD3d 62 [2d Dept 2020] *with Harrinarain v Sisters of St. Joseph,* 173 AD3d 983 [2d dept 2019]). Almost immediately after impacting Plaintiff's vehicle, Mr. Clark himself felt a very hard, heavy hit to his vehicle from behind when Defendant Palka, in his Chevy Tahoe SUV, rear ended him, causing Mr. Clark's vehicle to lurch forward again crashing into the rear end of the Plaintiffs' vehicle a second time. Mr. Clark also reported that his vehicle was totaled in the accident. Immediately after the accident Mr. Clark needed medical assistance.

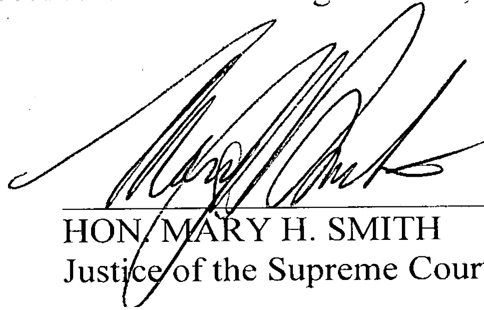
The second Defendant, Richard Andrew Palka, was also an everyday commuter on Route 9A in Briarcliff, and was driving to a job location in Stamford Connecticut. He was in no hurry, and like Mr. Clark said he had been driving the legal speed limit, 55 mph, but slowed down to 45 mph when he approached the aforementioned intersection with the green light. He did see the ambulance as was described by Plaintiff, but remembered it as being parked on Chappaqua Road waiting for the light to change in its direction. When the Clark vehicle hit the Plaintiff's vehicle the first time, Palka was about four to five car lengths behind the Clark vehicle. He stepped very hard on his brakes and his SUV travelled fifty to sixty feet, but then he collided with the rear of the Clark vehicle, pushing it back forward to again rear end Plaintiff's car. Mr. Palka said that his vehicle had been in good condition before the collision and that afterward he did not need immediate medical assistance.

The foregoing indicates that, under the law, Defendants have not raised a triable issues of fact because to do so, their explanations must be non-negligent in nature (see *Katz v Masada II Car & Limo Service, Inc.* 43 AD3d 876 [2d Dept. 2007]). Their defense, that the Plaintiff stopped short or slowed down significantly at a green light, does not enjoy support in case law to defeat the Plaintiff's summary judgement motion. It has been widely held that hitting a vehicle in the rear because it stopped short or slowed down does not vitiate the presumption of negligence of the driver in a rear end collision case, unless non-negligent reasons to rebut the presumption are produced by the defendant (*see Kyrnski v Chase* 707 FSupp.2d 318 (EDNY); *Sekuler v Limnos Taxi* 264 AD2d 389 (2d Dept 1999), *See also*, *Leal v. Wolff,* 224 AD2d 392 (2d Dept 1996); *Animah v Agyi,* 63 Misc3d 783 [Sup Ct 2019]). Plaintiff also cites cautionary statutes VTL section 1180 (a) and VTL section 1129(a), which the Court has carefully considered: Given the circumstances, with an emergency vehicle (ambulance) flashing its lights at the intersection, Plaintiff's vehicle stopped and waited: it was the speeding of both Defendant under the circumstances ("No person shall drive a vehicle at a speed greater than is reasonable and prudent under the conditions and having due regard for the speed of such vehicles and traffic upon and condition of the highway" VTL 1180 (a) and following too closely ("The driver of a motor vehicle shall not follow another vehicle more closely that is reasonable and prudent, having due regard for the speed of such vehicles and traffic upon and the condition of the highway." VTL 1129[a]). For these reasons, the Plaintiffs' motion as to liability must be granted.

The Court also dismisses the First Affirmative Defense raised by defendant Clark charging Plaintiff with comparative fault and the Third Affirmative Defense requiring a reduction of damages based on Plaintiff's failure to wear a seatbelt. Likewise, the Court dismisses the First and Second Affirmative Defenses raised by Defendant Palka and

Northbrook Contracting Corporation for Plaintiff's comparative fault and for "failure to utilize adjust and/or fasten the automobile safety and /or seat belts".

Dated: May 17, 2021
White Plains, New York



HON. MARY H. SMITH
Justice of the Supreme Court