

Bermudez v Cooney
2021 NY Slip Op 33423(U)
March 22, 2021
Supreme Court, Suffolk County
Docket Number: Index No. 614621/2019
Judge: William G. Ford
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SHORT FORM ORDER

INDEX No. 614621/2019

**SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 38 - SUFFOLK COUNTY**

P R E S E N T :

Hon. WILLIAM G. FORD

Justice of the Supreme Court

**MOTION DATE 10/30/20
ADJ. DATE 11/5/20
Mot. Seq. # 001 MG**

-----X
CESAR BERMUDEZ,

Plaintiff,

- against -

**LORIE COONEY and RAYMOND P.
COONEY,**

Defendants.
-----X

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Upon the following papers read on this motion for partial summary judgment : Notice of Motion/ Order to Show Cause and supporting papers filed by plaintiff, on September 25, 2020 : Notice of Cross Motion and supporting papers ___; Answering Affidavits and supporting papers ___; Replying Affidavits and supporting papers ___; Other ___; it is

ORDERED that the unopposed motion by plaintiff for partial summary judgment in his favor on the issue of defendants' liability is granted.

This is an action to recover damages for injuries allegedly sustained by plaintiff Cesar Bermudez as a result of a motor vehicle accident, which occurred on May 10, 2018, at approximately 4:30 p.m., on Nicholls Road, at or near its intersection with Patchogue-Holbrook Road, in Holbrook, New York. The accident allegedly occurred when a vehicle operated by defendant Lorie Cooney, and owned by defendant Raymond P. Cooney, struck the vehicle in which plaintiff was a passenger in the rear, as it was stopped in traffic.

Plaintiff now moves for summary judgment on the issue of defendants' liability, arguing that defendant driver's negligence was the sole proximate cause of the accident. Plaintiff alleges that defendant driver violated, inter alia, Vehicle and Traffic Law § 1129 (a) by following too closely. In support of his motion, plaintiff submits, inter alia, the transcript of his deposition testimony. Defendants do not oppose the motion.

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The driver of a vehicle approaching another vehicle from the rear must maintain a reasonably safe rate of speed and control over his or her vehicle and exercise reasonable care to avoid colliding with the other vehicle (*see Bloechle v Heritage Catering, Ltd.*, 172 AD3d 1294, 101 NYS3d 424 [2d Dept 2019]; *Schmertzler v Lease Plan U.S.A., Inc.*, 137 AD3d 1101, 27 NYS3d 648 [2d Dept 2016]; *Gallo v Jairath*, 122 AD3d 795, 996 NYS2d 682 [2d Dept 2014]). A rear-end collision with a stopped or stopping vehicle establishes a prima facie case of negligence on the part of the operator of the rear vehicle, and requires the operator of the rear vehicle to rebut the inference of negligence by providing a nonnegligent explanation for the collision (*see Miller v Steinberg*, 164 AD3d 492, 82 NYS3d 597 [2d Dept 2018]; *Edgerton v City of New York*, 160 AD3d 809, 74 NYS3d 617 [2d Dept 2018]). A nonnegligent explanation may include evidence of a mechanical failure, a sudden, unexplained stop of the lead vehicle, an unavoidable skidding on wet pavement, or any other reasonable cause (*see Grant v Carrasco*, 165 AD3d 631, 84 NYS3d 235 [2d Dept 2018]; *Binkowitz v Kolb*, 135 AD3d 884, 24 NYS3d 186 [2d Dept 2016]; *Ortiz v Hub Truck Rental Corp.*, 82 AD3d 725, 918 NYS2d 156 [2d Dept 2011]). To establish prima facie entitlement to judgment as a matter of law on the issue of liability, a plaintiff is no longer required to show freedom from comparative fault (*Rodriguez v City of New York*, 31 NY3d 312, 76 NYS3d 898 [2018]; *Bloechle v Heritage Catering, Ltd.*, *supra*; *Catanzaro v Edery*, *supra*; *Marks v Rieckhoff*, 172 AD3d 847, 101 NYS3d 63 [2d Dept 2019]; *Auguste v Jeter*, 167 AD3d 560, 560, 88 NYS3d 509 [2d Dept 2018]).

Plaintiff has established, prima facie, entitlement to summary judgment in his favor on the issue of negligence through his testimony (*see Lopez v Dobbins*, 164 AD3d 776, 79 NYS3d 566 [2d Dept 2018]; *Tsyganash v Auto Mall Fleet Mgt., Inc.*, 163 AD3d 1033, 83 NYS3d 74 [2d Dept 2018]; *Niyazov v Hunter EMS, Inc.*, 154 AD3d 954, 63 NYS3d 457 [2d Dept 2017]). Plaintiff testified that he was a passenger in a vehicle operated by his father, Julio Bermudez, and that they were traveling southbound on Nicholls Road. Plaintiff testified that weather conditions were sunny, and that the traffic conditions were “medium, regular,” as it was rush hour. Plaintiff testified that his father brought the vehicle to a complete stop due to traffic stopping ahead of them, and that the vehicle remained stopped for 10 to 15 seconds, when it was struck in the rear by defendant driver. Plaintiff testified that he observed defendant driver in the rear view mirrors two to three second prior to the accident. He testified that defendant driver was attempting to change lanes, to the opposite lane, immediately prior to the collision, but quickly switched again into plaintiff’s lane, striking plaintiff’s vehicle in the rear. Plaintiff has also established his prima facie entitlement to summary judgment as to defendant Raymond P. Cooney. Vehicle and Traffic Law § 388 provides that an owner of a motor vehicle is vicariously liable for the negligence of those whom the owner allows to drive his or her vehicle (*see Country-Wide Ins. Co. v National R.R. Passenger Corp.*, 6 NY3d 172, 811 NYS2d 302 [2006]; *Jung v Glover*, 169 AD3d 782, 93 NYS3d 390 [2d Dept 2019]).

Plaintiff having established his prima facie burden on the motion, the burden now shifts to defendants to raise a triable issue of fact with respect to whether there was a non-negligent explanation for the accident (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 508 NYS2d 923 [1986]; *Miller v Steinberg*, *supra*; *see generally Rodriguez v City of New York*, *supra*). Defendants fail to oppose the motion which, in effect, is a concession that no question of fact exists, and the facts as alleged in the moving papers may be deemed admitted (*see Kuehne & Nagel v Baiden*, 36 NY2d 539, 369 NYS2d

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667 [1975]; *114 Woodbury Realty, LLC v 10 Bethpage Rd., LLC*, 178 AD3d 757, 114 NYS3d 100 [2d Dept 2019]).

Accordingly, plaintiff's motion for partial summary judgment in his favor on the issue of defendants' liability is granted.

Dated: 03-22-2021



WILLIAM G. FORD, J.S.C.

____ FINAL DISPOSITION X NON-FINAL DISPOSITION