

Rodriguez v Liu

2021 NY Slip Op 34258(U)

October 8, 2021

Supreme Court, Bronx County

Docket Number: Index No. 36334/2017

Judge: Mary Ann Brigantti

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX, PART 25

C #002

DEIVI SANCHEZ RODRIGUEZ, et al.

Index No. 36334/2017E

-against-

Hon. MARY ANN BRIGANTTI

JOSEPH Y. LIU, et al.

Justice Supreme Court

The following papers numbered 1 to 4 were read on this motion (Seq. No. 2)
for SUMMARY JUDGMENT (DEFENDANT) noticed on June 10, 2021

Table with 3 columns: Document Name, No(s), and Count. Rows include Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed (1,2), Answering Affidavit and Exhibits (3), and Replying Affidavit and Exhibits (4).

Upon the foregoing papers, Roselio Morillo Martinez ("Martinez") moves for summary judgment, dismissing the complaint of the plaintiffs Deivi Sanchez Rodriguez ("Rodriguez"), Carmen O. Santos ("Santos") and Jose O. Vasquez ("Vasquez") (collectively, "Plaintiffs") and any cross-claims asserted against him, on the grounds that no triable issue of fact exists as Martinez bears no liability for this accident. Co-defendant Joseph Y. Liu ("Liu") opposes the motion.

Background

This matter arises out of an alleged motor vehicle accident. At the time of the accident, Plaintiffs were passengers in a vehicle operated by Martinez. The Martinez vehicle was allegedly struck in the rear by a vehicle operated by co-defendant Liu. In support of his motion, Martinez submits the deposition transcripts of himself, Santos, Vasquez, and Liu.

Martinez testified that he was operating a Honda CRV on the southbound Major Deegan, just before "exit 233" (Martinez EBT at 23). At this location there were three lanes of travel, and Martinez described traffic as "medium" (id. at 24). Martinez testified that he intended to take "exit 233" and was about 20-50 meters from the exit when the accident occurred (id. at 26). Martinez was proceeding in the right lane, and his vehicle was stopped for 1-2 seconds at the time of the accident (id. at 27-28). His vehicle stopped "[b]ecause the vehicle in front of me put on his brakes" (id. at 28). Martinez described that vehicle as a "black SUV" and he did not know why that vehicle put on its brakes (id.). Before the accident, he was following two car-lengths behind that vehicle (id. at 29). Martinez testified that the "black SUV" stopped "[a]ll of a sudden" and then Martinez suddenly applied his brakes as well (id. at 30). Martinez stopped without striking the black SUV, and "seconds" after he was stopped, his vehicle was struck in the rear by another vehicle (id. at 30-31).

Santos testified that at the time of the accident she was in the front passenger seat of a vehicle operated by Martinez (Santos EBT at 11). The accident occurred on the "Major Deegan south" near the

Motion is Respectfully Referred to Justice:
Dated:

exit for 233rd Street (*id.* at 12). Just before the accident, her vehicle was in the middle of three lanes (*id.* at 13). Santos became aware of the accident when her vehicle was struck in the rear (*id.* at 15). When the impact occurred, her vehicle was moving (*id.* at 15-16). Traffic at the time was “[m]oderate, medium” (*id.* at 16). Just before the accident happened, Santos noticed that cars in front of her were coming to a stop, so her vehicle began to gradually slow down as well (*id.* at 20-21). She felt one heavy impact (*id.* at 49).

Vasquez testified that at the time of this accident, he was a rear passenger in a vehicle operated by Martinez, seated behind the driver (Vasquez at 24). The vehicle was traveling on the Major Deegan, and traffic was “light” (*id.* at 30). His vehicle was traveling in the center lane (*id.* at 31). While the occupants of the vehicle were having a conversation, Vasquez’s vehicle was rear-ended (*id.* at 31-32). At the moment of impact his vehicle was “[m]oving” (*id.* at 32). Immediately before the impact his vehicle had reduced its speed (*id.* at 32-33) as the vehicle was about to exit (*id.* at 34). Vasquez testified that the vehicle “gradually” reduced its speed (*id.* at 35). Vasquez further testified that traffic in front of his vehicle was “moving normal” and he did not see anything in front of his vehicle that would have caused it to come to a stop (*id.* at 35). Vasquez also testified that he was looking to the “side, to the left side” moments before the impact occurred (*id.* at 35-36). He was “[l]ooking at the cars, the view” (*id.* at 36).

Liu testified that at the time of the accident he was traveling on a highway, “I-87,” and he described traffic as “medium” but “very smooth” or a “smooth drive” (Liu EBT at 23-24). Nothing was obstructing his visibility (*id.* at 24). Prior to the accident he noticed the vehicle traveling in front of him, but he was paying attention to merge to the left (*id.* at 26), so that vehicle left Liu’s observation “[o]nly for a second. About a second” (*id.* at 29). Eventually an impact occurred between the front of Liu’s car and the rear of car in front of him (*id.* at 35-36). Prior to the impact Liu applied his brakes (*id.* at 39-40). Liu explained that he did not expect the vehicle in front of him to come to a complete stop and he applied the brakes “in emergency” and came into contact with the vehicle (*id.* at 40). He testified that before the impact, he was traveling 2-3 car lengths behind the vehicle, and “the accident happened because the other vehicle suddenly stopped while I continued going forward...” (*id.* at 41). Liu explained that he believed the other car came to a complete stop, because beforehand he looked to the lane to his left to see if he could merge and determined that he was unable to do so. When he turned his attention back to what was in front of him, he noticed the other vehicle was stopped, so he applied his brakes “in emergency” (*id.* at 42).

When asked if he knew why the other vehicle came to a stop, Liu testified: “I didn’t see any vehicles in front of it. I didn’t see any congestion in front of it” (*id.* at 67). He then testified that the vehicle came to a stop because “they didn’t know before getting on the highway, they didn’t know where or which direction they were going, whether they were going to the north or south” (*id.* at 67-68). He said the other vehicle was “at the intersection...flashing their lights” and he thought that after they left the ramp, got on the highway, they stopped because they didn’t know which direction to go” (*id.* at 68). Liu did

conceded, however, that this was his own analysis of the situation, based upon his experience driving (*id.* at 68). After the accident Liu told police that he “thought the two people were changing seats” (*id.* at 60) from the driver’s seat to the passenger’s seat (*id.* at 60).

Standard of Review

To be entitled to the “drastic” remedy of summary judgment, the moving party “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 from the case.” (*Winegrad v. New York University Medical Center*, 64 N.Y.2d 851 [1985]; *Sillman v. Twentieth Century-Fox Film Corp.*, 3 N.Y.2d 395 [1957]). The failure to make such prima facie showing requires denial of the motion, regardless of the sufficiency of any opposing papers. (*Id.*, see also *Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324 [1986]). Facts must be viewed in the light most favorable to the non-moving party (*Sosa v. 46th Street Development LLC.*, 101 A.D.3d 490 [1st Dept. 2012]). Once a movant meets his initial burden, the burden shifts to the opponent, who must then produce sufficient evidence, also in admissible form, to establish the existence of a triable issue of fact (*Zuckerman v. City of New York*, 49 N.Y.2d 557 [1980]). When deciding a summary judgment motion the role of the Court is to make determinations as to the existence of bonafide issues of fact and not to delve into or resolve issues of credibility (*Vega v. Restani Constr. Corp.*, 18 N.Y.3d 499 [2012]).

Applicable Law and Analysis

“It is well settled 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 A.D.3d 553 [1st Dept. 2010] citing *Tutrani v County of Suffolk*, 10 NY3d 906, 908 [2008]; *Agramonte v City of New York* 288 AD2d 75, 76 [1st Dept. 2001]; see also *Dattilo v Best Transp. Inc* 79 A.D.3d 432 [1st Dept. 2010]).

Generally, the sudden stop of the lead vehicle, alone, is not a sufficient “non-negligent explanation” for a rear-end collision (see *Francisco v. Schoepfer*, 30 AD3d 275 [1st Dept. 2006]; *Androvic v. Metropolitan Transp. Auth.*, 95 AD3d 610 [1st Dept. 2012]). The First Department has “repeatedly so held, particularly when the defendant driver fails to explain why he or she did not maintain a safe following distance” (see *Morgan v. Browner*, 138 AD3d 560 [1st Dept. 2016]). However, a sudden stop of the lead vehicle may raise an issue of fact as to that driver's comparative fault where the rear-most driver “could have ‘reasonably expect[ed] that traffic would continue unimpeded,’ ” for example, where traffic had been otherwise flowing smoothly (see *Baez-Pena v. MM Truck and Body Repair, Inc.*, 151 AD3d 473, 477 [1st

Dept. 2017], quoting *Tutrani v. County of Suffolk*, 10 NY3d 906, 907 [2008]; see also *Berger v. New York City Housing Authority*, 82 AD3d 531 [1st Dept. 2011]). The First Department in *Baez-Pena* noted that it was unaware of a case where a sudden stop by a vehicle on a highway, under normal traffic conditions, resulted in summary judgment in favor of that vehicle (*id.* at 476). More recently, the First Department citing *Baez*, held that a jury could rationally find that a lead vehicle's conduct was a "substantial cause" of the accident where the vehicle suddenly stopped in an unobstructed moving lane of traffic (*Newell v. Bronston*, 183 A.D.3d 441 [1st Dept. 2020]; see also *Rodriguez v. Sharma*, 178 A.D.3d 508 [1st Dept. 2019]).

In this matter, Martinez failed to eliminate triable issues of fact as to whether he suddenly stopped his vehicle on a highway in a circumstance where Liu, the rear driver, reasonably anticipated that traffic would continue to flow unimpeded. Martinez testified that he had to bring his vehicle to a sudden stop because the vehicle in front of him suddenly stopped. Liu, however, testified that he saw no traffic or congestion in front of the Martinez vehicle when it came to a sudden stop. Vasquez similarly testified that he did not see any traffic in front of the Martinez vehicle moments before the accident. While Vasquez testified that he was looking out of his window prior to the accident, he also testified that he was looking at "cars" and "the view." Vasquez was not asked follow-up questions for an explanation as to how he saw vehicles traveling in front of his car moments before the impact. In any event, the Liu testimony raises fact issues as to whether Martinez suddenly stopped on a highway in normal traffic conditions, which precludes a finding that Martinez is free from negligence as a matter of law (see *Baez-Pena*, 151 AD3d at 477). Martinez thus failed to carry his initial summary judgment burden, and the motion is denied without consideration of the opposing papers (see *Winegrad*, 64 N.Y.2d at 851).

Conclusion

Accordingly, it is hereby

ORDERED, that Martinez's motion for summary judgment is denied.

This constitutes the Decision and Order of this Court.

Dated: OCTOBER 8, 2021

Hon. 
MARY ANN BRIGANTTI J.S.C.

- 1. CHECK ONE..... CASE DISPOSED IN ITS ENTIRETY CASE STILL ACTIVE
- 2. MOTION IS..... GRANTED DENIED GRANTED IN PART OTHER
- 3. CHECK IF APPROPRIATE..... SETTLE ORDER SUBMIT ORDER SCHEDULE APPEARANCE
- FIDUCIARY APPOINTMENT REFEREE APPOINTMENT