

Cagatay v City of New York

2022 NY Slip Op 31405(U)

April 29, 2022

Supreme Court, New York County

Docket Number: Index No. 159570/2018

Judge: Judy H. Kim

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. JUDY H. KIM PART 05

Justice

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HAKAN CAGATAY, MIHRICAN CAGATAY,
Plaintiffs,

INDEX NO. 159570/2018

MOTION DATE 01/20/2022

MOTION SEQ. NO. 001

- v -

THE CITY OF NEW YORK, THE NEW YORK CITY
DEPARTMENT OF SANITATION, LOUIS SALCEDO

DECISION + ORDER ON
MOTION

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 47, 48, 49

were read on this motion for PARTIAL SUMMARY JUDGMENT.

Upon the foregoing documents, plaintiffs' motion for partial summary judgment is granted for the reasons set forth below.

Plaintiffs commenced this negligence action on October 16, 2018 for personal injuries allegedly sustained in a motor vehicle collision on October 14, 2017 on New Jersey Routes 1 & 9 South. It is undisputed that a vehicle driven by plaintiff Hakan Cagatay, in which plaintiff Mihrican Cagatay was a passenger, was struck in the rear by a sanitation truck owned by defendant New York City Department of Sanitation and operated by defendant Louis Salcedo.

Defendants interposed an Answer asserting a counterclaim against plaintiffs for contributory negligence (NYSCEF Doc. No. 27 [Answer at ¶12])

Plaintiff Hakan Cagatay testified at an examination before trial ("EBT") that at the time of the collision he was driving a Nissan Murano in the right lane of traffic and was stopped for approximately fifteen seconds at a red light when he heard and felt an impact at the back of his car

(NYSCEF Doc. No. 29 [Hakan Cagatay EBT Tr. at pp. 25: 18-19, 33:2-10]). The impact of the sanitation truck pushed plaintiffs' car into the car in front of them (Id. at p. 35:20). Plaintiff Mihrican Cagatay also testified at an EBT that she and her husband were hit from behind (NYSCEF Doc. No. 31 [Mihrican Cagatay EBT Tr. at p. 20:8-19]).

Defendant Salcedo testified at an EBT that from his vantage point, on top of the sanitation truck, he saw plaintiffs' car stop suddenly as a result of the car in front of it stopping suddenly (NYSCEF Doc. No. 32 [Salcedo EBT Tr. at pp. 46-48]). Salcedo further testified that (contrary to plaintiffs' EBT testimony) at the time plaintiffs' car stopped short the upcoming traffic light was green and remained green at the time of the collision (Id. at p. 48).

Plaintiffs now move for partial summary judgment as to liability on their complaint and dismissing defendants' affirmative defense.

DISCUSSION

“Summary judgment is a drastic remedy, to be granted only where the moving party has tendered sufficient evidence to demonstrate the absence of any material issues of fact and then only if, upon the moving party's meeting of this burden, the non-moving party fails to establish the existence of material issues of fact which require a trial of the action” (Vega v Restani Constr. Corp., 18 NY3d 499, 503 [2012] [internal citations and quotations omitted]). Here, plaintiffs have tendered sufficient evidence to demonstrate the absence of any material issues of fact.

Defendants concede that the sanitation truck driven by Salcedo rear-ended plaintiffs' vehicle and “[i]t 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 rear vehicle to come forward with an adequate nonnegligent explanation for the accident” (Morgan v Browner, 138 AD3d 560, 560 [1st Dept 2016]).

In opposition, defendants argue that a material issue of fact exists because plaintiffs and Salcedo disagree as to whether the traffic light at the upcoming intersection was red or green at the time of the accident (NYSCEF Doc. No. 47 [Terrero-Black Affirm. in Opp. at ¶¶6, 10]). They further argue that plaintiffs' abrupt stop in front of a green light (as alleged by Salcedo) creates a question of fact as to whether plaintiffs were negligent. However, "[a] claim that the lead vehicle made a sudden stop, standing alone, is insufficient to rebut the presumption of negligence on the part of the rear driver" (Morgan v Browner, 138 AD3d 560, 560 [1st Dept 2016] [internal citations and quotations omitted]). "[D]efendants [have] failed to rebut the inference of negligence created by the rear-end collision by showing that [Salcedo] maintained a safe distance from [plaintiffs'] vehicle before the accident" (Scioli v Joseph, 203 AD3d 680 [1st Dept 2022] [internal citations omitted]). Moreover, whether or not the traffic light was red or green at the time of the accident does not present a material question of fact for trial (See Chowdhury v Matos, 118 AD3d 488 [1st Dept 2014]). Neither does defendants' allegation that plaintiffs' vehicle abruptly stopped raise an issue of comparative negligence supporting defendants' affirmative defense (Id.).

Accordingly, it is hereby

ORDERED that the motion is granted, and plaintiffs are granted summary judgment as to liability in their favor against defendants; and it is further

ORDERED that defendants' counterclaim is hereby dismissed; and it is further

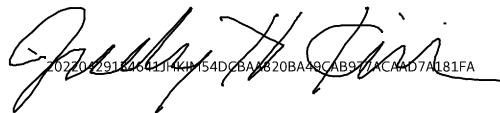
ORDERED that upon completion of discovery on the issue of damages, filing a Note of Issue, and compliance with all the rules of the Court, this action shall be placed on the trial calendar for a trial on the issue of plaintiffs' damages; and it is further

ORDERED that plaintiffs shall serve a copy of this decision and order with notice of entry upon the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk's

Office (60 Centre Street, Room 119), who are directed to enter judgment accordingly; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk’s Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “Efiling” page on this court’s website at the address www.nycourts.gov/suptctmanh).

This constitutes the decision and order of the Court.



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4/29/2022

DATE

HON. JUDY H. KIM, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE