

Ruiz v Burgess

2022 NY Slip Op 32309(U)

January 6, 2022

Supreme Court, Bronx County

Docket Number: Index No. 27887-2020E

Judge: Veronica G. Hummel

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This opinion is uncorrected and not selected for official publication.

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

ISAAC N. RUIZ,

Plaintiff,

-against-

MICHAEL D. BURGESS, SALEM TRUCK LEASING
INC., and REFRIGERATED TRANSFER CARRIER,
LLC.

Defendants.

Index No. 27887-2020E**HON. VERONICA G. HUMMEL, A.J.S.C.****Mot. Seq. No. 1**

In accordance with CPLR 2219(a), the decision herein is made upon consideration of all papers filed by the parties in NYSCEF in support of and in opposition to the motion of plaintiff ISAAC N. RUIZ (“Plaintiff”) (Seq. No. 1) seeking an order, pursuant to CPLR 3212, granting Plaintiff summary judgment as to liability against defendants MICHAEL D. BURGESS, SALEM TRUCK LEASING INC. and REFRIGERATED TRANSFER CARRIER, LLC (“Defendants”) and dismissing Defendants’ affirmative defense (third affirmative defense) alleging Plaintiff’s culpable conduct, as well as an order setting this matter down for an assessment of damages.

This is a personal injury action arising out of a two-vehicle rear-end accident that occurred on February 24, 2020, near the intersection of Whitlock Avenue and 165th Street (the “Accident”). Plaintiff was sitting in a parked school bus on Whitlock Avenue when a truck driven by defendant Burgess in the course of his employment for defendant Refrigerated Transfer Carrier, Inc. struck the rear panel of the bus. Whitlock Avenue is a one-way street which runs North and South, with one lane for moving traffic and one lane on each side of the street for parked vehicles.

In support of the motion, Plaintiff submits an attorney affirmation, an affidavit, and copies of the pleadings. In opposition to the motion, Defendants submit an attorney affirmation and a personal affidavit from defendant driver Burgess. Depositions of the parties have not yet been conducted.

Plaintiff avers that at the time of the Accident, the school bus he was driving was legally parked on the left side of Whitlock Avenue, and the bus engine was turned off. The bus had been parked for over ten minutes when Defendants’ vehicle struck the school bus in the rear. There was no traffic on the street at the time of the Accident and the weather was clear. Plaintiff suffered serious injuries as the result of the Accident.

Defendant Burgess submits a personal affidavit in opposition to the motion. Of note, the defense attorney failed to upload the document in accordance with NYSCEF rules, utilizing an independent label and identification. Henceforth, documents must be uploaded correctly in order to maintain a clear record. The Court is not required to sort through incorrectly uploaded documents to locate a party's submission.

The defendant driver avers that his vehicle was about midblock on Whitlock Avenue, going southbound at the time of the Accident. He admits that there was a lane for parking on the left side of the street. The defendant driver states that he was travelling a safe distance behind a non-party vehicle when the non-party vehicle slammed on its brakes and swerved to the right. At that moment, Defendant saw the Plaintiff's school bus was double-parked at a crooked angle along the left-side of the street, with the back corner of the bus dangerously protruding into Defendant's travel lane. The defendant driver asserts that the school bus was illegally double-parked along the left side of the street facing southbound, next to a large container truck that was parked closer to the curb. Plaintiff's bus did not have hazard lights on and the engine was turned off. There were no students getting on or off of the bus. The defendant driver claims that the school bus was dangerously street-parked at a crooked angle with the passenger-side rear-corner, which he struck, protruding out into the single travel lane for moving vehicles. The defendant driver applied the brakes as soon as he saw the non-party vehicle swerve, which revealed the presence of the school bus. Despite his efforts, Defendants' vehicle struck the Plaintiff's bus in the rear-corner passenger side. The impact forced the school bus to come into contact with the street-parked container truck which the school bus was double-parked next to. The defendant driver avers that he saw a woman inside of the school bus with Plaintiff.

“The proponent of a summary judgment motion must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering evidence sufficient to eliminate any material issues of fact from the case.” *Winegrad v. N.Y. Univ. Med. Ctr.*, 64 N.Y.2d 851, 853 (1985). Upon such a showing, the burden then shifts to the nonmovant to “present evidentiary facts in admissible form sufficient to raise a genuine, triable issue of fact.” *Mazurek v. Metro. Museum of Art*, 27 A.D.3d 227, 228 (1st Dep't 2006). A plaintiff in a negligence action moving for summary judgment on the issue of liability must, therefore, establish, *prima facie*, that the defendant breached a duty owed to the plaintiff and that the defendant's negligence was a proximate cause of the alleged injuries. *Fernandez v. Ortiz*, 183 A.D.3d 443 (1st Dept 2020). A plaintiff is not

required to demonstrate his or her freedom from comparative fault in order to establish a *prima facie* entitlement to summary judgment on the issue of liability. *Rodriguez v. City of N.Y.*, 31 N.Y.3d 312, 324-25 (2018).

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, nonnegligent explanation for the accident.” *Urena v. GVC Ltd.*, 160 A.D.3d 467, 467 (1st Dep’t 2018) (quoting *Matos v. Sanchez*, 147 A.D.3d 585, 586 (1st Dep’t 2017)); *Santos v. Booth*, 126 A.D.3d 506, 506 (1st Dep’t 2015); *Woodley v. Ramirez*, 25 A.D.3d 451, 452 (1st Dep’t 2006). Under New York Vehicle and Traffic Law (“VTL”) § 1129(a), “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 vehicle and traffic upon the condition of the highway.” In other words, a driver must maintain a safe distance between his vehicle and the one in front of the driver.

A violation of VTL § 1129(a) is *prima facie* evidence of negligence, and “[t]his rule has been applied when the front vehicle stops suddenly in slow-moving traffic.” *Rodriguez v. Budget Rent-A-Car Sys., Inc.*, 44 A.D.3d 216, 223-24 (1st Dep’t 2007) (quoting *Johnson v. Phillips*, 261 A.D.2d 269, 271 (1st Dep’t 1999)); *Mascitti v. Greene*, 250 A.D.2d 821, 822 (2d Dep’t 1998). Vehicle and Traffic Law § 1129 [a]) imposes a duty to be aware of traffic conditions, including vehicle stoppages (*Guzman v. Schiavone Construction Co.*, 4 A.D.3d 150 (1st Dep’t 2004); *Johnson v. Phillips, supra*). Hence, a collision with a stationary vehicle amounts to *prima facie* evidence of negligence on the part of the operator of the moving vehicle (see *Leal v. Wolff*, 224 A.D.2d 392, 393 [2d Dep’t 1996]; *Salodkaya v City of New York*, 193 A.D.3d 604 (1st Dep’t 2021). In a rear-end collision, there is a presumption of non-negligence of the driver of the lead vehicle. See *Soto-Marouquin v. Mellet*, 63 A.D.3d 449, 450 (1st Dep’t 2009).

Based on the moving papers, Plaintiff establishes *prima facie* entitlement to judgment as a matter of law by submitting evidence that his vehicle was stopped and legally parked when it was struck in the rear by the vehicle driven by Defendant.

Defendants, in turn, fail to come forward with an adequate non-negligent explanation for the Accident. The defendant driver admits that his vehicle rear-ended Plaintiff’s vehicle. The fact that the defendant driver was following another vehicle, which managed to avoid colliding with the school bus, shows that the defendant driver’s failure to maintain a safe distance and to see that

which he should have seen through the proper use of his senses was a proximate cause of the Accident. *see Francios v. Tang*, 171 A.D.3d 1139 (2d Dep't 2019).

Furthermore, Defendants' contention that Plaintiff's motion is premature because depositions have yet to be taken lacks merit. Granting Plaintiff partial summary judgment on the issue of liability under these circumstances is not premature, because the relevant drivers have submitted affidavits. *Salodkaya v. City of New York, supra*; *see Santos v. Booth*, 126 A.D.3d 506 (1st Dep't 2015). Furthermore, the allegation that there was a second person on Plaintiff's bus does not warrant the denial of the motion as Defendants fail to set forth any foundation for finding that the deposition of such a person would produce evidence capable of generating an issue of fact as to Defendants' liability. Any such purported question of fact is purely speculative. *See Cabrera v. Rodriguez*, 72 A.D.3d 553, 554 (1st Dep't 2010); *Garcia v. Verizon N.Y., Inc.*, 10 A.D.3d 339, 340 (1st Dep't 2004). Accordingly, the motion is appropriately granted insofar as it seeks an order granting partial summary judgment as to Defendants' liability for the Accident.

In contrast, issues of fact exist which require the denial of the motion to dismiss the affirmative defense based on contributory negligence. Issues of proximate cause are typically fact questions to be decided by a jury and are only appropriate decided on summary judgment where only one conclusion may be drawn from the established facts. *Geralds v. Damiano*, 128 A.D.3d 550 (1st Dep't 2015). Based on the facts presented here, a reasonable jury could find that Plaintiff inappropriately parked the school bus on the left side of the street with a portion of the vehicle in the travel lane without hazard lights, and that such action was a contributing cause of the Accident *White v. Diaz*, 49 A.D.3d 134 (1st Dep't 2008); *see Dong v. Cruz-Martel*, 189 A.D.3d 613 (1st Dep't 2020); *Brito v. RDJ Express Transport*, 135 A.D.3d 651 (1st Dep't 2016). As such, triable issues of fact exist as to whether the inappropriate location of the parked vehicle was a proximate cause of the Accident.

The Court has considered the additional contentions of the parties not specifically addressed herein. To the extent that any relief requested by the movant was not addressed by the Court, it is hereby denied.

Accordingly, it is hereby:

ORDERED that the part of the motion by plaintiff ISAAC N. RUIZ ("Plaintiff") (Seq. No. 1) that seeks (a) an order, pursuant to CPLR 3212, granting Plaintiff partial summary judgment as

to liability against defendants MICHAEL D. BURGESS, SALEM TRUCK LEASING INC. and REFRIGERATED TRANSFER CARRIER, LLC (“Defendants”) is granted; and it is further

ORDERED that the part of the motion by Plaintiff (Seq. No. 1) that seeks an order dismissing Defendants’ affirmative defense (third affirmative defense) alleging Plaintiff’s culpable conduct is denied: and it is further

ORDERED that the Clerk shall mark the motion (Seq. No. 1) disposed in all court records.

This constitutes the decision and order of the Court.

Dated: January ⁶, 2022

Hon. s/Hon. Veronica G. Hummel/signed 01/06/2022
VERONICA G. HUMMEL, A.J.S.C.

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- 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