

Sousa v Jordan

2022 NY Slip Op 32565(U)

July 28, 2022

Supreme Court, New York County

Docket Number: Index No. 451512/2019

Judge: J. Machelle Sweeting

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. J. MACHELLE SWEETING PART 62

Justice

-----X

WALDIR SOUSA,

Plaintiff,

- v -

RAFAEL JORDAN, NEW YORK CITY DEPARTMENT OF
PARKS & RECREATION, CITY OF NEW YORK,

Defendants.

-----X

INDEX NO. 451512/2019

MOTION DATE 05/04/2022

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65

were read on this motion to/for SUMMARY JUDGMENT (AFTER JOINDER).

In the underlying action, plaintiff, Waldir Souza, seeks to recover monetary damages for personal injuries allegedly sustained on February 10, 2018, at approximately 3:30 pm, while he was operating a yellow 2014 Nissan SUV taxi with New York State License Plate Number 5C21A on Amsterdam Avenue near the intersection of West 79th Street. Plaintiff’s vehicle was traveling in front of a New York City Department of Parks and Recreation (“DPR”) 2015 Ford F250 pick-up truck with New York State License Plate Number AN1928 operated by Rafael Jordan, a DPR park worker. Plaintiff alleges that Mr. Jordan’s vehicle struck plaintiff’s vehicle in the rear, causing plaintiff to sustain serious injuries.

Pending now before the court is a motion wherein plaintiff seeks summary judgment pursuant to Civil Practice Law and Rules (“CPLR”) Section 3212 against all defendants (collectively, the “City”).

Standard for Summary Judgment

The function of the court when presented with a motion for summary judgment is one of issue finding, not issue determination (Sillman v. Twentieth Century-Fox Film Corp., 3 N.Y.2d 395 [NY Ct. of Appeals 1957]; Weiner v. Ga-Ro Die Cutting, Inc., 104 A.D.2d331 [Sup. Ct. App. Div. 1st Dept. 1985]). The proponent of a motion for summary judgment must tender sufficient evidence to show the absence of any material issue of fact and the right to entitlement to judgment as a matter of law (Alvarez v. Prospect Hospital, 68 N.Y.2d 320 [NY Ct. of Appeals 1986]; Winegrad v. New York University Medical Center, 64 N.Y.2d 851 [NY Ct. of Appeals 1985]). Summary judgment is a drastic remedy that deprives a litigant of his or her day in court. Therefore, the party opposing a motion for summary judgment is entitled to all favorable inferences that can be drawn from the evidence submitted and the papers will be scrutinized carefully in a light most favorable to the non-moving party (Assaf v. Ropog Cab Corp., 153 A.D.2d 520 [Sup. Ct. App. Div. 1st Dept. 1989]). Summary judgment will only be granted if there are no material, triable issues of fact (Sillman v. Twentieth Century-Fox Film Corp., 3 N.Y.2d 395 [NY Ct. of Appeals 1957]).

The proponent of a summary judgment motion 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, and failure to make such *prima facie* showing requires a denial of the motion, regardless of the sufficiency of the opposing papers. Once this showing has been made, however, the burden shifts to the party opposing the motion for summary judgment to

produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action (Alvarez v Prospect Hosp., 68 NY2d 320 [N.Y. Ct. of Appeals 1986]).

Further, pursuant to the New York Court of Appeals, “We have repeatedly held that one opposing a motion for summary judgment must produce evidentiary proof in admissible form sufficient to require a trial of material questions of fact on which he rests his claim or must demonstrate acceptable excuse for his failure to meet the requirement of tender in admissible form; mere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient” (Zuckerman v City of New York, 49 NY2d 557 [N.Y. Ct. of Appeals 1980]).

Arguments Made by the Parties

Plaintiff argues that he was stopped at a red light when he was rear-ended by defendants’ vehicle and is, therefore, entitled to summary judgment under the Vehicle and Traffic Law (“the “VTL”) and the prevailing caselaw.

In support of his argument, plaintiff submitted a copy of the police report (NYSCEF Document #57) that states, in part:

VEHICLE NUMBER 1 [Defendants’ vehicle] HAD A REAR END COLLISION WITH DRIVER OF VEHICLE 2 [Plaintiff’s vehicle] AS VEHICLE 2 BEGAN SLOWING/STOPPING IN TRAFFIC APPROACHING INTERSECTION.

Plaintiff also submitted a sworn Affidavit (NYSCEF Document #58), in which plaintiff himself states, in part:

2. On February 10, 2018, I was stopped at a red light on Amsterdam Avenue, at or near its intersection with West 79th Street, in the City, County and State of New York, when the vehicle owned by defendants, NEW YORK CITY DEPARTMENT OF PARKS & RECREATION and/or CITY OF NEW YORK, and operated by defendant, RAFAEL JORDAN, rear-ended the vehicle I was operating.

[...]

5. I in no way contributed to the happening of this incident.

In opposition, the City argues that there exist material questions of fact as to how the alleged accident occurred. Specifically, the City argues that, “Plaintiff’s contention that there was a red light is patently false,” and that in fact, the light was green as plaintiff and the City vehicle were approaching the intersection. The City argues that the impact was caused by plaintiff when he, “without warning, directional signal, or justification, suddenly and unexpectedly stopped short; which creates a question of fact as to whether Plaintiff’s own negligence, caused the accident.”

In support of their argument, the City attached the sworn Affidavit of City driver Rafael Jordan, (NYSCEF Document #62), which states, in part:

3. On February 10, 2018, I was driving a DPR 2015 Ford F250 pick-up truck with New York State license plate #AN1928. I was driving northbound in the right lane on Amsterdam Avenue to head to District 7 depot. It was daylight, but it had been raining for about ten minutes and the ground was wet.

4. While driving northbound on Amsterdam Avenue near the intersection of West 79th Street, I observed a yellow taxicab driving northbound in the same lane of traffic ahead of me. The taxi was a yellow 2014 Nissan SW with New York State license plate # 5C2IA. The taxi was approximately two meters ahead of me in the right lane. When I observed the taxi, I was traveling approximately 5-20 miles per hour.

5. A traffic signal controls the intersection of Amsterdam Avenue and West 79th Street. When I was approaching the intersection of Amsterdam Avenue and West 79th Street, I was constantly observing traffic conditions and the cars immediately in front of my vehicle including the taxi with plate # 5C2IA. The traffic signal at the intersection of Amsterdam Avenue and West 79th Street was green as I approached the intersection. The cars in the northbound left lane were proceeding, the vehicles in the right lane I was in were proceeding, when suddenly the taxicab come to a sudden, unexpected, and abrupt stop just as it began entering the intersection with a green light at Amsterdam Avenue and West 79th Street.

6. When I observed the taxi stop short, I immediately forcefully applied my brakes, to come to a stop. I was unable to steer into the left lane as vehicles were continuing to move for the green light. Due to the sudden, and unexpected short stop of the taxi, I was unable to avoid the collision.

Conclusions of Law

It is well-established that a rear-end collision is sufficient to create a *prima facie* case of liability and imposes a duty of explanation with respect to the operator of the offending vehicle. See e.g. Rodriguez v. Sharma, 178 A.D.3d 508 (Sup. Ct. App. Div. 1st Dept. 2019) (holding that a rear-end collision with a stopped vehicle creates a *prima facie* case of negligence on the part of the operator of the moving vehicle unless the operator presents evidence sufficient to rebut the inference of negligence. A sudden stop of the front vehicle is a non-negligent explanation for a rear-end collision); Agramonte v. City of New York, 288 A.D.2d 75 (Sup. Ct. App. Div. 1st Dept. 2001) (finding that plaintiff's sudden stop was insufficient to rebut the presumption of negligence since defendants failed to offer a non-negligent explanation for the happening of the accident); Morales v. Consol. Bus Transit, Inc., 167 A.D.3d 457 (Sup. Ct. App. Div. 1st Dept. 2018) (concluding that the driver's excuse for rear-ending a bus, namely, that the bus made a sudden stop, mid-block, is insufficient to rebut the presumption of negligence); Morgan v. Browner, 138 A.D.3d 560 (Sup. Ct. App. Div. 1st Dept. 2016) (claiming 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); Johnson v. Phillips, 261 A.D.2d 269 (Sup. Ct. App. Div. 1st Dept. 1999) (upholding the principle that drivers must maintain safe distances between their cars and cars in front of them and that drivers have a "duty to see what should be seen and to exercise reasonable care under the circumstances to avoid an accident . . . even if the sudden stop is repetitive; when the front vehicle, although in stop-and-go traffic, stopped while crossing an intersection; . . . and when the front car stopped after having changed lanes").

Here, the City's argument that plaintiff came to a "sudden stop" is insufficient to rebut the presumption of liability. *See e.g. Rodriguez v. Sharma*, 178 A.D.3d 508 (Sup. Ct. App. Div. 1st Dept. 2019) (holding that a rear-end collision with a stopped vehicle creates a *prima facie* case of negligence on the part of the operator of the moving vehicle unless the operator presents evidence sufficient to rebut the inference of negligence. A sudden stop of the front vehicle is a non-negligent explanation for a rear-end collision); *Agramonte v. City of New York*, 288 A.D.2d 75 (Sup. Ct. App. Div. 1st Dept. 2001) (finding that plaintiff's sudden stop was insufficient to rebut the presumption of negligence since defendants failed to offer a non-negligent explanation for the happening of the accident); *Morales v. Consol. Bus Transit, Inc.*, 167 A.D.3d 457 (Sup. Ct. App. Div. 1st Dept. 2018) (concluding that the driver's excuse for rear-ending a bus, namely, that the bus made a sudden stop, mid-block, is insufficient to rebut the presumption of negligence); *Morgan v. Browner*, 138 A.D.3d 560 (Sup. Ct. App. Div. 1st Dept. 2016) (claiming 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); *Johnson v. Phillips*, 261 A.D.2d 269 (Sup. Ct. App. Div. 1st Dept. 1999) (upholding the principle that drivers must maintain safe distances between their cars and cars in front of them and that drivers have a "duty to see what should be seen and to exercise reasonable care under the circumstances to avoid an accident . . . even if the sudden stop is repetitive; when the front vehicle, although in stop-and-go traffic, stopped while crossing an intersection; . . . and when the front car stopped after having changed lanes").

Further here, the City's argument that the light was green and not red is unavailing. *See, e.g. Chowdhury v Matos*, 118 AD3d 488 (1st Dept 2014) ("Furthermore, even crediting the testimony of defendant Collazo that [plaintiff] Mohammed abruptly stopped in the middle of the intersection and not for a red light, defendants have failed to proffer a nonnegligent explanation

for the rear-end collision”); Malone v Morillo, 6 AD3d 324 (1st Dept 2004) (“Regardless of whether defendants were already stopped at the red light, or stopped suddenly in the middle of the intersection while the light was yellow, we find no non-negligent explanation by plaintiff for striking defendants' vehicle”).

Based on this record, this court finds that the City has failed to offer a non-negligent explanation for the happening of the accident or to rebut the presumption of negligence.

Conclusion

Accordingly, it is hereby:

ORDERED that plaintiff’s motion is GRANTED; and it is further

ORDERED that summary judgment is granted to plaintiff on the issue of liability.

7/28/2022
DATE


J. MACHELLE SWEETING, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER
REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: