

Cintron v Santos
2022 NY Slip Op 35076(U)
May 27, 2022
Supreme Court, Bronx County
Docket Number: Index No. 22166/2019e
Judge: Veronica G. Hummel
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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX, IAS PART 31**IVELISSE CINTRON, HOWARD HARRIS
and GERTRUDE HARRIS,

Plaintiffs,

-against-

ARISMER SANTOS,

Defendant.

**Index No. 22166/2019e
HON. VERONICA G. HUMMEL, A.J.S.C.****Mot. Seq. No. 3,4**

In accordance with CPLR 2219(a), the decision herein is made upon consideration of all papers filed by the parties in NYSCEF relevant to the joined motion of plaintiffs IVELISSE CINTRON, HOWARD HARRIS, and GERTRUDE HARRIS (the Harris Plaintiffs) (jointly Plaintiffs)(Seq. No. 3) seeking an order, pursuant to CPLR 3212, granting Plaintiffs partial summary judgment against defendant ARISMER SANTOS on the issue of liability; and the motion of the Harris Plaintiffs (Seq. No. 4), made pursuant to CPLR 3403(b), seeking a trial preference based on age.

This is a personal-injury action arising from a rear-end collision that occurred on April 26, 2018, on the Brooklyn Bridge, County of Kings. (the Accident). The Harris Plaintiffs were in one vehicle (the Harris Vehicle) and plaintiff Cintron was a passenger in a vehicle driven by defendant Santos (Defendant's Vehicle). The Harris Vehicle was rear-ended by Defendant's vehicle.

Summary Judgment (Mot. Seq. 3)

In support of the motion, the Harris Plaintiffs submit the pleadings, a consolidation order, the deposition testimony of the parties, a personal affidavit by plaintiff Howard Harris, a statement of material facts, and an attorney affirmation. Plaintiff Cintron submits an attorney affirmation joining the motion.

In opposition to the motion, Defendant submits an attorney affirmation and affirmation in opposition to the statement of facts.

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 her. 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” or at a red light. *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). Furthermore, in a chain reaction collision, responsibility presumptively rests with the rearmost driver. *Mustafaj v Driscoll*, 5 A.D.3d 138 (1st Dep’t 2004); *Chuk Hwa Shin v Correale*, 142 A.D.3d 518, 519 (2d Dep’t 2016); *Skura v Wojtowski*, 165 A.D.3d 1196, 1199 (2d Dep’t 2018).

First Department case law is also clear that a claim by the rear driver that the lead vehicle made a sudden stop, standing alone, is insufficient to rebut the presumption of negligence (*Bajrami v Twinkle Cab Corp.*, 147 A.D.3d 649 (1st Dep’t 2017); see *Cabrera v Rodriguez*, 72 A.D.3d 553 (1st Dep’t 2010); see *Ly Giap v Hathi Son Pham*, 159 A.D.3d 484, 485 (1st Dep’t 2018) (“A claim that the lead driver came to a sudden stop, standing alone, is insufficient to rebut the presumption that the rearmost driver was negligent, and the stopped vehicle was not negligent”). Hence, the happening of a rear-end collision with a vehicle stopped is itself a *prima facie* case of negligence of the rearmost driver (*Vasquez v Chimborazo*, 155 A.D.3d 432 (1st Dep’t 2017); see *Smyth v Murphy*, 177 A.D.3d 492 (1st Dep’t 2019); *Corrigan v Porter Cab Corp.*, 101 A.D.3d 471 (1st Dep’t 2012); *LaMasa v Bachman*, 56 A.D.3d 340 (1st Dep’t 2008).

Based on the submissions, including Plaintiff’s affidavit and the submitted testimony, Plaintiffs demonstrate *prima facie* entitlement to judgment as a matter of law on Defendant’s liability. In Plaintiff’s affidavit, Plaintiff avers that the Harris Vehicle was stopping in traffic, when the Defendant’s vehicle struck the Harris Vehicle in the rear. Plaintiff driver did not contribute to causing the Accident in any way. The deposition testimony of the parties supports this version of events. This evidence sets forth a *prima facie* case.

Defendant, in turn, fails to raise an issue of material fact as to any non-negligent explanation for the Accident. The attorney affirmation submitted in opposition to the motion has no evidentiary value. see *Conti v. City of Niagara Falls Water Bd.*, 82 A.D.3d 1633, 1634 (1st Dep’t 2011) (“It is well established . . . that an affirmation submitted by an attorney who has no

personal knowledge of the facts is without evidentiary value.”), and is thus insufficient to defeat the motion. Any contention that the motion is premature also lacks merit as the mere hope that evidence sufficient to defeat a motion for summary judgment may be uncovered during the discovery process is insufficient to deny such a motion.” *Downey v. Mazzioli*, 137 A.D.3d 498, 499 (1st Dep’t 2016). Furthermore, the mere allegation that the Harris Vehicle stopped suddenly is insufficient to generate an issue of fact as a matter of law. *Bajrami v Twinkle Cab Corp.*, *supra*; *see Cabrera v Rodriguez*, *supra*; *see Ly Giap v Hathi Son Pham*, *supra*. As such the motion is appropriately granted.

Trial Preference (Mot. Seq. 4)

The Harris Plaintiffs submit evidence proving that each Harris plaintiff is over seventy years old. Accordingly, the motion for a trial preference is granted without opposition.

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

ORDERED that the joined motion of plaintiffs IVELISSE CINTRON, HOWARD HARRIS and GERTRUDE HARRIS (the Harris Plaintiffs) (jointly Plaintiffs)(Seq. No. 3) seeking an order, pursuant to CPLR 3212, granting Plaintiffs partial summary judgment against defendant ARISMER SANTOS on the issue of liability is granted; and it is further

ORDERED that the motion by the Harris Plaintiffs [Seq. No. 4] for an order, pursuant to CPLR 3403(b), for a special trial preference upon the ground that the plaintiffs are over 70 years old is granted without opposition; and it is further

ORDERED that the Clerk of Part 31 shall transfer this action to the STP Part, cancel the virtual conference presently scheduled in Part 31 for June 28, 2022, and remove the consolidated action from the inventory of Part 31; and it is further

ORDERED that upon service of a copy hereof upon the Clerk of the Motion Support Office and the Clerk of the Special Trial Part, this matter shall be placed on the Trial calendar for Preferred Matters based on age; and it is further

ORDERED that the Clerk shall mark the motions (Seq. Nos. 3, 4) disposed in all court records.

This constitutes the decision and order of the Court.

Dated: May 27, 2022

Hon. s/Hon. Veronica G. Hummel/signed 05/27/2022

VERONICA G. HUMMEL, A.J.S.C.

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1. CHECK ONE..... ☐ CASE DISPOSED IN ITS ENTIRETY ☒ CASE STILL ACTIVE
2. MOTIONs are ☒ GRANTED ☐ DENIED ☐ GRANTED IN PART ☐ OTHER
.....
3. CHECK IF APPROPRIATE..... ☐ SETTLE ORDER ☐ SUBMIT ORDER ☐ SCHEDULE APPEARANCE
☐ FIDUCIARY APPOINTMENT ☐ REFEREE APPOINTMENT

TRANSFER TO STP PART