

Lara v Soto
2022 NY Slip Op 35090(U)
May 26, 2022
Supreme Court, Bronx County
Docket Number: Index No. 31264/2020E
Judge: Ben R. Barbato
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

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JOAQUIN LARA,

Plaintiff,

-against-

Index No.: 31264/2020E

ESTEVEN SOTO, SPRAY ENTERPRISE, LLC,
and RYDER TRUCK RENTAL, INC.,
Defendants.

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HON. BEN R. BARBATO:

Plaintiff JOAQUIN LARA moves for partial summary judgment in his favor on liability, as against two of the Defendants, ESTEVEN SOTO, and SPRAY ENTERPRISE, LLC, and for dismissal Defendants' affirmative defenses alleging on Plaintiff's culpable conduct, and failure to wear a seatbelt, and for related relief.

This is an action to recover damages for alleged personal injuries sustained by Plaintiff in LARA a motor vehicle accident, which occurred on or about August 29, 2018, at about 4:45 p.m., on Jerome Avenue, near its intersection with the Cross Bronx Expressway, in the Bronx, New York. The motor vehicle owned and operated by Plaintiff LARA came into contact with the motor vehicle operated by Defendant SOTO and leased to Defendant SPRAY ENTERPRISE, who was Plaintiff's employer. Defendant, RYDER TRUCK RENTAL, INC., was the owner/lessor of Defendants' vehicle. It is noted that Plaintiff does not seek summary judgment as against Defendant RYDER TRUCK RENTAL, INC., in the instant motion.¹

¹ Parenthetically, Defendants allege that RYDER would not be liable to Plaintiff for any alleged vicarious liability under VTL § 388, because RYDER engaged in the business of renting or leasing motor vehicles, within the meaning of 49 USCS § 30106, otherwise known as the "Graves Amendment".

On the motion, the submissions include the pleadings, the Police Accident Report, Plaintiff LARA's deposition transcript, and photographs.

Alleged Facts:

Plaintiff, LARA, describes Jerome Avenue as a two-way street with two lanes of travel in each direction. The intersection of Jerome Avenue and the entrance ramp of the Cross Bronx Expressway is controlled by a traffic light. The traffic light has a right-turn arrow, in addition to the green, yellow and red signals.

After turning onto Jerome Avenue, Plaintiff, who was wearing his seat belt, was driving about five to ten miles per hour. When he saw the traffic signal turn to red, he decreased his speed until he stopped.

Plaintiff alleges that his vehicle was stopped for fifteen to twenty seconds, with his right foot on the brake pedal, prior to the time of the impact. There were no vehicles stopped in front of LARA at the subject traffic light. The traffic light was red when LARA stopped his vehicle, and it remained red up until the time when his vehicle was struck by the Defendants' vehicle. There was only one impact; and as a result of thereof, LARA's vehicle was pushed forward. After the accident, LARA exited vehicle and observed damage to the rear of his vehicle, on the left side of the rear bumper of his minivan. (Plaintiff LARA's deposition, dated July 13, 2021).

In the Police Accident Report, the accident is described as follows:

"AT TPO, DRIVER OF VEHICLE 1 [SOTO] STATES DRIVER 2 [LARA] STOPPED SHORT WHICH RESULTED IN THE COLLISION. DRIVER 2 [LARA] STATES HE WAS WAITING AT THE RED LIGHT WHEN DRIVER 1 [SOTO] REAR ENDED HIM. DRIVER OF VEHICLE 2 [LARA] HAS COMPLAINT OF PAIN TO THE NECK

AND LEFT SHOULDER, CONSCIOUS AT ALL TIMES. DRIVER OF VEHICLE 2 [LARA] RMA ON SCENE".

Applicable Law/Analysis:

Vehicle and Traffic Law § 1129(a) "Following too closely", provides that: "The 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 vehicles and the traffic upon and the condition of the highway."

A "driver is expected to maintain enough distance between himself and cars ahead of him so as to avoid collisions with stopped vehicles, taking into account weather and road conditions" (*Matos v Sanchez*, 147 AD3d 585, 586 [1st Dept 2017]).

"Plaintiff established her entitlement to judgment as a matter of law by submitting evidence that her vehicle was stopped at a red light when it was rear-ended by defendants' vehicle" (*Vasquez v Chimborazo*, 155 AD3d 432, 433 [1st Dept 2017]; see *Rodriguez v Garcia*, 154 AD3d 581 [1st Dept 2017]; see *Castaneda v DO&CO NY Catering, Inc.*, 144 AD3d 407 [1st Dept 2016]).

" "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" (*Matos v Sanchez*, 147 AD3d 585, 586, 47 NYS3d 307 [1st Dept 2017]). Here, defendant driver's assertion that plaintiffs' vehicle stopped abruptly does not explain why defendant driver failed to maintain a safe distance, and is insufficient to constitute a nonnegligent explanation" (*Urena v GVC Ltd.*, 160 AD3d 467, 467 [1st Dept 2018]).

Accordingly, Plaintiff LARA made a *prima facie* showing of his entitlement to partial summary judgment in his favor, as to the liability of Defendants, ESTEVEN SOTO and SPRAY ENTERPRISE, by the testimony that that said Defendants' vehicle rear-ended LARA's vehicle while LARA's vehicle was stopped at a red traffic light. In this regard, an "innocent ... driver exists in a case where the ... driver did not contribute to the happening of the accident in any way. A typical example is the case at bar where ... [the] driver, while stopped, was rear-ended by the following driver" [emphasis added] (*Oluwatayo v Dulinayan*, 142 AD3d 113, 119 [1st Dept 2016]).

Thus, the burden shifted to said Defendants, ESTEVEN SOTO and SPRAY ENTERPRISE, to advance a non-negligent explanation for the accident. Herein, however, Defendant SOTO, the person having knowledge of the relevant facts concerning the circumstances surrounding the happening of the accident, has not submitted his own affidavit or sworn testimony; and, in his Counsel's Affirmation, there is merely a recitation of general principals; and, thus, said Defendants have not made the requisite showing.

It is well-established that where the submission on the part of the party opposing a summary judgment motion "consisted only of the bare affirmation of [his] ... attorney who demonstrated no personal knowledge of the manner in which the accident occurred [, s]uch an affirmation by counsel is without evidentiary value and thus unavailing" (*Zuckerman v New York*, 49 NY2d 557, 563 [1980]). In *Zuckerman*, as here, the opponent of the motion proffered no affidavit made by a party or eyewitness having knowledge of the relevant facts. There was

no explanation for the failure to submit affidavits. (*Zuckerman v New York*, 49 NY2d at 563).

A motion for summary judgment on liability was properly granted, where, as here, in “opposition to plaintiff's prima facie showing, defendants failed to submit any evidence to raise a triable issue of fact, and instead relied solely upon ... the arguments of counsel ... [, who] claimed no personal knowledge of the accident, his affirmation has no probative value” (*Thompson v Pizzaro*, 155 AD3d 423, 423 [1st Dept 2017]). In *Thompson*, the Court also held that: “Plaintiff's motion was not premature. Depositions are unnecessary, since defendants have personal knowledge of the facts, yet “failed to meet their obligation of laying bare their proof and presenting evidence sufficient to raise a triable issue of fact” ” (*Thompson v Pizzaro*, 155 AD3d at 423).

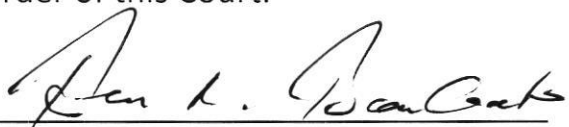
Conclusion:

Plaintiff's motion seeking partial summary judgment on issue of the liability, as against Defendants, ESTEVEN SOTO and SPRAY ENTERPRISE, is granted, to the extent that said Defendants are found liable, and Defendant SOTOS's negligence was a substantial factor in causing the accident. Also, Defendants' affirmative defenses alleging Plaintiff's culpable conduct, and failure to wear a seatbelt, are dismissed.

However, this Court makes no determination as to other issues herein, including whether Plaintiff's alleged injuries were proximately caused by the negligence of Defendants; and whether Plaintiff sustained a “serious injury” within the meaning of the Insurance Law.

This constitutes the decision and order of this Court.

Dated: MAY 26 2022, 2022



HON. BEN R. BARBATO, J.S.C.