

Vorbe-Matos v Figueroa

2023 NY Slip Op 32373(U)

July 10, 2023

Supreme Court, New York County

Docket Number: Index No. 151009/2021

Judge: Denise M. Dominguez

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. DENISE M DOMINGUEZ PART 21

Justice

-----X

VORBE-MATOS, HENRY
Plaintiff

INDEX NO. 151009/2021

MOTION DATE

MOTION SEQ. NO. 003

- v -

FIGUEROA, JOSE, MTA BUS COMPANY
Defendant

DECISION AND ORDER ON MOTION

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 58, 59, 60, 61, 62

were read on this motion to/for JUDGMENT - SUMMARY

For the reasons that follow and upon hearing oral arguments, Plaintiff's motion is denied.

Background

In this negligence action for personal injury and property damage, Plaintiff-driver, alleges that on April 18, 2020, he sustained injuries and damage to his vehicle as a result of a rear-end collision with Defendant's bus operated by Defendant-driver, Figueroa.

Pre-note of issue, Plaintiff moved for summary judgment on the issue of liability. By Order (J. Adams) dated July 27, 2021, the motion was denied with leave to re-file upon the completion of discovery, finding that Plaintiff had not established a prima facie showing that his's vehicle was stopped or stopping such that negligence from the vehicle behind him could be presumed.

Now, post note of issue, Plaintiff moves again, pursuant to CPLR 3212 for summary judgment on the issue of liability and for dismissal of Defendant's affirmative defenses of comparative negligence, contributory negligence, and culpable conduct. Plaintiff alleges that his vehicle and Defendants' bus were driving in the same direction when Plaintiff was slowing down to make a turn and Defendants' vehicle struck from behind. Plaintiff therefore argues that based on

Defendants' unexcused rear-end collision, Defendants' negligence is uncontestable. Defendants again oppose.

Discussion

A party moving for summary judgment has the high and unshifting burden of establishing entitlement to judgment as a matter of law with admissible evidence that dispels material questions of fact for a trial (CPLR 3212 [a]; *Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986]). Only when the movant satisfies this burden will the opposing papers be considered (*Alvarez*, 68 NY2d 320).

In automobile accidents, when a rear-end collision is established, negligence on the part of the rear driver is presumed (*see e.g. Service v McCoy*, 131 AD3d 1038 [2nd Dept 2015]; *see also Williams v. Kadri*, 112 AD3d 442 [1st Dept 2013]; *Matos v. Sanchez*, 147 AD3d 585 [1st Dept 2017]; *Urena v. GVC Ltd.*, 160 AD3d 467 [1st Dept 2018]). The presumption is based upon prudent driving and maintaining a safe distance (*see VTL §1129; id.*). Since a prudent driver is expected to maintain a reasonable safe rate of speed, control of his/or her vehicle, not follow another vehicle more closely than is reasonable prudent, and thus maintain enough distance between his or her car and the car ahead as to avoid a collision (*see id.*).

Similarly, it is also well settled law that a rear-end collision with a front vehicle that is stopped or stopping is presumed negligence on the part of the rear driver (*see Kalair v Fajerman*, 202 AD3d 625 [1st Dept 2022]; *Williams*, 112 AD3d 442; *Matos*, 147 AD3d 585; *Urena*, 160 AD3d 467; *Androvic v Metropolitan Transp. Auth.*, 95 AD3d 610 [1st Dept 2012]; *Johnson v Phillips*, 261 AD2d 269, 271 [1st Dept 1999]).

Thus, when a party moving for summary judgment specifically invokes the stopped or stopping-rear-end collision presumption, it is their burden to establish as a matter of law, that their vehicle was stopped or coming to a stop and that a rear-end collision occurred (*see id.*). Once this

burden is met, a prima facie case of negligence is created against the rear vehicle driver, and it can only be rebutted with an adequate nonnegligent explanation for the accident (*id*).

Here, it is undisputed that Defendant's bus made contact with the rear of Plaintiff's vehicle. During the statutory hearing, Plaintiff testified that as a result of the accident there were dents and scratches from the middle to the left side of the rear of his vehicle. During Plaintiff's deposition, he testified that as result of the accident some of the paint came off his rear bumper. During the bus driver's deposition, he described the contact with the rear of Plaintiff's vehicle as a little tap with the left side of the bus's front bumper. Yet, these statements alone are insufficient to establish the stop/stopping rear-end collision presumption.

According to Plaintiff's Statement of Material Facts, at the time of the accident, Plaintiff was slowing down to turn. According to Defendants' Statements of Material Facts, Defendants dispute this fact and alleges that at the time of impact, Plaintiff did not slow down and without signally attempted to make a last-minute turn. In addition, during Plaintiff's statutory hearing and deposition, he testified that at the time of the collision, his vehicle was moving. During the statutory hearing Plaintiff was unable to remember the speed he was traveling at. However, months later during his deposition he recalled driving about 5 miles per hour, stated again that he was moving at the time of impact and that his foot was not on the brake pedal.

Plaintiff also testified that he took photographs of accident, yet none are submitted. At Plaintiff's statutory hearing he testified that the accident occurred on a dry day as he was driving on 91st Street intending to turn left on to 157th Avenue. In contract, during his deposition, Plaintiff testified that on the day of the accident the roadway was wet and not dry, that he was driving on 157th Street and not on 91st Street intending to turn left on to 91st Street. He also stated that the accident occurred before he reached the intersection at 91st Street and that his vehicle was turned towards 91st Street a "little bit" at the time of the impact.

Upon review this Court finds that the evidence submitted presents more than mere inconsistencies in Plaintiff's testimony and material questions of fact for a trial exist regarding whether Plaintiff was stopping or slowing down at the time of accident, the credibility of the parties, and where and how the accident happened (see e.g. *Rabayo v Ashaabdul*, 109 AD3d 892 [2nd Dept 2013]; *Cabrera v Rodriguez*, 72 AD3d 553 [1st Dept 2010]; *Matos*, 147 AD3d 585). Accordingly, Plaintiff has not met his burden (see *Cruz v. Lise*, 123 AD3d 514 [1st Dept 2014]; *Alvarez*).

Furthermore, even if this Court found that the rear-end collision presumption was met, the submitted evidence raises a nonnegligent explanation for the accident. Although Plaintiff alleges that he signaled, the bus driver testified that he maintained his distance of about 15 feet from Plaintiff's vehicle, that he was operating the bus properly at approximately 10-15 miles per hour, and that Plaintiff without signally attempted to make a last-minute turn. In addition, the passenger in Plaintiff's vehicle (Ramon Carreras Lorenzo) also testified that he didn't recall if Plaintiff signaled. Thus, raising the question whether Plaintiff contributed to the accident by failing to stop suddenly or slowing down without properly signaling to avoid the collision as required by Vehicle and Traffic Law § 1163 (VTL 1163; see e.g., *Power v. Hupart*, 260 AD2 458 [2nd Dept 1999]).

Accordingly, it is hereby, ORDERED that Plaintiff's motion for summary judgment on liability and dismissal of Defendants' affirmative defenses is denied; and it is further

ORDERED that Plaintiff shall serve a copy of this order with notice of entry upon the Clerk of the Court.

7/10/2023
DATE

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APPLICATION:
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DENISE M. DOMINGUEZ, J.S.C.

HON. DENISE M. DOMINGUEZ
NON-FINAL
J.S.C.

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