

Smith-Kotlarek v Berrios

2023 NY Slip Op 33582(U)

October 11, 2023

Supreme Court, New York County

Docket Number: Index No. 154365/2021

Judge: Leslie A. Stroth

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. LESLIE A. STROTH PART 12

Justice

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CHRISTIAAN SMITH-KOTLAREK,
Plaintiff,

- v -

MICHELE BERRIOS, LOGAN BUS CO., INC., LOGAN BUS
SERVICE, INC.

Defendant.

-----X

INDEX NO. 154365/2021
MOTION DATE 6/13/2023
MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 23

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

This motion for summary judgement arises out of an action for personal injuries sustained by plaintiff Christiaan Smith-Kotlarek (plaintiff) in connection with a rear-end collision. Plaintiff moves for partial summary judgement against defendants Michele Berrios, Logan Bus Co., Inc., and Logan Bus Service, Inc. (collectively, defendants) on the issue of liability pursuant to CPLR 3212.

I. Alleged Facts

On October 28, 2019, plaintiff allegedly sustained injuries while operating an automobile involved in a rear-end motor collision which occurred on Hillside Avenue at its intersection with 175th Street, County of Queens, City and State of New York. Defendants Logan Bus Co., Inc. and Logan Bus Service, Inc.¹ allegedly own the second vehicle involved in the collision. Defendant Michele Berrios, an employee of Logan Bus Co., Inc., drove the second vehicle at the time of the

¹ The relationship between these entities is unclear on the face of the motion papers, however, defendants neither provide additional clarity on their corporate structure nor seek to dismiss either entity from this action.

accident. Plaintiff was stopped at the time of the collision, which is uncontested by defendants. However, defendants allege that plaintiff stopped short, causing the accident.

II. Arguments

Plaintiff alleges that his vehicle was stopped at the time of the collision, and, therefore, he argues that he is entitled to partial summary judgment as defendants are liable for this rear-end collision as a matter of law. For the same reasons, plaintiff also moves to dismiss defendants' affirmative defenses as to plaintiff's culpability.

Defendants oppose this motion, arguing that plaintiff's motion is premature as party depositions have not yet been held and questions of fact remain as to defendants' liability. Although defendants concede that their bus struck plaintiff's vehicle from the rear, they maintain that the collision was caused by plaintiff's stopping short. Therefore, defendants maintain that their affirmative defenses relating to plaintiff's comparative fault should not be dismissed.

III. Analysis

It is well-established that the "function of summary judgment is issue finding, not issue determination." *Assaf v Ropog Cab Corp.*, 153 AD2d 520 (1st Dept 1989), quoting *Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404 (1957). As such, 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. *See Alvarez v Prospect Hospital*, 68 NY2d 320 (1986); *Winegrad v New York University Medical Center*, 64 NY2d 851 (1985). Therefore, the party opposing a motion for summary judgment is entitled to all favorable inferences that can be drawn from the evidence submitted. *See Dauman Displays, Inc. v Masturzo*, 168 AD2d 204 (1st Dept 1990), citing *Assaf v Ropog Cab Corp.*, 153 AD2d 520, 521 (1st Dept 1989).

A rear-end collision with a stopped or stopping vehicle establishes a prima facie case of negligence on the part of the operator of the moving vehicle that strikes a stopped or stopping vehicle from behind. *See Leal v Wolff*, 224 AD2d 392, 393 (2d Dept 1996); *Arias v Rosario*, 42 AD3d 551, 552 (2d Sept 2008). The First Department has squarely held that, in the case of a rear end collision with a stopped or stopping vehicle, "...[the] occupant of the front vehicle is entitled to summary judgment on liability unless the driver of the second vehicle provides a non-negligent explanation for the collision." *See Somers v Condlin*, 39 AD3d 289 (1st Dept 2007), citing *Johnson v Phillips*, 261 AD2d 269, 271 (2009).

In support of plaintiff's motion, plaintiff submits an affidavit in which he states that defendant Michele Berrios, operating a vehicle owned by defendants Logan Bus Co., Inc., and Logan Bus Service, Inc., struck his vehicle from the rear while he was sitting, stopped, and waiting for pedestrians to cross the street. *See* NYSCEF doc. no. 15. Plaintiff also attests that he did not contribute to the accident. *See id.* Plaintiff contends that Ms. Berrios' failure to remain alert while driving, failure to maintain control of her vehicle, failure to maintain a safe following distance, and failure to properly slow and completely stop her vehicle was the sole proximate cause of this collision as a matter of law.

Plaintiff argues that defendants have no non-negligent explanation for the rear-end collision and submits the relevant police accident report in further support of his position. *See* NYSCEF doc. no. 14. The officer's notes in the police accident report state that:

At T/P/O the driver of vehicle 1 states that she was waiting at the red light behind vehicle 2 facing W/B on hillside avenue about to make a left hand turn S/B onto 175 Street when she rear ended the driver of vehicle 2. The driver of vehicle 2 stated that he was waiting at the red light on Hillside Avenue facing W/B waiting to make a left hand turn S/B onto 175 Street when the driver of vehicle 1 rear ended him... *See* NYSCEF doc. no. 14.

As the First Department has ruled, defendants must, as a matter of law, proffer a non-negligent explanation to relieve themselves of liability in a rear-end collision case. Here,

defendants concede that they struck plaintiff's vehicle in the subject rear-end collision at issue. Yet, defendants argue they are not liable because plaintiff stopped short. Plaintiff relies on the affidavit of Michele Berrios, which reads, in its entirety: "I was driving he made a sudden stop and I hit the back of his car. Everyone is fine. Suffered no injuries." NYSCEF doc. no. 20.

Plaintiff establishes its prima facie entitlement to judgment as a matter of law on the issue of liability through plaintiff's sworn affidavit, as well as the police report. In turn, defendants fail to raise a triable issue of fact through admissible evidence. Although Ms. Berrios attests that plaintiff made a sudden stop, courts have consistently held that stopping short is not a sufficient non-negligent explanation for a rear-end collision. *Raymond Reyes v Jared M. Gropper, and Truetox Laboratories, LLC* 212 A.D3d 565 (1st Dept. 2023). See *Morales v. Consolidated Bus Tr., Inc.*, 167 AD3d 457, 458, 89 (1st Dept. 2018). Additionally, courts have repeatedly held that claiming the lead vehicle made a sudden stop, standing alone, is insufficient to rebut the presumption of negligence on the part of the rear driver, particularly when the defendant driver fails to explain why he or she did not maintain a safe following distance. *Errol Morgan v. Scott Browner*, 138 A.D.3d 560, 560 (1st Dept. 2016). Therefore, no triable issues of material fact exist which preclude summary judgment.

Additionally, Defendants' argument that plaintiff's motion is premature is unavailing. Defendants have offered nothing but "mere hope or speculation" that it will uncover evidence sufficient to defeat the instant motion through the discovery process. *Lopez v WS Distrib., Inc.*, 34 AD3d 759, 760 (2d Dept. 2006). Therefore, the lack of depositions alone is insufficient to defeat summary judgement in this case, especially given the substantial evidence submitted establishing the facts at issue, such as the police accident report, plaintiff's affidavit, and Ms. Berrios'

admission that she rear-ended plaintiff. Viewing the evidence in favor of the non-moving party, defendants have failed to raise a triable issue of fact to rebut plaintiff's prima facie case.

IV. Conclusion

Accordingly, it is hereby

ORDERED that the plaintiff's motion for partial summary judgement is granted and the complaint is dismissed on the issue of liability; and it is further

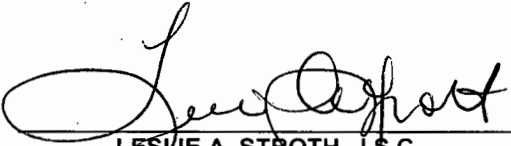
ORDERED that an assessment of damages against defendants Logan Bus Co., Inc., Logan Bus Service, Inc., and Michele Berrios is directed, and it is further

ORDERED that a copy of this order with notice of entry be served by the movant upon the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who is directed, upon the filing of a note of issue and a certificate of readiness and the payment of proper fees, if any, to place this action on the appropriate trial calendar for the assessment hereinabove directed; and it is further

ORDERED that such service upon the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/suptmanh).

This constitutes the order and decision of the Court.

10/11/2023
DATE


LESLIE A. STROTH, J.S.C.

CHECK ONE: CASE DISPOSED DENIED NON-FINAL DISPOSITION

APPLICATION: GRANTED GRANTED IN PART OTHER

CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER FIDUCIARY APPOINTMENT REFERENCE

INCLUDES TRANSFER/REASSIGN