

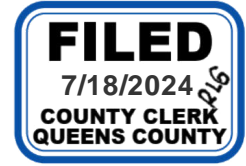
Gill v City of New York
2024 NY Slip Op 35134(U)
July 18, 2024
Supreme Court, Queens County
Docket Number: Index No.707475/2021
Judge: Chereé A. Buggs
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Short Form Order

NEW YORK SUPREME COURT-QUEENS COUNTY

Present: **HONORABLE CHEREÉ A. BUGGS**
Justice

IAS PART 30



-----X
KELVIN GILL,

Index No.:707475/2021

Plaintiff,

Motion

Date: June 17, 2024

-against-

Motion Cal. No.: 9

THE CITY OF NEW YORK, NEW YORK CITY
POLICE DEPARTMENT and
ALI HASAN, in his personal and official capacity,

Motion Sequence No.: 1

Defendants.

-----X

The following e-file papers numbered 13-19 submitted and considered on this motion by Plaintiff Kelvin Gill (hereinafter "Plaintiff") seeking an Order granting plaintiff partial summary judgment against Defendants on the issue of liability, dismissing defendants' affirmative defenses alleging comparative negligence, contributory negligence and culpable conduct, setting this action down for a trial on the assessment of damages. The motion here is **granted**.

Papers
Numbered

Notice of Motion-Affidavits-Exhibits..... EF 13-17
Affirmation in Opposition-Affidavits-Exhibits..... EF 18-19

Procedural History

Plaintiff filed his summons and complaint on March 31, 2021 to recover damages for serious injuries which he alleged that he sustained in a motor vehicle accident which occurred on October 11, 2020 at the intersection of Jamaica Avenue and 221st Street, County of Queens, State of New York. Defendants appeared in the matter with the service of an Answer on May 28, 2021, and thereafter, Defendants served an Amended Answer on October 4, 2021.

Plaintiff claimed that defendants were 100 percent at fault for the accident and were negligent in the ownership, repair, maintenance, control and operation of their vehicle on the date of the accident, which they essentially denied in their amended answer. Plaintiff moves for summary judgment against Defendants on the issue of liability, dismissing defendants' affirmative defenses alleging comparative negligence, contributory negligence and culpable conduct, setting this action down for a trial on the assessment of damages. A Note of Issue has not been filed. In support of the motion, Plaintiff's documentary evidence included his affidavit dated May 21, 2024, and a copy of a police report.

Plaintiff claims in his sworn affidavit that at the time of the collision, he was in his seat belt and operating his 2011 Chevrolet sedan and proceeding westbound on Jamaica Avenue traveling the speed limit, within his lane of traffic when his vehicle was rear-ended by Defendants' vehicle when Defendants' vehicle made an improper lane change. He asserted that he did not contribute in any way to the causing the accident. He stated that the weather was clear at the time, that there was adequate lighting in the area.

LAW AND APPLICATION

Summary judgment is a drastic remedy which should only be employed when there is no doubt as to the absence of triable issues." (*See Murray v Community House Hous. Dev. Fund Co., Inc.*, 223 AD3d 675 [2d Dept 2024].) The burden is on the party moving for summary judgment to demonstrate a prima facie entitlement to judgment as a matter of law by submitting sufficient documentary evidence to demonstrate the absence of any material issue of fact. (*See Ferrante v Amer. Lung Assn.*, 90 NY2d 623 [1997]; *Ayotte v Gervasio*, 881 NY2d 1062 [1993].) On a motion for summary judgment facts must be viewed in the light most favorable to the non-moving party (*see Vega v Restani Constr. Corp.*, 18 NY3d 499 [2013]).

Vehicle and Traffic Law (VTL) § 1128 titled "Driving on roadways laned for traffic" states the following:

Whenever any roadway has been divided into two or more clearly marked lanes for traffic... (a) A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety.

VTL § 1129 titled "Following too closely" states the following in relevant part:

(a) 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.

VTL §1163 titled “Turning movements and required signals” states the following in relevant part:

(a) No person shall... turn a vehicle from a direct course or move right or left upon a roadway unless and until such movement can be made with reasonable safety. No person shall so turn any vehicle without giving an appropriate signal in the manner hereinafter provided.

VTL § 1180 titled “Basic rule and maximum limits” states the following in relevant part:

(a) No person shall drive a vehicle at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing.

It is well settled that the proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering admissible evidence to eliminate any material issues of fact from the case. (*Alvarez v Prospect Hospital*, 68 NY2d 320 [1986]; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851 [1985]). “A rear-end collision with a stopped or stopping vehicle creates a prima facie case of negligence with respect to the operator of the moving vehicle and imposes a duty on the operator of the moving vehicle to come forward with an adequate non-negligent explanation for the accident” (*See Shirman v Lawal*, 69 AD3d 838 [2d Dept 2010]; *see* VTL §1129[a]; *see also Balanta v Wu*, 220 AD3d 720 [2d Dept 2023]; *Smith v Seskin*, 49 AD3d 628 [2d Dept 2008].) “A trailing driver’s conduct in failing to leave reasonable distance creates the possibility that a sudden stop will be necessary” (*Cajas-Romero v Ward*, 106 AD3d 850 [2d Dept 2013]; *see also Tumminello v City of New York*, 148 AD3d 1084 [2d Dept 2017]; *Waide v Ari Fleet, LT*, 143 AD3d 975 [2d Dept 2016]). “To be entitled to summary judgment on the issue of a defendant’s liability, a plaintiff does not bear the burden of establishing the absence of his or her own comparative negligence” (*see Jordon v Chan*, 214 AD3d 774, 775 [2d Dept 2023] quoting *Maliakel v Morio*, 185 AD3d 1018, 1019 [2d Dept 2020]; *see also Rodriguez v City of New York*, 31 NY3d 312, 324-325 [2018]). The issue of Plaintiff’s comparative negligence may be determined by this Court on this motion (*see generally Maliakel v Morio*, 185 AD3d 1018, 1019 [2d Dept 2020]; *Martha A. Balladares et al. v City of New York et al.*, 177 AD3d 942, 943 [2d Dept 2019]; *E.B. v Gonzalez*, 208 AD3d 618 [2d Dept 2022].) A violation of the vehicle and traffic law constitutes negligence as a matter of law (*see Policart v Wheels LT*, 221 AD3d 920 [2d Dept 2023]).

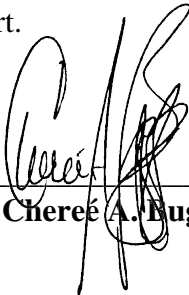
Plaintiff established his entitlement to judgment as a matter of law by demonstrating that at the time of the accident, he was driving his vehicle at the aforementioned intersection and wearing his seatbelt when Defendants’ vehicle came into contact with his vehicle in the rear after making an improper lane change. Defendants violated VTL sections 1128(a), 1129(a), 1163 and 1180 thereby causing the accident, and that she was free from any comparative negligence (*see Gil v Frisina*, 223 AD3d 878 [2d Dept 2024]).

In opposition, City stated that it was not taking a position on the issue of fault, as Plaintiff had alleged that Defendants' operation of its vehicle fell short of the applicable standard outlined in VTL § 1129(a); however, all other unresolved issues regarding injuries and causation must await a jury determination since Plaintiff had not demonstrated that he sustained a serious injury as defined under Insurance Law §5102(d) and the causal connection to the accident. Defendants have not raised an issue of fact on the issue of liability. Defendants' affirmative defenses related to Plaintiff's comparative fault, culpable conduct and contributory negligence shall be stricken.

Therefore, Plaintiff's motion is **granted**. Upon the completion of discovery on the issue of damages, filing a note of issue and compliance with all the rules of the Court, this action shall be placed on the trial calendar of the Court for a trial on the issue of damages.

This constitutes the decision and Order of the Court.

Dated: July 18, 2024



Hon. Chereé A. Buggs, JSC

