

Cameron v City of New York
2024 NY Slip Op 35453(U)
April 3, 2024
Supreme Court, Queens County
Docket Number: Index No. 720780/2022
Judge: Kevin J. Kerrigan
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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE KEVIN J. KERRIGAN
JusticePart 10-----X
William Cameron,Index
Number: 720780/2022Plaintiff,
- against -Motion
Date: 4/1/24The City of New York, New York City
Housing Authority, and Garfield Kendall,

Motion Seq. No.: 1&2

Defendant.
-----X

The following papers numbered E18-24, E27-42 read on this motion by Plaintiff for summary judgment and read on this motion by the Defendant, City of New York, for summary judgment.

Sequence 1
Papers
Numbered

Notice of Motion-Affirmation-Exhibits.....	E18-24
Affirmation in Opposition.....	E27-28
Affirmation in Reply.....	E29
Affirmation in Opposition-Exhibits.....	E40-42

Sequence 2
Papers
Numbered

Notice of Motion-Affirmation-Exhibits.....	E30-39
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Upon the foregoing papers it is ordered that the motion is decided as follows:

Motion by Plaintiff for summary judgment is granted. Motion by the Defendant, City of New York, for summary judgment is granted, there appearing no opposition.

Plaintiff allegedly sustained injuries stemming from a motor vehicle accident, which occurred on Astoria Boulevard at or near its intersection with 21st Street in Queens County on September 23, 2021. Plaintiff avers that at the forgoing time and place, he was the driver of a vehicle and stopped at a red light. While stopped,

he was rear ended by a vehicle owned by the New York City Housing Authority (NYCHA) and operated by Garfield Kendall.

Initially, the Housing Authority is a separate and distinct entity from the City (see Torres v. New York City Housing Authority, 261 A.D.2d 273 [1st Dept. 1999]). Here, NYCHA also admitted ownership of the subject vehicle that purportedly came into contact with Plaintiff's vehicle. Moreover, neither Plaintiff nor the remaining Defendants appeared on the motion by the City to oppose summary judgment. Accordingly, the City is entitled to summary judgment as a matter of law, as it is not a proper party.

In order to obtain summary judgment, movant must make a prima facie showing that he is entitled to said relief, by tendering sufficient proof to eliminate any material issues of fact (see Winegrad v. New York Univ. Med. Ctr., 64 N.Y.2d 851 [1985]; Zuckerman v. City of New York, 49 N.Y.2d 557 [1980]). Plaintiff has met his burden.

"A rear-end collision is sufficient to create a prima facie case of liability and imposes a duty of explanation with respect to the operator of the offending vehicle" (see Macauley v Elrac, Inc., 6 A.D.3d 584, 585 [2d Dept. 2004]). This general principle is most often expressed in cases where the lead vehicle was stopped or was in the process of slowing down to stop, and the courts re-phrase this general principle in terms of said specific fact pattern by stating that a rear-end collision with a stopped or stopping vehicle establishes a prima facie case of liability with respect to the driver of the rearmost vehicle, absent a non-negligent explanation for the collision (see Quinones v. Grace Indus., LLC, 219 A.D.3d 765 [2d Dept. 2023]; Harding v. Royal Waste Servs., Inc., 208 A.D.3d 762 [2d Dept. 2022]; Chepel v Meyers, 306 A.D.2d 235 [2d Dept. 2003]; Mohan v Puthumana, 302 A.D.2d 437 [2d Dept. 2003]).

In opposition, Defendants, NYCHA and Kendall, argue that there was a non-negligent explanation for the collision. Per the affidavit of Kendall, on the date of incident he was traveling eastbound on Astoria Boulevard when he reached the subject intersection, which was controlled by a traffic light. There was one vehicle in front of him. He came to a complete stop and waited for the light to turn green. When the light turned green, the vehicle in front of him began to move forward, and Kendall followed. The vehicle suddenly stopped and Kendall was unable to stop his vehicle in time to avoid contact.

The Court finds that Kendall's affidavit failed to provide a non-negligent explanation sufficient to defeat summary judgment. Typically, a sudden stop does not constitute a non-negligent explanation (see Ramirez v Konstanzer (61 A.D.3d 837 [2d Dept.

2009]; Jumandeo v Franks (56 A.D.3d 614 [2d Dept. 2008])). A driver has a duty to maintain a safe distance from the vehicle ahead (see Filippazzo v Santiago, 277 A.D.2d 419 [2d Dept. 2000])). A sudden stop may be considered where the sudden stop is coupled with other evidence of negligence, such as reckless driving or failing to signal (see Foti v Fleetwood Ride, Inc. (57 A.D.3d 724 [2d Dept. 2008])). In contrast, a sudden stop which is "foreseeable under the prevailing traffic conditions must be anticipated....since he or she is under a duty to maintain a safe distance between his or her vehicle and the vehicle ahead" (see Waide v. ARI Fleet, LT, 143 A.D.3d 975 [2d Dept. 2016])). Here, the alleged sudden stop was not coupled with any other evidence of negligence. In fact, it falls squarely within the type of situation which must be anticipated by drivers. A bare claim that a driver of the lead vehicle stopped suddenly, standing alone, is insufficient to rebut the presumption of negligence (see Ramirez, 61 A.D.3d at 837). Kendall had a duty to maintain a safe distance between his vehicle and Plaintiff's vehicle since stops are a foreseeable result of traffic conditions. Accordingly, Plaintiff is entitled to summary judgment as a matter of law.

Counsel for Defendants in opposition is correct, in that since the police report is not the sole basis in opposition, it may properly be used to defeat summary judgment here, notwithstanding the fact that it constitutes hearsay (see Garcia v. 122-130 E. 23rd St. LLC, 220 A.D.3d 463 [2d Dept. 2023])). However, even considering the police report in opposition, Kendall's statements contained within the report similarly fail to raise a non-negligent explanation for the accident. Indeed, the statements are substantially the same as those contained in Kendall's affidavit. Finally, the mere hope that the discovery process may yield evidence favorable to them is insufficient to warrant denial of summary judgment (see Goldes v City of New York, 19 AD 3d 448 [2d Dept. 2005])).

The branch of the motion to dismiss the affirmative defense of comparative fault is granted. A Plaintiff "is not required to establish his or her freedom from comparative negligence to be entitled summary judgment on the issue of [defendant's] liability" (see Joseph-Felix v. Hersh, 208 A.D.3d 571 [2d Dept. 2022])). However, if the Plaintiff seeks summary judgment, dismissing an affirmative defense, the issue of Plaintiff's comparative negligence may be decided (see id.). Here, since the alleged sudden stop was foreseeable under the prevailing traffic conditions and should have been anticipated by Kendall, there is no evidence that Plaintiff was comparatively at fault under the circumstances.

Accordingly, the Plaintiff's motion for summary judgment on the issue of liability is granted as against New York City Housing Authority and Garfield Kendall only. Plaintiff's affirmative

defense of comparative negligence is hereby stricken. The motion for summary judgment by the City of New York is granted.

Serve a copy of this order with notice of entry upon all parties without undue delay.

Dated: April 3, 2024



KEVIN J. KERRIGAN, J.S.C.

