

Paulsingh v Leon's Ambulette Inc.

2019 NY Slip Op 35215(U)

April 26, 2019

Supreme Court, Queens County

Docket Number: Index No. 707506/2018

Judge: Leslie J. Purificacion

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

Part 39

-----X
KEVIN PAULSINGH,

Index Number 707506/2018

Plaintiff,

DECISION/ORDER

--against--

Motion Sequence: 1

LEON'S AMBULETTE INC. AND JIMMY
SEENATH

Defendants.

-----X

The following papers numbered 1-10 read on plaintiff's motion seeking an order granting summary judgment on the issue of liability.

PAPERS
NUMBERED

N.M., Aff., Exhibits and Service.....	1-4
Opp. Affs., and Service.....	5-7
Reply.....	8-10

FILED
MAY 14 2019
COUNTY CLERK
QUEENS COUNTY

Upon the foregoing papers, the motion is decided as follows:

Plaintiff commenced this action to recover for personal injuries allegedly sustained as a result of a motor vehicle accident that occurred on December 30, 2017, at or near the intersection of Liberty Avenue and Brewer Blvd, Queens, New York. Plaintiff now moves for summary judgment on the issue of liability against the defendants.

In support of the motion plaintiff submits his duly sworn affidavit wherein he states that he was stopped at a red light when his vehicle was struck in the rear by a vehicle owned by defendant Leon's Ambulette Inc. and driven by defendant Jimmy

Seenath. He states he brought his car to a slow and gradual stop and was stopped for approximately ten seconds before impact. He also submits a certified police report that reflects that he stated he was stopped at a red light when the other driver rear ended his vehicle. The report further reflects that defendant stated that while attempting to stop at the red light his vehicle began to skid, causing him to collide with plaintiff's vehicle. The court notes the officer did not witness the accident.

In opposition, defendant submits an attorney affirmation stating that the motion is premature as depositions have not yet been held. Defendant also submits a sworn statement wherein he states that he was traveling behind a black mercedes benz (plaintiff's car) and that the cars "had a steady green light in our favor when suddenly the mercedes comes to an abrupt stop." He also states that "when I saw the abrupt stop, I immediately applied my brakes but I did not have enough time to avoid contact."

The proponent of a summary judgment motion must tender evidentiary proof in admissible form eliminating any material issues of fact from the case. If the proponent succeeds, the burden shifts to the party opposing the motion, who then must show the existence of material issues of fact by producing evidentiary proof in admissible form in support of his position (see Zuckerman v. City of New York, 49 N.Y.2d 557).

Plaintiff driver states that his vehicle was at a complete stop when it was struck from behind by the defendant's vehicle. The plaintiff, therefore, has satisfied his prima facie burden of entitlement to judgment as a matter of law on the issue of liability. Thus, the burden shifts to defendant to provide a non-negligent explanation for the collision.

A driver of a vehicle approaching another vehicle from the rear is required to maintain a reasonably safe distance and rate of speed under prevailing conditions to

avoid colliding with the other vehicle (see Plummer v. Nourddine, 82 A.D.3d 1069; Gubala v Gee, 302 A.D.2d 911). As such, it is well-settled that a rear-end collision with a stopped or stopping vehicle creates a prima facie case of liability as to the offending vehicle's driver and imposes a duty on that operator to provide a non-negligent explanation for the collision (see Katz v Masada II Car & Limo Service, Inc., 43 A.D.3d 876; Mead v Marino, 205 A.D.2d 669).

Defendant has failed to demonstrate that discovery would lead to facts essential to justify opposition to the motion that are exclusively within plaintiff's knowledge and control (see Rodriguez v Farrell, 115 AD3d 929. Defendant has also failed to provide a non-negligent explanation for the collision. "A claim that the driver of the lead vehicle made a sudden stop, standing alone, is insufficient to rebut the presumption." See, Ramirez v Konstanzer, 61 AD 3d 837 (2d Dept. 2009). The defendant's claim that plaintiff's vehicle abruptly stopped, without more, under the circumstances of this case, is insufficient to raise a triable issue of fact as to whether the plaintiff was negligent. See, Lundy v Llatin, 51 AD3d 877 (2d Dep't. 2008).

Defendant's written statement herein that the mercedes "came to a sudden stop and slightly maneuvered left as if they were going to make a left turn from the middle lane" is completely speculative and insufficient to raise any question about a negligent lane change. Indeed, defendant's counsel only argues that plaintiff's vehicle came to a short stop on a green light for no apparent reason. As such, the non -negligent explanation offered in opposition to the motion is that the mercedes came to an abrupt stop and defendant, according to his own statement, "did not have enough time to avoid contact." The court notes that defendant's friend was a passenger in his vehicle at the

time of the accident but that defendant has not submitted a statement from this friend in opposition to this motion.

There is no contention that plaintiff violated any traffic regulations and the facts are that defendant could not stop in time to avoid colliding with plaintiff after plaintiff stopped his car. As such, the evidence on the record before the court is that defendant failed to keep a safe distance and avoid colliding with the vehicle in front of him. Therefore, defendants have not set forth a non negligent explanation for the rear end collision with plaintiff's vehicle and have not raised a question of fact as to overcome the presumption of negligence and defeat the motion. See, Leguen v The City of New York, 2011 NY Slip Op 50367(U)(2011).

Accordingly, the plaintiff's motion for summary judgment on the issue of liability against the defendant is granted.

This is the decision and order of the court.

Date:

APR 26 2019

Hon. Leslie J. Purificacion, J.S.C.

FILED
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COUNTY CLERK
QUEENS COUNTY