

Bates v Tocci

2022 NY Slip Op 34740(U)

July 29, 2022

Supreme Court, Bronx County

Docket Number: Index No. 36368/2017E

Judge: Laura G. Douglas

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

Index No. 36368/2017

ANTHONY BATES,

Plaintiff,

-against-

DANIEL L. TOCCI and GALAXIE LABORATORY, INC.,

Defendants.

DECISION/ORDER

Present:
Hon. Laura G. Douglas
J.S.C.
Part 6

Recitation, as required by Rule 2219(a) of the C.P.L.R., of the papers considered in the review of this motion for summary judgment (seq. no. 3; NYSCEF seq. no. 1):

Papers

Numbered

Plaintiff’s Notice of Motion, Affirmation of Jhosandys Sears, Esq. dated January 25, 2019 in in Support of Motion, and Exhibits (“A” through “H”)..... 1

Affirmation of Christopher South, Esq. dated February 13, 2019 in Opposition to Motion and Exhibit (“A”)..... 2

Upon the foregoing papers and after due deliberation, the Decision/Order on this motion is as follows:

The plaintiff (“Bates”) moves for summary judgment on liability pursuant to CPLR § 3212. The motion is granted.

Bates seeks monetary damages for personal injuries allegedly sustained on June 9, 2017 following a motor vehicle accident on the Brooklyn Bridge in which the vehicle he was driving was struck in the rear while stopped by a vehicle driven by defendant Daniel L. Tocci (“Tocci”) and owned by defendant Galaxie Laboratory, Inc. Bates argues that such a rear-end collision warrants summary judgment in his favor on issues of liability. Tocci contends that issues of fact remain that require a trial to determine whether he has a non-negligent explanation for the accident and preclude summary disposition.

The defendants do not contest a finding that Bates has met his initial burden by demonstrating that Tocci’s vehicle rear-ended Bates’ vehicle while it was stopped in traffic, which presumes negligence on Tocci’s part (*see* South Aff., ¶ 3 and *Tutrani v. County of Suffolk*, 10 NY3d 906 [Ct App 2008]).

Therefore, the Court finds that Bates' deposition testimony submitted on this motion satisfies his initial burden of proof - that Tocci's negligence was the proximate cause of Bates' injuries - and the Court will only address whether Tocci has set forth sufficient evidence to rebut the presumption of negligence.

In pertinent part, Tocci testified at his deposition as follows:

Q: Now at any time before the impact between the front of your vehicle and the rear of the vehicle ahead of you did you see that vehicle come to a stop?

A: I saw his brake lights but only had about half a second to react. It was instantaneous.

Q: As you traveled behind the vehicle ahead of you, can you estimate what distance separated your front bumper from that vehicle's rear bumper?

A: I was trying to keep as much distance as I could, but since traffic was so thick I only had maybe a foot or two to spare. That might even be a high estimate.

Q: Immediately before the impact between the two vehicles, can you estimate your rate of speed?

A: It was probably about five miles per hour.

Q: Immediately before the accident, was your foot on the gas or the brake?

A: The brake.

Q: Now at the moment of impact, where was your foot? On the gas or brake?

A: The brake.

Q: Now immediately before the accident, how would you describe the pressure that you put on the brake? Light, medium, heavy, something else?

A: I figured it would be enough to stop the car. I would say medium.

Q: And at the moment of impact what would you estimate your rate of speed to be?

A: My rate of speed, it was decelerating, so like five miles per hour down to zero.

Tocci contends that this testimony presents issues of fact with respect to whether he acted unreasonably or in violation of a statutory duty under the circumstances leading to the accident. Tocci argues that he was well aware of the prevailing driving conditions and of the need to maintain an adequate distance from Bates' vehicle. He had his foot on the brake and drove at a very slow pace. Tocci insists that a jury must determine if such conduct was reasonable and non-negligent under the circumstances.

To obtain summary judgment, Bates must demonstrate that there are no material issues of fact in

dispute and that he is entitled to judgment as a matter of law under these undisputed facts (*see Winegrad v. New York University Medical Center*, 64 NY2d 851 [Ct App 1985] and *Flores v. City of New York*, 29 AD3d 356 [1st Dept 2006]). The moving party's "[f]ailure to make [a] prima facie showing [of entitlement to summary judgment] requires a denial of the motion, regardless of the sufficiency of the opposing papers" (*Vega v Restani Constr. Corporation.*, 18 NY3d 499, 503 [Ct App 2012]). To defeat such a showing, the defendants must present facts in admissible form demonstrating that a genuine, triable issue(s) of fact exists which precludes summary judgment (*see Zuckerman v. City of New York*, 49 NY2d 557 [Ct App 1980] and *Flores v. City of New York*, 29 AD3d 356 [1st Dept 2006]). All reasonable inferences must be resolved in favor of the party opposing summary judgment and by the trier of fact (*see Thomas v. City of New York*, 173 AD3d 633 [1st Dept 2019]).

When the operator of a motor vehicle strikes a stopped vehicle ahead of his in the rear, the operator is presumed to have been negligent and summary judgment on liability in favor of the operator of the stopped vehicle is appropriate (*see Johnson v. Phillips*, 261 AD2d 269 [1st Dept 1999]). However, not all such accidents warrant summary disposition. The trailing driver can defeat summary judgment by demonstrating a non-negligent explanation for the collision (*see Galante v. BMW Financial Services North America, Inc.*, 223 AD2d 421 [1st Dept 1996]).

Here, Tocci has failed to demonstrate a non-negligent explanation for striking Bates' stopped vehicle in heavy traffic. A non-negligent explanation could include unexpected brake failure (*see Schuster v. Amboy Bus Company*, 267 AD2d 448 [2nd Dept 1999]) or a sudden lane change followed by an abrupt stop (*see Hernandez v. Advance Transit Company, Inc.*, 101 AD3d 483 [1st Dept 2012]). A claim that Bates' vehicle came to a sudden stop does not alone rebut the presumption of Tocci's negligence (*see Giap v. Pham*, 159 AD3d 484 [1st Dept 2018]). Tocci was required to maintain a reasonably safe distance and rate of speed under the existing conditions to avoiding striking Bates' vehicle (*see VTL § 1129(a)* and *Renteria v. Simakov*, 109 AD3d 749 [1st Dept 2013]). Vehicle stops which are foreseeable under the prevailing traffic conditions must be anticipated (*see Newman v. Apollo Tech Iron Work Corporation*, 188 AD3d 902 [2nd Dept 2020]). Tocci's admission that traffic was heavy charged him with the expectation that Bates' vehicle would likely come to several quick stops. Tocci was not facing free-flowing traffic conditions where he could reasonably anticipate that travel would continue unimpeded (*see Tutrani v. County of Suffolk*, 10 NY3d 906 [Ct App 2008] and *Baez-Pena v. MM Truck and Body Repair, Inc.*, 151 AD3d 473 [1st Dept 2017]). Tocci's failure to timely anticipate

the stopping of Bates' vehicle breached his duty, as shown by the fact that the collision was not avoided even when he applied the brakes (*see Xia v. Saft*, 177 AD3d 823 [2nd Dept 2019]) (rear-end collision in "stop-and-go" traffic warrants summary judgment) and *Newman v. Apollo Tech Iron Work Corporation*, 188 AD3d 902 [2nd Dept 2020]) (rear-end collision in heavy traffic after defendant's vehicle had come to a stop one to two feet behind plaintiff's stopped vehicle does not raise a triable issue of fact)).

Accordingly, it is hereby

ORDERED that the plaintiff have summary judgment on issues of the defendants' liability and comparative fault; and it is further

ORDERED that the defendants' first affirmative defense as asserted in their Answer dated February 22, 2018 is dismissed.

The foregoing constitutes the Decision/Order of this Court.

DATED: July 29, 2022
Bronx, New York



HON. LAURA G. DOUGLAS
J.S.C.