

Granata v Pierce

2011 NY Slip Op 33190(U)

November 29, 2011

Sup Ct, Suffolk County

Docket Number: 2873/2010

Judge: Joseph Farneti

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SHORT FORM ORDER

INDEX NO. 2873/2010

SUPREME COURT - STATE OF NEW YORK
I.A.S. TERM, PART 37 - SUFFOLK COUNTY

PRESENT:

HON. JOSEPH FARNETI
 Acting Justice Supreme Court

 ALEXA GRANATA and LARISSA CAMPANA,

Plaintiffs,

-against-

ABBY PIERCE,

Defendant.

ORIG. RETURN DATE: AUGUST 31, 2011
 FINAL SUBMISSION DATE: SEPTEMBER 8, 2011
 MTN. SEQ. #: 003
 MOTION: MG

ORIG. RETURN DATE: AUGUST 31, 2011
 FINAL SUBMISSION DATE: SEPTEMBER 15, 2010
 MTN. SEQ. #: 004
 MOTION: MG

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Upon the following papers numbered 1 to 8 read on these motions _____
TO RENEW AND FOR SUMMARY JUDGMENT

Notice of Motion and supporting papers 1-3 ; Affirmation in Opposition 4 ; Replying Affirmation 5 ; Notice of Motion and supporting papers 6-8 ; it is,

ORDERED that this motion (seq. #003) by plaintiffs for an Order granting leave to renew their prior motion for summary judgment, and upon renewal, for an Order, pursuant to CPLR 3212, granting plaintiffs summary judgment on the issue of liability against defendant, ABBY PIERCE, is hereby **GRANTED** in its entirety for the reasons set forth hereinafter. The Court has

received an affirmation of defendant's counsel in opposition to this application; and it is further

ORDERED that this motion (seq. #004) by the plaintiff on the counterclaim, ALEXA GRANATA, for an Order, pursuant to CPLR 3212, granting plaintiff summary judgment dismissing defendant's counterclaim on the basis that plaintiffs' vehicle was stopped when it was struck in the rear by defendant's vehicle, is **GRANTED** for the reasons set forth hereinafter, without opposition.

This action was commenced on January 22, 2010, to recover damages for personal injuries sustained by plaintiffs, ALEXA GRANATA and LARISSA CAMPANA, in a motor vehicle accident that occurred on or about August 20, 2009, when the motor vehicle owned and operated by defendant, ABBY PIERCE, struck the rear of plaintiffs' vehicle which was stopped on Montauk Highway at or near its intersection with East Bay Drive, in West Islip, New York. Issue was joined by service of defendant's verified answer with counterclaim against plaintiff ALEXA GRANATA dated March 4, 2010.

Plaintiffs had filed a prior motion for summary judgment against defendant on the issue of liability, arguing that their vehicle was completely stopped at a red traffic light prior to being struck in the rear by defendant's vehicle. Plaintiff ALEXA GRANATA had also submitted a separate motion for summary judgment seeking dismissal of defendant's counterclaim against her based upon the same arguments. In opposition to those motions, defendant averred that for no apparent reason, plaintiffs' vehicle made an unexpected sudden and/or short stop at a green traffic light.

By Order dated December 30, 2010, this Court denied both motions, holding that although plaintiffs established *prima facie* that they were entitled to judgment as a matter of law on the issue of liability, defendant established material issues of fact which require a trial on liability (*Alvarez v Prospect Hosp.*, 68 NY2d 320, *supra*). The Court found that defendant's assertion that plaintiffs' vehicle made an unexpected, sudden stop at a green traffic light contradicted plaintiffs' contention and, if believed, provided a non-negligent explanation for the rear-end collision.

Plaintiffs have now renewed their application for summary judgment, informing the Court that the depositions of the parties have been conducted.

Plaintiffs argue that based upon the deposition testimony of defendant, summary judgment against defendant on the issue of liability is now warranted. Specifically, plaintiffs indicate that defendant testified at her deposition that she observed Montauk Highway as being “full of cars,” and that traffic was stop-and-go prior to the accident. Defendant further testified that “everybody started stopping fast, and I couldn’t stop fast enough,” despite the fact that she saw the three or four cars ahead of her braking. Moreover, defendant testified that plaintiffs’ vehicle was not going fast, no more than twenty miles per hour, when it began to brake, but that defendant was unable to stop before colliding with plaintiffs’ vehicle. Defendant testified that she was operating her vehicle at a speed of twenty to thirty miles per hour notwithstanding the heavy traffic. Plaintiffs argue that even if traffic did come to an abrupt halt, plaintiffs were able to stop their vehicle before striking the vehicle immediately in front of their vehicle. Therefore, plaintiffs argue that, based upon her own testimony, defendant has failed to offer a non-negligent explanation for the rear-end collision.

A motion for leave to renew must be based on new or additional facts “not offered on the prior motion that would change the prior determination” and “shall contain a reasonable justification for the failure to present such facts on the prior motion” (CPLR 2221 [e] [2], [3]; see *Ramirez v Khan*, 60 AD3d 748 [2009]; *Lardo v Rivlab Transp. Corp.*, 46 AD3d 759 [2007]). Here, the Court finds that leave to renew is appropriate in light of the parties’ deposition testimony given subsequent to this Court’s Order of December 30, 2010.

On a motion for summary judgment the Court’s function is to determine whether issues of fact exist not to resolve issues of fact or to determine matters of credibility (see *Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395 [1957]; *Tunison v D.J. Stapleton, Inc.*, 43 AD3d 910 [2007]; *Kolivas v Kirchoff*, 14 AD3d 493 [2005]). Therefore, in determining the motion for summary judgment, the facts alleged by the nonmoving party and all inferences that may be drawn are to be accepted as true (see *Doize v Holiday Inn Ronkonkoma*, 6 AD3d 573 [2004]; *Roth v Barreto*, 289 AD2d 557 [2001]; *Mosheyev v Pilevsky*, 283 AD2d 469 [2001]). The failure of the moving party to make such a *prima facie* showing requires denial of the motion regardless of the insufficiency of the opposing papers (see *Dykeman v Heht*, 52 AD3d 767 [2008]; *Sheppard-Mobley v King*, 10 AD3d 70 [2004]; *Celardo v Bell*, 222 AD2d 547 [1995]). Once the movant’s burden is met, the burden shifts to the opposing party to establish the existence of a material issue of fact (see *Alvarez v Prospect Hosp.*, 68 NY2d 320

[1986]; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851 [1985]; *Zuckerman v New York*, 49 NYS2d 557 [1980]). However, mere allegations, unsubstantiated conclusions, expressions of hope or assertions are insufficient to defeat a motion for summary judgment (see *Zuckerman v City of New York*, *supra*; *Blake v Guardino*, 35 AD2d 1022 [1970]).

When the driver of an automobile approaches another vehicle from behind, it is the duty of the driver of the rear vehicle to maintain a reasonably safe rate of speed and control over her vehicle, to maintain a safe distance between her vehicle and the other vehicle, and to exercise reasonable care so as to avoid colliding with the other vehicle (see Vehicle and Traffic Law § 1129 [a]; *Klopchin v Masri*, 45 AD3d 737 [2007]; *Gaeta v Carter*, 6 AD3d 576 [2004]; *Chepel v Meyers*, 306 AD2d 235 [2003]). A rear-end collision creates a *prima facie* case of negligence on behalf of the operator of the rear vehicle, and imposes a duty on that operator to rebut the inference of negligence by providing a non-negligent explanation for the collision (see *Niyazov v Bradford*, 13 AD3d 501 [2004]; *Stalikas v United Material*, 306 AD2d 810 [2003], *aff'd* 100 NY2d 626 [2003]; *Ruzycki v Baker*, 301 AD2d 48 [2002]; *Niemiec v Jones*, 237 AD2d 267 [1997]). “A claim that the driver of the lead vehicle made a sudden stop, standing alone, is insufficient to rebut the presumption of negligence” (*Ayach v Ghazal*, 25 AD3d 742, 743 [2006] [internal quotation marks omitted]; see *Belitsis v Airborne Express Frgt. Corp.*, 306 AD2d 507 [2003]; *Dickie v Pei Xiang Shi*, 304 AD2d 786 [2003]).

As held in the Order of December 30, 2010, plaintiffs have established *prima facie* that they are entitled to judgment as a matter of law on the issue of liability. Upon renewal, the Court finds that defendant has failed to establish any material issues of fact which require a trial of the action on this issue (*Alvarez v Prospect Hosp.*, 68 NY2d 320, *supra*). Under the circumstances presented, defendant’s assertion that plaintiffs’ vehicle made an unexpected, sudden stop at a green traffic light does not provide a non-negligent explanation for the rear-end collision. On the prior application, there was no mention of the heavy, stop-and-go traffic; as such, the color of the traffic signal is not the paramount issue. Defendant testified that she was aware of the heavy, stop-and-go traffic, and thus should have anticipated that plaintiffs might be forced to stop suddenly (see *Staton v Ilic*, 69 AD3d 606 [2010]; *Jumandeo v Franks*, 56 AD3d 614 [2008]; *Greene v Sivret*, 43 AD3d 1328 [2007]; *Rainford v Han*, 18 AD3d 638 [2005]).

Therefore, for the reasons delineated hereinabove, plaintiffs' motion for leave to renew is **GRANTED**, and upon renewal, plaintiffs' motion for summary judgment against defendant on the issue of liability is **GRANTED**. For the same reasons, the motion by the plaintiff on the counterclaim, ALEXA GRANATA, for summary judgment dismissing defendant's counterclaim is **GRANTED**. Upon service of a copy of this Order with notice of entry upon defendant, the Calendar Clerk of the Court is directed place this action on the Calendar Control Part Calendar for the next available date for a trial on damages. Plaintiffs are reminded that a Note of Issue must be filed prior to trial.

The foregoing constitutes the decision and Order of the Court.

Dated: November 29, 2011



HON. JOSEPH FARNETI
Acting Justice Supreme Court

____ FINAL DISPOSITION

 X NON-FINAL DISPOSITION