Russo v Nash
2014 NY Slip Op 32801(U)
July 14, 2014
Sup Ct, Westchester County
Docket Number: 51136/2011
Judge: Charles D. Wood

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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BRIANNE RUSSO AND ANTHONY RUSSO,

Plaintiffs,

-against-

DECISION & ORDER
Index No.: 51136/2011
Sequence No. 1

RICHARD S. NASH AND HOYT TRANSPORTATION GROUP,

Defendants.

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WOOD, J.

The following documents numbered 1-16 were read in connection with plaintiffs' summary judgment motion:

Plaintiffs' Notice of Motion, Counsel's Affirmation, Plaintiff's Affidavit, Exhibits, Memorandum of Law.	1-11
Defendants' Affirmation in Opposition, Exhibits.	12-15
Plaintiff's Reply Affirmation.	16

This is a personal injury action resulting from a motor vehicle accident that took place on October 26, 2010, at approximately 12:00 noon, when a bus owned by defendant Hoyt Transportation Group (" defendant Hoyt"), and operated by defendant Richard S. Nash ("defendant Nash"), struck plaintiff, Brianne Russo's ("Plaintiff Brianne) vehicle, at the intersection of Alexander Avenue and Central Avenue, in the Town of Greenburgh, causing plaintiff Brianne to sustain injuries. Plaintiffs commenced this action by filing the summons and complaint with the Westchester County Clerk on May 12, 2011. Issue was joined by defendants on or about June 23, 2011, by service of their answer. Plaintiffs filed a note of issue and

certificate of readiness on January 24, 2014.

Plaintiff moves for summary judgment on the issue of liability, which is opposed by defendants. Upon the foregoing papers, the motion is decided as follows:

It is well settled that a proponent of a summary judgment motion must make a "prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact" (Alvarez v Prospect Hospital, 68 NY2d 320, 324 [1986]; see Orange County-Poughkeepsie Ltd. Partnership v Bonte, 37 AD3d 684, 686-687 [2d Dept 2007]; see also Rea v Gallagher, 31 AD3d 731 [2d Dept 2007]). Moreover, failure to make such a prima facie showing requires a denial of the motion, regardless of the sufficiency of the motion papers (Jakabovics v Rosenberg, 49 AD3d 695 [2d Dept 2008]; see also Menzel v Plotkin, 202 AD2d 558, 558-559 [2d Dept 1994]). Once the movant has met this threshold burden, the opposing party must present the existence of triable issues of fact (see Zuckerman v New York, 49 NY2d 557, 562 [1980]; see also Khan v Nelson, 68 AD3d 1062 [2d Dept 2009]). In deciding a motion for summary judgment, the court is required to view the evidence presented "in the light most favorable to the party opposing the motion and to draw every reasonable inference from the pleadings and the proof submitted by the parties in favor of the opponent to the motion" (Yelder v Walters, 64 AD3d 762, 767 [2d Dept 2009]; see Nicklas v Tedlen Realty Corp., 305 AD2d 385, 386 [2d Dept 2003]). Summary judgment is a drastic remedy and should not be granted where there is any doubt as to existence of a triable issue (Alvarez v. Prospect Hospital, 68 NY2d 320,324 [1986]).

Plaintiff's Motion for Summary Judgment

Generally, Vehicle and Traffic Law §1129(a) imposes a duty on all drivers to drive at a

safe speed and maintain a safe distance between vehicles, always compensating for any known adverse road conditions (Ortega v. City of New York, 721 NYS2d 790 [2d Dept 2000]). It is well settled that proof of a rear-end collision establishes a prima facie case of negligence on the part of the driver of the vehicle that strikes the forward vehicle and imposes a duty upon said offending vehicle to come forward with admissible proof to establish an adequate, non negligent explanation for a rear- end collision (Parise v. Meltzer, 204 AD2d 295 [2d Dept 1994]; Moran v. Singh, 10 A.D.3d 707, 708). In particular, a rear-end collision with a stopped vehicle creates a prima facie case of negligence on the part of the offending vehicle and imposes a duty of explanation on that operator (*see* Cerda v. Parsley, 709 NYS2d 585 [2d Dept 2000]). The sudden stop of a lead car is one of the non-negligent explanations of a rear-end collision, because the operator of that car has a duty to avoid stopping suddenly without properly signaling to avoid a collision "when there is opportunity to give such signal" (Vehicle and Traffic Law § 1163; *see id.;* Colonna v. Suarez, 278 A.D.2d 355, 718 N.Y.S.2d 618); Taveras v Amir, 24 AD3d 655, 656 [2d Dept 2005]). Moreover, under Vehicle and Traffic Law § 1163(a)(b)(d) it is incumbent upon a driver to turn on the signal when making a left turn, and the failure to do so has been found to be sufficient to preclude the granting of summary judgment to a plaintiff on an argument that a rear ending collision is negligence against the rearward operator (Klochpin v. Masri, 45 AD3d 737 [2d Dept 2006]). Another one of the several nonnegligent explanations for a rear end collision is a sudden stop of the lead vehicle (Chepel v. Meyers, 306 AD2d 235, 237 [2d Dept 2003]).

Here, plaintiffs argue that summary judgment must be granted to them on liability, because the evidence establishes that there was no negligence on the part of plaintiff Brianne, and

the sole proximate cause of this accident was the actions of defendants, in defendant Nash following too closely in violation of Vehicle and Traffic Law §1129, and in striking the rear of plaintiffs' vehicle while it was stopped. Plaintiff Brianne testified that, she had been stopped at the light for approximately 1 to 2 minutes prior to being struck. She continues, that at the time of the accident the light had just turned green when the impact occurred. To support their motion, plaintiffs point to the testimony of defendant Nash, who admits that his vehicle rear ended ("love tapped") plaintiffs' vehicle. Based upon the foregoing, plaintiffs made out a prima facie case.

In opposition, defendants have provided a non-negligent explanation for the collision, and have raised triable issues of fact. Defendants maintain that there is no dispute that defendant Nash's bus impacted the rear of plaintiff Brianne's vehicle. However, defendant Nash claims that plaintiff Brianne stopped her vehicle short, and caused his school bus to lightly make contact with the right rear of her bumper. Further, defendants raise the issues of fact as to whether plaintiff's operation of her vehicle caused or contributed to her accident; whether she stopped her vehicle short; whether plaintiff's vehicle was moving or stopped at the time of the accident; and whether defendant Russo was stopped at a traffic light prior to the accident. In support of defendants' position, Capital Services Bureau, Inc. was retained to conduct a site inspection of the accident location. According to Mr. DeVito, the intersection of North Central Avenue and Alexander Avenue is not controlled by a traffic light, (as plaintiffs have claimed).

Based upon the evidence submitted, the arguments presented, and the triable issues of fact raised, plaintiffs' motion for summary judgment as to defendants' liability is **DENIED**.

All matters not herein decided are denied. This constitutes the decision and order of the court.

ORDERED, that the parties are directed to appear on August 27th **, 2014, at** 9:15 **a.m, in courtroom 1600, the Settlement Conference Part of the Westchester County Courthouse.**

Dated: **July 14, 2014**
White Plains, New York

HON. CHARLES D. WOOD
Justice of the Supreme Court

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