Griffiths v Burgos
2015 NY Slip Op 31179(U)
June 4, 2015
Supreme Court, Bronx County
Docket Number: 308128/11
Judge: Sharon A.M. Aarons
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX Part 24

KATISHA GRIFFITHS,

Plaintiff,

-against-

PEDRO BURGOS, BRIGHTON CAR SERVICE, INC., MICHELLE GRIFFITHS and JENNIFER GRIFFITHS,

Defendants.

Index No. 308128/11
Present: Hon. Sharon A. M. Aarons

Recitation, as required by CPLR 2219(a), of the papers considered in the review of motion(s) and/or cross-motion(s), as indicated below:

Papers	**Numbered**
Notice of Motion and Affidavits Annexed	**1**
Answering Affidavits	**2**
Cross Motion	
Reply	

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

Plaintiff moves for summary judgment pursuant to CPLR 3212 against Defendants Pedro Burgos and Brighton Car Service, Inc. Defendants Pedro Burgos and Brighton Car Service, Inc., represented by the same counsel, file written opposition. Defendants Michelle Griffiths and Jennifer Griffiths do not appear on the motion. The motion is denied.

Plaintiff was allegedly injured on June 14, 2011, at approximately 6:40 PM, when the vehicle in which she was a passenger, driven by defendant Michelle Griffiths, was struck in the rear by a vehicle driven by defendant Burgos and owned by defendant Brighton Car Service.

In support of the motion, plaintiff submits a certified copy of an accident report; the pleadings and bill of particulars; and the sworn,[1] uncertified deposition testimony of the plaintiff.

[1] No objection is raised as to the submission of the uncertified deposition. *See Rosenblatt v. St. George Health & Racquetball Assoc., LLC,* 984 N.Y.S.2d 401, 2014 N.Y. App. Div.

The accident report reflects that the driver of vehicle #1, Michelle Griffiths, indicated that another vehicle pulled out in front of her, causing her to "stop abruptly...." On the other hand, plaintiff testified that a car reversed out of a private driveway, but did not enter into any moving lane of traffic, nor did it obstruct the vehicle in which plaintiff was traveling. The vehicle in which plaintiff was a passenger was allegedly slowing to 15 mile-per-hour to stop at a stop sign, when it was rear-ended by the Burgos vehicle.

In opposition, defendants argue that summary judgment must be denied as no affidavit from a party with knowledge was submitted.

The court's function on this motion for summary judgment is issue finding rather than issue determination. (*Sillman v. Twentieth Century Fox Film Corp.*, 3 N.Y.2d 395, 144 N.E.2d 387, 165 N.Y.S.2d 49 [1957]). Since summary judgment is a drastic remedy, it should not be granted where there is any doubt as to the existence of a triable issue. (*Rotuba Extruders v. Ceppos*, 46 N.Y.2d 223, 385 N.E.2d 1068, 413 N.Y.S.2d 141 [1978].) Thus, when the existence of an issue of fact is even arguable or debatable, summary judgment should be denied. (*Stone v. Goodson*, 8 N.Y.2d 8, 167 N.E.2d 328, 200 N.Y.S.2d 627 [1960]; *Sillman*, 3 N.Y.2d at 404.).

It is well established that, a rear-end collision creates a prima facie case of negligence of the part of the operator of offending vehicle and imposes a duty upon that operator to offer an explanation. (*Itingen v. Weinstein*, 260 A.D.2d 440, 688 N.Y.S.2d 582 [2d Dept. 1999]). A rear-end collision with a stopped vehicle creates a prima facie case of negligence against the operator of the following vehicle imposing a duty of explanation (see, *Tripp v. Gelco Corp.*, 260 A.D.2d 925,

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LEXIS 2854 [2d Dept. 2014] (failure to submit to the Supreme Court a certified copy of the plaintiff's deposition was an irregularity and, as no substantial right of a party was prejudiced, the court should have ignored the defect).

925-926, 688 N.Y.S.2d 829, 830 [3d Dept. 1999]). It is equally well established that, "A nonnegligent explanation for a collision is sufficient to overcome the inference of negligence" (*Riley v. County of Broome*, 256 A.D.2d 899, 681 N.Y.S.2d 851 [3d Dept. 1998].).

An inference of negligence which emanates from a rear end collision may be rebutted by a reasonable excuse such as "mechanical failure or a sudden stop of the vehicle ahead, or an unavoidable skidding on wet pavement." (*See, Baule v. Lanzzarini*, 222 A.D.2d 635, 636 [1st Dept. 1995]; *but see*, *Ng v. Reid*, 259 A.D.2d 601, 686 N.Y.S.2d 780 [2d Dept. 1999] [driver who was able to safely stop her own vehicle when vehicle in front of her stopped abruptly was not liable for injuries sustained by motorist who collided with rear end of driver's automobile]). However, the presumption can only be rebutted by evidentiary submissions; conclusory allegations or the hope that discovery may uncover evidence will not suffice (*Rainford v. Han*, 18 AD3d 638, 795 NYS2d 645 [2d Dept. 2005] [driver's conclusory allegation of sudden stopping was insufficient to rebut presumption]; *Pampris v. Egnasher*, 20 AD3d 746, 799 NYS2d 309 [3d Dept. 2005] [allegation that decedent did not have opportunity to question witnesses insufficient]).

The issue of comparative fault will be left for a jury to determine only where there is a triable issue of fact as to whether the frontmost driver also operated his or her vehicle in a negligent manner (Gaeta v. Carter, 6 A.D.3d 576, 775 N.Y.S.2d 86 [2d Dept. 2004]). However, " [v]ehicle stops which are foreseeable under the prevailing traffic conditions, even if sudden and frequent, must be anticipated by the driver who follows, since he or she is under a duty to maintain a safe distance between his or her car and the car ahead'" (*Volpe v Limoncelli*, 74 A.D.3d 795, 795-796, 902 N.Y.S.2d 152 [2d Dept. 2010], quoting *Shamah v Richmond County Ambulance Serv.*, 279 A.D.2d 564, 565, 719 N.Y.S.2d 287 [2d Dept. 2001]). An allegation that the defendant stopped suddenly

in the middle of an intersection at a yellow light was not a sufficient non-negligent explanation. (*Malone v. Morillo*, 6 A.D.3d 324, 775 N.Y.S.2d 312 [1st Dept. 2004] [plaintiff rear-ended defendant; plaintiff's complaint dismissed]); *Toulson v. Young Han Pae*, 6 A.D.3d 292, 774 N.Y.S.2d 706 [1st Dept. 2004] ["In view of defendant's admission that plaintiff's vehicle was stopped before he rear-ended it, his claim that she failed to timely activate her turn signal does not raise an issue of fact as to the cause of the collision."]).

Defendants' argument concerning the absence of an affidavit is without merit; summary judgment may be granted on the basis of deposition testimony. (*Blasso v. Parente*, 79 A.D.3d 923, 913 N.Y.S.2d 306 [2d Dept. 2010] [granting summary judgment in rear-end collision case based on deposition testimony]). Nevertheless, a police accident report containing a party's admission against interest is competent evidence on summary judgment. (*Scott v. Kass*, 48 A.D.3d 785, 851 N.Y.S.2d 649 [2d Dept. 2008][[police officer who prepared the report was acting within the scope of his duty in recording statement].) Here, the statement attributed to the driver of the lead vehicle in the police accident report, that she "stopped abruptly" due to a third vehicle emerging from a driveway, contradicts the plaintiff's deposition testimony, and thus raises issues of fact precluding summary judgment.

Accordingly, plaintiff's motion for summary judgment as to liability only against defendant is denied.

This constitutes the Decision and Order of the Court.

Dated: June 4, 2015

SHARON A. M. AARONS, J.S.C.