Owens v Mature
2015 NY Slip Op 31803(U)
September 16, 2015
Supreme Court, Queens County
Docket Number: 702843/2014
Judge: Robert J. McDonald
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SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK
CIVIL TERM - IAS PART 34 - QUEENS COUNTY
25-10 COURT SQUARE, LONG ISLAND CITY, N.Y. 11101

P R E S E N T : **HON. ROBERT J. MCDONALD**
Justice

- - - - - - - - - - - - - - - - - - - x

PANDORA N. OWENS, Plaintiff,

- against -

ROLANDO J. MATURE, Defendant.

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Index No.: 702843/2014
Motion Date: 8/28/15
Motion No.: 91
Motion Seq.: 1

The following papers numbered 1 to 7 read on this motion by plaintiff for an order pursuant to CPLR 3212, granting plaintiff partial summary judgment on the issue of liability and setting the matter down for a trial on damages:

	Papers Numbered
Notice of Motion-Affidavit-Exhibits	1 - 4
Affirmation in Opposition-Affidavit-Exhibits	5 - 7
Reply Affirmation	8

This is a personal injury action in which plaintiff seeks to recover damages for injuries she sustained as a result of a motor vehicle accident that occurred on October 12, 2013 on the westbound direction of the Brooklyn Queens Expressway (BQE) at or near its intersection with the Williamsburg Bridge in Kings County, New York. At the time of the accident, the vehicle in which plaintiff was a passenger in was allegedly stopped in traffic when it was hit in the rear by the vehicle owned and operated by defendant. Plaintiff alleges that as a result of the impact she sustained, inter alia, injuries to her cervical and lumbar spine and both shoulders.

Plaintiff commenced this action by filing a summons and verified complaint on April 25, 2014. Issue was joined on or about February 10, 2015. Plaintiff now moves, prior to

depositions, for an order pursuant to CPLR 3212(b), granting partial summary judgment on the issue of liability and setting the matter down for a trial on serious injury and damages only.

In support of the motion, plaintiff submits an affidavit from counsel; a copy of the pleadings; a copy of the police accident report (MV-104AN); and an affidavit of facts from plaintiff.

In her affidavit, dated June 17, 2015, plaintiff states that on the date of the accident, October 12, 2013, she was a passenger in a vehicle that was driving westbound on the BQE at or near its intersection with the Williamsburg Bridge. She states that her vehicle was stopped to yield for traffic when it was rear-ended by the vehicle owned and operated by defendant. She further states that the vehicle she was a passenger in was driving slowly due to traffic and that she did not engage in any conduct that contributed to the happening of this accident.

Defendant states in his affidavit, dated July 9, 2015, that on the date of the accident he was traveling westbound on the BQE when there was "suddenly a sun glare bouncing off another vehicle's mirror". He states that suddenly and without warning the vehicle that plaintiff was a passenger in came to a stop and he attempted to swerve his vehicle to the right, pressed on his breaks with heavy pressure, but was unable to bring his vehicle to a stop in time.

The police report, which is based upon the statements of the drivers states:

"Driver #1 states he was driving slowly in traffic when Vehicle #2 rear ended him. Driver #2 states he was distracted and he hit Vehicle #1 in the rear."

Plaintiff contends that defendant was negligent in the operation of his vehicle in striking plaintiff's vehicle in the rear. Plaintiff's counsel contends that the accident was caused solely by defendant's negligence in that his vehicle was traveling too closely in violation of VTL § 1129 and he failed to brake his vehicle in a timely and proper manner. Counsel contends that defendant's explanation that plaintiff came to a sudden and unanticipated stop in and of itself is insufficient to provide a non-negligent explanation for the collision and is in sufficient to raise a triable issue of fact (citing Rodriguez v Farrell, 115 AD3d 929 [2d Dept. 2014]; David v New York City Bd. Of Educ. 19 AD3d 639 [2d Dept. 2005]). Counsel contends, therefore, that plaintiff is entitled to partial summary judgment as to liability because defendant driver was solely responsible for causing the accident while plaintiff was free from culpable conduct.

In opposition, defendant's counsel states that although defendant struck plaintiff's vehicle in the rear, defendant's affidavit raises triable issues of fact. Specifically, counsel contends that defendant's affidavit stating that plaintiff's vehicle suddenly and without warning came to a stop raises a non-negligent explanation for the accident. Counsel claims that because the operator of plaintiff's vehicle also operated his vehicle in a negligent manner, the issue of comparative negligence is for the jury to determine. In addition, counsel contends that the motion is premature as depositions have yet to be held and facts essential to oppose the motion may exist, but cannot be stated without depositions.

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 or her position (see Zuckerman v City of New York, 49 NY2d 557[1980]).

"When the driver of an automobile approaches another automobile from the rear, he or she is bound to maintain a reasonably safe rate of speed and control over his or her vehicle, and to exercise reasonable care to avoid colliding with the other vehicle" (Macauley v ELRAC, Inc., 6 AD3d 584 [2d Dept. 2003]). It is well established law that a rear-end collision with a stopped or stopping vehicle creates a prima facie case of negligence on the part of the driver of the rearmost vehicle, requiring the operator of that vehicle to proffer an adequate, non-negligent explanation for the accident (see Parra v Hughes, 79 AD3d 1113 [2d Dept. 2010][the defendant's claim that the vehicle immediately in front of him made a sudden stop, standing alone, was insufficient, under the circumstances of this case, to rebut the presumption of negligence]; DeLouise v S.K.I. Wholesale Beer Corp., 75 AD3d 489 [2d Dept. 2010]; Volpe v Limoncelli, 74 AD3d 795 [2d Dept. 2010]; Klopchin v Masri, 45 AD3d 737 [2d Dept. 2007]; Hakakian v McCabe, 38 AD3d 493 [2d Dept. 2007]; Velazquez v Denton Limo, Inc., 7 AD3d 787 [2d Dept. 2004]).

Here, plaintiff states that the vehicle she was a passenger in was stopped in traffic on the BQE and was struck from behind by defendant's vehicle. Thus, the plaintiff satisfied her prima facie burden of establishing her entitlement to judgment as a matter of law on the issue of liability by demonstrating that her vehicle was stopped when it was struck in the rear by the vehicle operated by defendant (see Ramos v TC Paratransit, 96 AD3d 924 [2d Dept. 2012]; Napolitano v Galletta, 85 AD3d 881 [2d Dept. 2011]; Kastritsios v Marcello, 84 AD3d 1174 [2d Dept. 2011]).

Having made the requisite prima facie showing of entitlement to summary judgment, the burden then shifted to defendant to raise a triable issue of fact as to whether plaintiff or the operator of plaintiff's vehicle was also negligent, and if so, whether such negligence contributed to the happening of the accident (see Goemans v County of Suffolk, 57 AD3d 478 [2d Dept. 2007]).

This court finds that defendant failed to submit evidence as to any negligence on the part of plaintiff or the operator of plaintiff's vehicle or to provide a non-negligent explanation for the accident sufficient to raise a triable question of fact (see Lampkin v Chan, 68 AD3d 727 [2d Dept. 2009]; Gomez v Sammy's Transp., Inc., 19 AD3d 544 [2d Dept. 2005]). If the operator of the moving vehicle cannot come forward with evidence to rebut the inference of negligence, the occupants and owner of the stationary vehicle are entitled to summary judgment on the issue of liability (see Kimyagarov v. Nixon Taxi Corp., 45 AD3d 736 [2d Dept. 2007]). The evidence demonstrated that plaintiff, who was in a stopped vehicle that was operated in a nonnegligent manner, did not contribute to the happening of the accident (see Aikens-Hobson v Bruno, 97 ad 3d 709 [2d Dept. 2012]; Daramboukas v Samlidis, 84 AD3d 719 [2d Dept. 2011]; Franco v Breceus, 70 AD3d 767 [2d Dept. 2010]; Shirman v Lawal, 69 AD3d 838 [2d Dept. 2010]). Further, although defendant contends that the accident was the result of the plaintiff driver coming to a sudden and unexpected stop, this does not explain his failure to maintain a safe distance from the vehicle in front of him [see Shirman v Lawal, 69 AD3d 838 [2d Dept. 2010]; Lampkin v Chan,68 AD3d 727 [2d Dept. 2009]; Zdenek v Safety Consultants, Inc.,63 AD3d 918 [2d Dept. 2009]). Although the defendant claims that suddenly a sun glare prevented him from seeing the traffic in front of him, and then plaintiff's vehicle came to an abrupt stop, defendant did not provide any evidence regarding the traffic conditions at the time, that he maintained a reasonably safe speed and reasonable safe distance behind plaintiff's vehicle, and that he attempted to exercise reasonable care to avoid colliding with plaintiff's vehicle (see Hackney v Monge, 103 AD3d 844 [2d Dept. 2013]; Hearn v Manzolillo, 103 AD3d 689 [2d Dept. 2013]; Byrne v Calogero, 96 AD3d 704 [2d Dept. 2012]).

Defendant's contention that the motion for summary judgment is premature is without merit. Defendant failed to offer any evidentiary basis to suggest that discovery may lead to relevant evidence. The mere hope and speculation that evidence sufficient to defeat the motion might be uncovered during discovery is an insufficient basis upon which to deny the motion (see CPLR 3212[f]; Hanover Ins. Co. v Prakin,81 AD3d 778 [2d Dept. 2011]; Essex Ins. Co. v Michael Cunningham Carpentry, 74 AD3d 733 [2d Dept. 2010]; Peerless Ins. Co. v Micro Fibertek, Inc., 67 AD3d 978 [2d Dept. 2009]; Gross v Marc, 2 AD3d 681 [2d Dept. 2003])

Accordingly, this Court finds that in opposition to plaintiff's motion, defendant failed to submit evidence sufficient to raise a triable issue of fact (see Arias v Rosario, 52 AD3d 551 [2d Dept. 2008]; Smith v Seskin, 49 AD3d 628 [2d Dept.2008]; Campbell v City of Yonkers, 37 AD3d 750 [2d Dept. 2007]). As the evidence in the record demonstrates that defendant failed to provide a non-negligent explanation for the collision, and as no triable issues of fact have been put forth as to whether plaintiff or the operator of plaintiff's vehicle may have borne comparative fault for the causation of the accident, and based on the foregoing, it is hereby,

ORDERED, that the plaintiff's motion for partial summary judgment on the issue of liability is granted, and it is further,

ORDERED, that upon completion of discovery on the issue of damages, filing a note of issue, and compliance with all the rules of the Court, this action shall be placed on the trial calendar of the Court for a trial on serious injury and damages.

Dated: September 16, 2015
Long Island City, N.Y

ROBERT J. MCDONALD
J.S.C.