

Maman v Diane Transp. Inc.

2015 NY Slip Op 31880(U)

September 21, 2015

Supreme Court, Queens County

Docket Number: 704509/2014

Judge: Robert J. McDonald

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This opinion is uncorrected and not selected for official publication.

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

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DORIS MAMAN and DANIEL MAMAN,

Index No.: 704509/2014

Plaintiffs,

Motion Date: 9/2/15

- against -

Motion No.: 85

DIANE TRANSPORTATION INC. and FERNZ
GAPPAREV,

Motion Seq.: **FILED**

Defendants.

SEP 24 2015

**COUNTY CLERK
QUEENS COUNTY**

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The following papers numbered 1 to 6 read on this motion by plaintiffs for an order pursuant to CPLR 3212, granting plaintiffs partial summary judgment on the issue of liability and setting the matter down for a trial on damages:

	<u>Papers Numbered</u>
Notice of Motion-Affidavit-Exhibits.....	1 - 4
Affirmation in Opposition.....	5
Reply Affirmation.....	6

In this action for negligence, plaintiffs seek to recover damages for personal injuries allegedly sustained as a result of a motor vehicle accident that occurred on March 21, 2013, on Queens Boulevard at or near its intersection with 65th Avenue, Queens County, New York. Plaintiff Doris Maman alleges that she sustained injuries when her vehicle, which was stopped at a red light, was struck in the rear by the vehicle owned by defendant Diane Transportation Inc. and operated by defendant Fernz Gapparev. As a result of the accident she allegedly sustained serious physical injuries including, inter alia, injuries to her cervical spine and lumbar spine.

This action was commenced by the filing of a summons and complaint on June 27, 2014. Issue was joined by service of defendants' verified answer dated September 2, 2014. Plaintiffs now move, prior to the completion of discovery, 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 damages only.

In support of the motion, plaintiffs submit an affirmation from counsel; a copy of the pleadings; a copy of the police accident report (MV-104AN); and a copy of plaintiff's own affidavit. In her affidavit, plaintiff states that on May 21, 2013, she was stopped at the intersection of Queens Boulevard and 65th Avenue due to a red light for approximately 45 - 60 seconds, when suddenly and without warning, her vehicle was struck in the rear by defendants' vehicle. She states that as a result of the impact she sustained serious injuries.

Plaintiff contends that defendant driver was negligent in the operation of his vehicle in striking her vehicle in the rear. Plaintiff's counsel contends that the accident was caused solely by the negligence of defendant driver in that his vehicle was traveling too closely in violation of VTL § 1129(a), and that the driver failed to safely stop his vehicle prior to rear-ending plaintiff's vehicle. Counsel contends that the evidence indicates that plaintiff's vehicle was stopped at a red light when it was struck from behind by defendants' vehicle. Therefore, plaintiffs are entitled to partial summary judgment on the issue of liability because defendant driver did not stop his vehicle in time.

In opposition, defendants' counsel contends that plaintiffs' motion for summary judgment is premature as depositions have not yet been held. Secondly, counsel asserts that there is a non-negligent excuse for the accident.

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 Delgado v Bang, 120 AD3d 608 [2d Dept. 2014]; Kertesz v Jason Transp. Corp., 102 AD3d 658 [2d Dept. 2013]; Ramos v TC Paratransit, 96 AD3d 924 [2d Dept. 2012]; Pollard v Independent Beauty & Barber Supply Co., 94 AD3d 845 [2d Dept. 2012]; Klopchin v Masri, 45 AD3d 737 [2d Dept. 2007]).

Here, plaintiff provided an affidavit stating that her vehicle was stopped at a red light when it was struck from behind by defendants' vehicle. Thus, plaintiff satisfied her prima facie burden of establishing entitlement to summary judgment as a matter of law by demonstrating that her vehicle was stopped when it was struck in the rear by defendants' vehicle (see Volpe v Limoncelli, 74 AD3d 795 [2d Dept. 2010]; Vavoulis v Adler, 43 AD3d 1154 [2d Dept. 2007]; Levine v Taylor, 268 AD2d 566 [2d Dept. 2000]).

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

Here, there is no dispute that plaintiff's vehicle was struck in the rear by the defendants' vehicle (see Griffin v Pennoyer, 49 AD3d 341 [1st Dept. 2008]). This Court finds, therefore, that defendants who did not submit an affidavit in opposition to the motion, failed to provide evidence of a non-negligent explanation for the accident sufficient to raise a triable question of fact (see Bernier v Torres, 79 AD3d 776 [2d Dept. 2010]; Lampkin v Chan, 68 AD3d 727 [2d Dept. 2009]; Cavitch v Mateo, 58 AD3d 592 [2d Dept. 2009]; Garner v Chevalier Transp. Corp., 58 AD3d 802 [2d Dept. 2009]; Kimyagarov v Nixon Taxi Corp., 45 AD3d 736 [2d Dept. 2007]; Gomez v Sammy's Transp., Inc., 19 AD3d 544 [2d Dept. 2005] [the defendants failed to raise a triable issue of fact by only interposing an affirmation of their attorney who lacked knowledge of the facts]). Further, the lack of disclosure does not excuse the failure of the party with personal knowledge to submit an affidavit in opposition to the motion (see Rainford v Han, 18 AD3d 638 [2d Dept. 2005]; Niyazov v Bradford, 13 AD3d 501 [2d Dept. 2004]). Defendants' contention that plaintiffs' motion for summary judgment is premature is without merit. Defendants 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]; Medina v Rodriguez, 92 AD3d 850 [2d Dept. 2012]; 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]).

As the evidence in the record demonstrates that defendants failed to provide a non-negligent explanation for the accident, and as no triable issues of fact have been put forth as to whether plaintiff may have borne comparative fault for the causation of the accident, and based on the foregoing, it is hereby,

ORDERED, that plaintiffs' motion is granted, and plaintiffs shall have partial summary judgment on the issue of liability against defendants, and the Clerk of Court is authorized to enter judgment accordingly; 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 21, 2015
Long Island City, N.Y



ROBERT J. MCDONALD
J.S.C.

FILED
SEP 24 2015
COUNTY CLERK
QUEENS COUNTY