Pennacchio v Ryan
2015 NY Slip Op 32996(U)
October 5, 2015
Supreme Court, Westchester County
Docket Number: Index No. 71554/2014
Judge: Charles D. Wood
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To commence the statutory time period for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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MARIA R. PENNACCHIO,

Plaintiff,

-against-

71554/2014
Sequence No. 1

VERONICA H. RYAN,

Defendant.

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WOOD, J.

The following papers were read and considered in connection with plaintiff's motion for partial summary judgment on the issue of liability, which is opposed by defendant:

Plaintiff's Notice of Motion, Counsel's Affirmation, Affidavit, Exhibits.
Defendant's Counsel's Affirmation in Opposition, Exhibits.
Plaintiff's Counsel's Reply Affirmation.

This is an action for personal injuries arising out of an automobile accident that occurred on April 30, 2012 on Bloomingdale Road at the intersection of Westchester Mall Place, in White Plains. Plaintiff commenced this action by filing the summons and verified complaint on December 22, 2014, and amended complaint on December 31, 2014. Issue was joined by defendant by service of a verified answer.

Plaintiff now brings this motion for summary judgment, pursuant to CPLR 3212, granting plaintiff partial summary judgment on the issue of liability.

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]; Orange County-Poughkeepsie Ltd. Partnership v Bonte, 37 AD3d 684, 686-687 [2d Dept 2007]; 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 (Winegrad v New York University Medical Center, 64 NY2d 851, 853 [1986]; Jakabovics v Rosenberg, 49 AD3d 695 [2d Dept 2008]; 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 (Zuckerman v New York, 49 NY2d 557, 562 [1980]; 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]; 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).

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]). "When

a driver approaches another vehicle from the rear, he is bound to maintain a reasonably safe rate of speed and to maintain control of his vehicle and use reasonable care to avoid colliding with the other vehicle" (Young v City of New York, 113 AD2d 833, 834 [2d Dept 1985]). "A rear-end collision with a stopped or stopping vehicle establishes a prima facie case of negligence on the part of the operator of the rear vehicle, thereby requiring that operator to rebut the inference of negligence by providing a nonnegligent explanation for the collision" (Fernandez v Babylon Mun. Solid Waste, 117 AD3d 678 [2d Dept 2014]). In other words, 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 AD3d 707, 708 [2d Dept 2004]); Cerda v Parsley, 273 AD2d 339 [2d Dept 2000]). In addition, where a vehicle is lawfully stopped, there is a duty imposed on the operators of vehicles traveling behind it in the same direction to come to a timely halt (Carter v Castle Elec. Contr. Co., 26 AD 2d 83 [2d Dept 1966]). The operator of the moving vehicle is required to rebut the inference of negligence created by an unexplained rear-end collision because he or she is in the best position to explain whether the collision was due to a reasonable, non-negligent cause (Carter v Castle Elec. Contr. Co., at 85).

Further, if defendant cannot come forward with any evidence to rebut the inference of negligence, plaintiffs may properly be awarded judgment as a matter of law on the issue of liability (Lopez v Minot, 258 AD2d 564 [2d Dept 1999]).

According to plaintiff, her vehicle was slowing down at the subject intersection for a yellow light when suddenly and without warning defendant struck plaintiff's motor vehicle in the rear. Plaintiff offers the police report of the incident, which indicates that defendant hit plaintiff when she attempted to slow down at the intersection of Bloomingdale Road and Westchester Mall Place. Notably, there is no indication that the police officer actually witnessed the subject accident. Further, it is unclear how the police officer obtained this information or if defendant made an effort to dispute the accuracy of this statement in that police accident report (Buchinger v Jazz Leasing Corp., 95 AD3d 1053 [2d Dept 2012]).

Accordingly, plaintiff has established a prima facie case of negligence on the part of defendant, the operator of the rear vehicle, thereby requiring defendant to rebut the inference of negligence by providing a nonnegligent explanation for the collision.

Defendant asserts that plaintiff has attempted to frame the subject accident as a typical rear end accident. However, defendant offers in her affidavit that on the day of the accident, plaintiff was on the ramp at the intersection with Bloomingdale Road, having just traveled on Interstate 287. The accident occurred only after plaintiff made a right turn on red onto Bloomingdale Road immediately in front of defendant's vehicle, which was already traveling straight and established in the right lane of Bloomingdale Road. Defendant states that she had a right to assume that plaintiff would obey the traffic laws and bring her vehicle to a stop at the right light before making a right turn. Further, defendant explains that plaintiff's right turn on the red light was so abrupt that defendant did not have sufficient time or distance to bring her vehicle to a stop before contacting plaintiff's vehicle.

Vehicle &Traffic Law Section 1111(d)(2) provides that "Traffic facing a steady circular red signal may cautiously enter the intersection to make a right turn after stopping as required by paragraph one of this subdivision, except that right turning traffic is not required to stop when a steady right green arrow signal is shown at the same time. Such traffic shall yield the right-of-way to pedestrians within a marked or unmarked crosswalk at the intersection and to other traffic lawfully using the intersection" (Veh. & Traf. Law §1111).

The Second Department has held that where plaintiff's freedom from negligence is not established as a matter of law, summary judgment is properly denied (Abbott v Picture Cars East, 78 AD3d 869 [2d Dept 2010]).

Based upon the foregoing, the record contains two different versions of the accident. Plaintiff's conduct—allegedly improperly making the right turn on red, without regard to the proximity of defendant's vehicle, raise issues of fact with respect to plaintiff's culpability, and the culpability or non-culpability of defendant. The parties are not in agreement as to the events leading to the subject accident; and it is unclear as to what facts would be testified to as depositions have yet to be held in this matter. Thus, the determination of each party's negligence, and the respective apportionment of fault, are properly left to the jury.

Based upon the record, defendant provides a non-negligent explanation for the accident sufficient to raise a triable question of fact (Grimm v Bailey, 105 AD3d 703 [2d Dept 2013]).

NOW, therefore for the above stated reasons, it is hereby

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

ORDERED, that defendant shall serve a copy of this order with notice of entry upon the parties to this action within ten (10) days of entry, and file proof of service within five (5) days of service; and it is further

ORDERED, that the parties are directed to appear in the Preliminary Conference Part on October 26, 2015, at 9 30am in Room 811 of the Westchester County Courthouse, 111 Dr. Martin Luther King Jr. Blvd., White Plains, New York 10601.

All matters not herein decided are denied. This constitutes the Decision and Order of the court.

Dated: October 5, 2015
White Plains, New York

HON. CHARLES D. WOOD
Justice of the Supreme Court

TO: **VIA NYSCEF**

Bernstein & Bernstein
Attorneys for Plaintiff

Law Office of Kevin M. McGowen
Attorneys for Defendant