

**Scott v Estrella**

2016 NY Slip Op 30679(U)

March 17, 2016

Supreme Court, Bronx County

Docket Number: 307622/2012

Judge: Lucindo Suarez

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX: I.A.S. PART 19

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FAITHLYN SCOTT,

Plaintiff,

- against -

JOHNY R. ESTRELLA, WILLIAM SCHEER, ALEX  
SCHEER, TORRIENTI MITCHELL and MARIA D.  
DANTAS,

Defendants.  
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DECISION AND ORDER

Index No. 307622/2012

PRESENT: Hon. Lucindo Suarez

Upon the notice of motion dated January 26, 2016 of defendant Maria D. Dantas and the affirmation and exhibits submitted in support thereof; the affirmation in opposition dated February 2, 2016 of defendants William Scheer and Alex Scheer and the exhibit submitted therewith; plaintiff's affirmation in opposition dated February 9, 2016 and the exhibit submitted therewith; movant's affirmation in reply dated March 11, 2016 and the exhibit submitted therewith; the affirmation in opposition dated March 15, 2016 of Johny R. Estrella and the exhibit submitted therewith being untimely served and not considered; and due deliberation; the court finds:

In this action emanating from a series of rear-end motor vehicle accidents, defendant Maria D. Dantas ("Dantas"), the driver of the lead vehicle, moves for summary judgment on the ground that she bears no liability for the occurrence. Plaintiff and all other defendants oppose on the ground that Dantas' prior motion for summary judgment was denied by the undersigned, in a decision and order dated June 7, 2013, "without leave to renew at the close of discovery." Reading the decision as a whole, however, it is clear that, as one of the grounds stated in the

decision was that the parties' depositions had not yet been conducted, such was a typographical error, *see* CPLR 2001, 2002, and that it was intended that the motion be denied with leave to renew upon the completion of discovery; otherwise, the verbiage following the disposition of the motion – “denied” – would have been superfluous and illogical.

If the decision is to be read as the opposition urges, then defendants could have moved for summary judgment again at any time other than at the completion of discovery, which is nonsensical. Nothing in the original motion papers or the prior decision depicted any factors warranting the extraordinary and unusual result of denying a premature summary judgment motion and simultaneously foreclosing the possibility of summary relief in the future. As all counsel participating herein are experienced practitioners well-known to the court, none of whom chose to bring the error to the attention of the undersigned until now, their argument is puzzling. Where a discrepancy exists between the decision and the order, the decision controls. *See Briscuso v. Edison Parking Corp.*, 222 A.D.2d 328, 635 N.Y.S.2d 615 (1st Dep't 1995). Although the most appropriate avenue may be a motion to resettle the order to correct the error, *see Lindgren v. New York City Hous. Auth.*, 269 A.D.2d 299, 704 N.Y.S.2d 30 (1st Dep't 2000), because the court does not find the opposition's reading of the erroneous decision reasonable, the parties cannot have been unduly prejudiced by the error. *See Cohen v. Akabas & Cohen*, 79 A.D.3d 460, 917 N.Y.S.2d 117 (1st Dep't 2010).

Furthermore, while “successive fragmentary attacks upon a cause of action” are disfavored, *NYP Holdings, Inc. v. McClier Corp.*, 83 A.D.3d 426, 427, 921 N.Y.S.2d 35, 36 (1st Dep't 2011), significant discovery, including the depositions of the parties, has taken place since the first motion, changing the court's vantage point, *see Kobre v. United Jewish Appeal-Fedn. of Jewish Philanthropies of N.Y., Inc.*, 32 A.D.3d 218, 819 N.Y.S.2d 737 (1st Dep't), *appeal*

*denied*, 7 N.Y.3d 715, 859 N.E.2d 921, 826 N.Y.S.2d 181 (2006); *Fielding v. Environmental Resources Mgmt. Group*, 253 A.D.2d 713, 678 N.Y.S.2d 253 (1st Dep’t 1998). Even where there is no new evidence, the court may entertain a successive motion upon “other sufficient cause” to do so, which the court would do here. *Varsity Transit, Inc. v. Board of Educ.*, 300 A.D.2d 38, 39, 752 N.Y.S.2d 603, 604 (1st Dep’t 2002), *citing Freeze Right Refrigeration & Air Conditioning Services, Inc. v. New York*, 101 A.D.2d 175, 475 N.Y.S.2d 383 (1st Dep’t 1984).

Turning to the merits of the motion, Dantas averred that she stopped at the intersection upon seeing the light turn yellow, remained stopped while the light was red, and had not yet resumed travel upon the light turning green when her vehicle was struck from behind. She testified that she was stopped for approximately one minute and that the light had been green for two seconds when her vehicle was struck. The other parties’ testimony was largely consistent.

“A rear-end collision with a stationary vehicle creates a *prima facie* case of negligence requiring a judgment in favor of the stationary vehicle unless defendant proffers a nonnegligent explanation for the failure to maintain a safe distance . . . A driver is expected to drive at a sufficiently safe speed and to maintain enough distance between himself and cars ahead of him so as to avoid collisions with stopped vehicles, taking into account weather and road conditions.” *LaMasa v. Bachman*, 56 A.D.3d 340, 340, 869 N.Y.S.2d 17, 18 (1st Dep’t 2008) (citations omitted). The happening of a rear-end collision is itself a *prima facie* case of negligence on the part of the rearmost driver in a chain confronted with a stopped or stopping vehicle. *See Cabrera v. Rodriguez*, 72 A.D.3d 553, 900 N.Y.S.2d 29 (1st Dep’t 2010).

The general rule regarding liability for rear-end accidents “has been applied when the front vehicle stops suddenly in slow-moving traffic; even if the sudden stop is repetitive; when the front vehicle, although in stop-and-go traffic, stopped while crossing an intersection; and

when the front car stopped after having changed lanes.” *Johnson v. Phillips*, 261 A.D.2d 269, 271, 690 N.Y.S.2d 545, 547 (1st Dep’t 1999) (citations omitted). This presumption of negligence has been applied where the vehicles have started to move from a stop at a traffic signal. *See e.g. Brown v. Smalls*, 104 A.D.3d 459, 961 N.Y.S.2d 104 (1st Dep’t 2013); *Savarese v. Cerrachio*, 79 A.D.3d 725, 911 N.Y.S.2d 921 (2d Dep’t 2010). The sudden stop of the lead vehicle “is generally insufficient to rebut the presumption of non-negligence on the part of the lead vehicle,” *Woodley v. Ramirez*, 25 A.D.3d 451, 452, 810 N.Y.S.2d 125, 126-27 (1st Dep’t 2006) (citations omitted), and, without more, does not rebut the presumption of negligence, *see Cabrera, supra*.

No party denies that Dantas was stopped at the time of impact, *see Brown, supra*, and any argument that Dantas failed to move from her position upon the light turning green would not be a non-negligent explanation. *See Ramirez v. Konstanzer*, 61 A.D.3d 837, 837-38, 878 N.Y.S.2d 381, 382 (2d Dep’t 2009). Furthermore, any variant in the parties’ versions of the events does not raise a triable issue of material fact. *See Cajas-Romero v. Ward*, 106 A.D.3d 850, 965 N.Y.S.2d 559 (2d Dep’t 2013). The opposition has thus failed to rebut the presumption of the other defendants’ negligence. *See Dattilo v. Best Transp. Inc.*, 79 A.D.3d 432, 913 N.Y.S.2d 163 (1st Dep’t 2010).

Even were the court to consider the untimely opposition of defendant Johny R. Estrella, the only party who interposed a substantive, rather than procedural, argument, the essence of the argument is that Dantas lingered too long at the green light upon its change from red. Regardless of whether the lead vehicle stopped where it should not have or when such stop would have been unexpected, an excuse amounting to nothing more than the sudden stop of the lead vehicle is not a non-negligent explanation for the accident. *See Chowdhury v. Matos*, 118 A.D.3d 488, 987

N.Y.S.2d 132 (1st Dep't 2014); *Malone v. Morillo*, 6 A.D.3d 324, 775 N.Y.S.2d 312 (1st Dep't 2004). That the light was green when Dantas' vehicle was struck does not raise an issue of fact. *See Torres v. Kalmar*, 136 A.D.3d 457, 24 N.Y.S.3d 625 (1st Dep't 2016).

Accordingly, it is

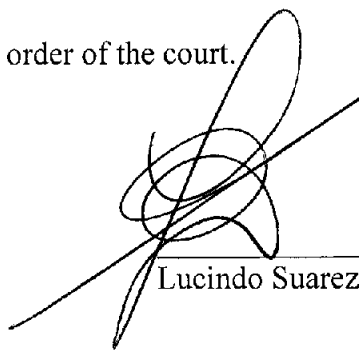
ORDERED, that the motion of defendant Maria D. Dantas for summary judgment is granted; and it is further

ORDERED, that the complaint against defendant Maria D. Dantas is dismissed; and it is further

ORDERED, that the Clerk of the Court shall enter judgment in favor of defendant Maria D. Dantas dismissing the complaint against her.

This constitutes the decision and order of the court.

Dated: March 17, 2016



Lucindo Suarez, J.S.C.