Garcia v McMahon's Farm, Inc.
2016 NY Slip Op 33177(U)
May 18, 2016
Supreme Court, Westchester County
Docket Number: Index No. 63334/2015
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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ALJER GARCIA,

Plaintiff,

-against-

DECISION & ORDER
Index No. 63334/2015
Sequence No. 1

MCMAHON'S FARM, INC. And PEOPLES WILLIS, JR.,

Defendants.

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WOOD, J.

The following papers were read and considered in connection with plaintiff's motion for partial summary judgment as to liability:

Plaintiff's Notice of Motion, Counsel's Affirmation, Exhibits.
Defendants' Counsel's Affirmation in Opposition.

This is an action for serious personal injuries allegedly sustained by plaintiff as a result of a motor vehicle accident which occurred on April 23, 2015 on the Major Deegan Expressway near East 230th street in the Bronx, where a vehicle operated by defendant struck plaintiff's vehicle in the rear while plaintiff was slowly moving in traffic. Plaintiff brings this motion for summary judgment on the issue of liability, claiming that there is no triable issue of fact. Defendants oppose the motion.

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

Summary Judgment

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]). 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, 559 [2d Dept 1994]). Once the movant has met this threshold burden, the opposing party must present the existence of triable issues of fact "sufficient to require a trial of material questions of fact on which he rests his claim or must demonstrate acceptable excuse for his failure to meet the requirement of tender in admissible form; mere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient" (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 must 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]). Issue finding, as opposed to issue determination, is the key to summary judgment (Krupp v. Aetna Life & Cas. Co., 103 AD2d 252, 261 [2d Dept 1984]). 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 [1986]).

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 the 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 A.D.3d 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 AD2d 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).

The sudden stop of a lead car is a non-negligent explanation of a rear-end collision,

because the operator of that car has a duty to avoid stopping suddenly without properly

signaling to avoid a collision "when there is opportunity to give such signal" (VTL §1163; *see id.*; Colonna v. Suarez, 278 AD2d 355 [2d Dept 2000]) ; Taveras v. Amir, 24 AD3d 655, 656 [2d Dept 2005]). 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]).

Here, plaintiff's motion for summary judgment is supported by evidence that establishes prima facie entitlement to judgment as a matter of law. In support of the motion, plaintiff tendered her affidavit and complaint, that recited that her car was stopped and rear-ended by defendants' car. There is no evidence in the record that plaintiff contributed to the accident. Thus, plaintiff has met her prima facie burden of establishing defendants' negligence, and plaintiff is entitled to summary judgment unless defendants present a nonnegligent explanation for the car accident. (Volpe v. Limoncelli, 74 AD3d 795, 795 [2010]).

Notably, in opposition, defendants fail to offer an affidavit with a non-negligent explanation for their vehicle rear ending plaintiff's vehicle (Williams v. Spencer-Hall, 113 AD3d 759, 760 [2d Dept 2014]).

Defendants argue that partial summary judgment on the issue of liability should be denied as premature, where depositions are pending and discovery is outstanding. This is unavailing. "A party contending that a motion for summary judgment is premature is required to demonstrate that additional discovery might lead to relevant evidence or that the facts essential to oppose the motion are exclusively within the knowledge and control of the movant" (Reynolds v. Avon Grove Properties, 129 AD3d 932, 933 [2d Dept 2015]).

Here, while depositions have not been completed, defendants' hope that additional discovery might reveal something helpful to the determination of liability in this matter does

not provide a basis pursuant to CPLR 3212(f) for postponing judgment (Morrisaint v. Raemar Corp., 271 AD2d 586 [2d Dept 2000]). A party who contends that a summary judgment motion is premature is required to "demonstrate that discovery might lead to relevant evidence or the facts essential to justify opposition to the motion were exclusively within the knowledge and control of the movant", which has not been proven here (see CPLR 3212 [f]; 106 AD3d 850, 852). The mere hope or speculation that evidence sufficient to defeat a motion for summary judgment may be uncovered during the discovery process is insufficient to deny the motion (106 AD3d 850). However, "where knowledge is the key fact at issue, and [is] peculiarly within the possession of the movant himself, summary judgment will ordinarily be denied", which is not the case here (Di Miceli v. Olcott, 119 AD2d 539 [2d Dept 1986]).

Therefore, under these circumstances, defendants failed to provide any admissible evidence as to any negligence on the part of plaintiff or to provide a non-negligent explanation for the accident sufficient to raise a triable question of fact, and any defense to such a claim would be known by defendant without the need to amplify the pleadings (Grimm v. Bailey, 105 AD3d 703 [2d Dept 2013]).

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

ORDERED, that the plaintiff's motion for summary judgment on the issue of liability is granted, and the Clerk is directed to enter judgment accordingly; and it is further

ORDERED, that plaintiff 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 in accordance with NYSCEF protocols; and it is further

ORDERED, that the issue of serious injury will be tried during the damages phase of the trial, and that the granting of this summary judgment motion does not preclude further determination that plaintiff may or may not have sustained serious injury as defined by Insurance Law §5102[d]; and it is further

ORDERED, that the parties are directed to appear in the Compliance Conference Part on August 11, 2016 at 9:30 a.m. in Room 800 of the Westchester County Courthouse, 111 Dr. Martin Luther King Jr. Blvd., White Plains, New York 10601 to discuss outstanding discovery, and to endeavor to send this matter to Settlement Conference Part to schedule trial on damages pursuant to the protocols of NYSCEF.

All matters not herein decided are denied.

This constitutes the Decision and Order of the court.

Dated: May 18, 2016
White Plains, New York

HON. CHARLES D. WOOD
Justice of the Supreme Court

TO: All Parties by NYSCEF