

Ranallo v Finelli

2016 NY Slip Op 33197(U)

August 9, 2016

Supreme Court, Nassau County

Docket Number: Index No. 605528/15

Judge: James P. McCormack

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SUPREME COURT - STATE OF NEW YORK

PRESENT:

Honorable James P. McCormack

Justice

NATALIE RANALLO,

**TRIAL/IAS, PART 29
NASSAU COUNTY**

Plaintiff(s),

Index No.: 605528/15

-against-

Motion Seq. No.: 001

Motion Submitted: 6/17/15

ELIZABETH FINELLI,

Defendant(s).

x

The following papers read on this motion:

- Notice of Motion/Supporting Exhibits.....X
- Affirmation in Opposition.....X
- Reply Affirmation.....X

Plaintiff, Natalie Ranallo (Ranallo), moves this court pursuant to CPLR § 3212, for an order granting summary judgment on the issue of liability. Defendant, Elizabeth Finelli (Finelli), opposes the motion.

This action arises from a motor vehicle accident that occurred on January 15, 2014, on Sunrise Highway, at or near the intersection with Lakeshore Blvd., Massapequa

Park, County of Nassau, wherein Ranallo alleges she was rear-ended by the vehicle driven and owned Finelli. Plaintiff commenced this action by the service of a summons and amended complaint dated September 18, 2015. Issue was joined by the service of an answer dated November 6, 2015.

It is well settled that in a motion for summary judgment the moving party bears the burden of making a *prima facie* showing that he or she is entitled to summary judgment as a matter of law, submitting sufficient evidence to demonstrate the absence of a material issue of fact (*see Sillman v. Twentieth Century Fox Film Corp.*, 3 NY2d 395 [1957]; *Friends of Animals, Inc. v. Associates Fur Mfrs.*, 46 NY2d 1065 [1979]; *Zuckerman v. City of New York*, 49 NY2d 5557 [1980]; *Alvarez v. Prospect Hospital*, 68 NY2d 320 [1986]).

The failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers (*see Winegard v. New York University Medical Center*, 64 NY2d 851 [1985]). Once this showing has been made, however, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action (*see Zuckerman v. City of New York*, 49 NY2d 5557 [1980], *supra*). The primary purpose of a summary judgment motion is issue finding not issue determination, *Garcia v. J.C. Duggan, Inc.*, 180 AD2d 570 (1st Dept. 1992), and it should

only be granted when there are no triable issues of fact (*see also Andre v. Pomeroy*, 35 N2d 361 [1974]).

Ranallo submits an affidavit, annexed to the moving papers, in which she states that she was stopped in heavy traffic when her vehicle was rear-ended by Finelli's vehicle. It is undisputed that Finelli's vehicle rear-ended Ranallo's vehicle.

It is well settled that a rear-end collision is sufficient to establish a *prima facie* case of liability against the operator of the offending vehicle and imposes a duty upon said operator to rebut the inference of negligence by providing a sufficient explanation (*see Young v. City of New York*, 113 AD2d 844 [2d Dept. 1985]; *Benyarko v. Avis Rent A Car System, Inc.*, 162 AD2d 572 [2d Dept. 1990]; *Ayach v. Ghazal*, 25 AD3d 742 [2d Dept. 2006]; *Connors v. Flaherty*, 32 AD3d 891 [2d Dept. 2006]).

Additionally, in a rear end collision situation, it is the rear driver's duty to maintain a safe distance between his vehicle and the vehicle in front of his. Failure to do so will establish a *prima facie* case of negligence, as a matter of law (*Lifshitz v. Variety Polbans*, 278 AD2d 372 [2d Dept. 2000]; *Pena v. Allen*, 272 AD2d 311 [2d Dept. 2000]; *Hernandez v. Burkitt*, 271 AD2d 648 [2d Dept. 2000]). "Vehicle stops which are foreseeable under the prevailing traffic conditions, even if sudden and frequent, must be anticipated by the driver who follows, since he or she is under a duty to maintain the safe distance between his or her car and the car ahead." (*see Sharma v. Richmond County Ambulance Serv.*, 279 AD2d 564 [2nd Dept. 2001]).

Plaintiff has established a *prima facie* showing of entitlement to summary judgment as a matter of law on the issue of liability. The burden shifts to Defendant to establish a material issue of fact.

In opposition, Defendant submits an affidavit where she claims she and Ranallo were both stopped at a red light. When the light turned green, all the cars started to move, including Ranallo's, but then Ranallo stopped suddenly and without warning. Finelli applied her brakes but still hit Ranallo.

Assuming the court accepts Finelli's version of events, it does not raise a material issue of fact. Finelli has acknowledged failing to keep a safe distance between her car and Ranallo's car, particularly when considering the accident occurred soon after a red light turned green and there were cars in front of Ranallo's, indicating that neither Ranallo nor Finelli could have been moving very fast. Regardless, it was Finelli's responsibility to keep a safe distance. (*Lifshitz v. Variety Polbans, supra*).

In the moving papers, Plaintiff annexed a copy of the certified police accident report which contains a statement by Finelli wherein she acknowledged taking her eyes off the road, in heavy traffic, and the rear-ending Ranallo. Finelli tries to argue that her alleged statement to the officer is hearsay and is therefore inadmissible. This court disagrees. As an admission, the statement falls within a hearsay exception and is

admissible. (*Brown v URS Midwest, Inc.*, 132 A.D.3d 936 [2nd Dept. 2015]). Based upon the police accident report, Finelli, in essence, acknowledges liability¹.

Further, Finelli has neglected 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” (*Hanover Ins. Co. v. Prakin*, 81 AD3d 778 [2d Dept. 2011]; *see also 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]). Thus, Plaintiff has established a *prima facie* showing of entitlement to summary judgment on the issue of liability.

Accordingly, it is hereby

ORDERED, that Plaintiffs’ motion for summary judgment on the issue of liability is GRANTED.

This constitutes the Decision and Order of the Court.

Dated: August 9, 2016
Mineola, N.Y.



Hon. James P. McCormack, J. S. C.

ENTERED
AUG 16 2016
NASSAU COUNTY
COUNTY CLERK'S OFFICE

¹While Finelli’s affidavit and the statement in the police accident report appear to be contradictory and may impact credibility at trial, the court is not basing its decision on credibility. Had either statement raised a material issue of fact, then summary judgment would not be warranted.