

<b>Hernandez v Bourdierd</b>
2017 NY Slip Op 33409(U)
November 16, 2017
Supreme Court, Westchester County
Docket Number: Index No. 56411/17
Judge: David F. Everett
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To commence the 30-day statutory time period for appeals as of right under 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

-----X  
CAROLINA HERNANDEZ,

Plaintiff,

-against-

Index No. 56411/17  
Motion Sequence No. 001  
Decision and Order

A. BOURDIERD and MIGUEL BOURDIERD,

Defendants.

-----X  
EVERETT, J.

The following papers were read on the motion:

Notice of Motion/Affirmation in Supp/Fact Affidavit/Exhibits A-C/  
Affs of Serv (docs 2, 3, 5-10)

In this action arising from a motor vehicle accident, plaintiff Carolina Hernandez (Hernandez) moves for an order, pursuant to CPLR 3212, granting summary judgment against defendants A. Bourdierd and Miguel Bourdierd (M. Bourdierd) as to liability. Defendants do not submit opposition to the motion, and upon the foregoing papers, the motion is granted.

The following facts are taken from the pleadings, motion papers, affidavits, documentary evidence and the record, and are undisputed unless otherwise indicated.

Hernandez commenced the instant action by filing a summons and complaint in the Office of the Westchester County Clerk on April 28, 2017, to recover damages for injuries she allegedly sustained on September 16, 2015, when, at approximately 8:30 a.m., the motor vehicle owned by M. Bourdierd and operated by A. Bourdierd struck the rear end of her motor vehicle in the express lane of the eastbound Cross County Parkway in Yonkers, New York. Issue was

joined by service of defendants' joint answer with affirmative defenses on or about July 5, 2017, after which Hernandez served the instant motion for summary judgment on the issue of liability.

As the proponent of the motion for summary judgment, Hernandez must tender evidentiary proof in admissible form sufficient to warrant the court to direct judgment in her favor as a matter of law (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; CPLR 3212 [b]). Should Hernandez make the requisite showing, the burden would shift to defendants to produce evidentiary proof in admissible form sufficient to require a trial on one or more issues of fact (*id.*).

Here, Hernandez supports her motion with a copy of the pleadings together with her sworn affidavit in which she states, in relevant part:

“2. On September 16, 2015, at approximately 8:30 a.m., I was operating a 2003 Toyota Highlander in the leftmost express lane of the eastbound Cross-County Parkway in Yonkers, New York.

3. There was heavy traffic on the Cross-County Parkway at that time. I slowed down and eventually stopped my vehicle near Central Avenue due to traffic. The vehicle in front of me was stopped, as were several vehicles in front of it.

4. I was stopped for at least approximately five (5) seconds when I was rear-ended by another vehicle. I later learned that the vehicle which struck mine was operated by Miguel A. Bourdierd, Jr., who is sued herein as “A. BOURDIERD,” and was owned by Miguel A. Bourdierd, Sr., who is sued herein as “MIGUEL BOURDIERD.”

(notice of motion, exhibit C).

With respect to collisions between moving vehicles, or between a moving vehicle and a stopped vehicle, it is well settled that, “[w]hen 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” (*Taing v Drewery*, 100 AD3d 740, 741 [2d Dept 2012]). It is also well settled law that, “any rear-end collision establishes a prima facie case of negligence on the part of the rear-ending driver” (*De La Cruz v Ock Wee Leong*, 16 AD3d 199, 200 [1<sup>st</sup> Dept 2005]), and that, when “a rear-end collision occurs, the occupants of the front vehicle are entitled to summary judgment on liability, unless the driver of the following vehicle can provide a nonnegligent explanation, in evidentiary form, for the collision” (*Johnson v Phillips*, 261 AD2d 269, 271 [1<sup>st</sup> Dept 1999]). Finally, Vehicle and Traffic Law § 1129 provides, at subsection (a), that “[t]he driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon and the condition of the highway.”

Here, Hernandez satisfied her prima facie burden of establishing negligence on the part of defendants as a matter of law on the issue of liability, by submitting evidence that the motor vehicle she was driving was struck in the rear by motor vehicle driven by A. Bourdierd. Defendants do not challenge plaintiff’s evidence, or her prima facie showing.

It appearing to the Court that Hernandez is entitled to judgment on liability and that any triable issues of fact arising on her motion for summary judgment relate to the amount of damages to which she is entitled, it is accordingly

ORDERED that the motion for summary judgment is granted with regard to liability; and it is further

ORDERED that counsel for the parties are directed to appear at the Westchester County Courthouse, 111 Dr. Martin Luther King, Jr. Blvd., White Plains, New York, at the Preliminary Conference Part, Courtroom 811; on Monday, January 8, 2018, at 9:30 a.m., to schedule discovery related to damages.

This constitutes the decision and order of the Court.

Dated: White Plains, New York  
November 16, 2017

ENTER:

  
HON. DAVID F. EVERETT, A.J.S.C.

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