

Tehrany v Barbuti
2017 NY Slip Op 33419(U)
May 16, 2017
Supreme Court, Nassau County
Docket Number: Index No. 609003/16
Judge: Antonio I. Brandveen
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SHORT FORM ORDER

ORIGINAL

SUPREME COURT - STATE OF NEW YORK

Present: ANTONIO I. BRANDVEEN

J. S. C.

ROMINA TEHRANY,

Plaintiff,

- against -

ANNA M. BARBUTI,

Defendant.

TRIAL / IAS PART 31
NASSAU COUNTY

Index No. 609003/16

Motion Sequence No. 001

The following papers having been read on this motion:

Notice of Motion, Affidavits, & Exhibits	<u>1</u>
Answering Affidavits	<u>2</u>
Replying Affidavits	<u>3</u>
Briefs: Plaintiff's / Petitioner's	_____
Defendant's / Respondent's	_____

The plaintiff moves for summary judgment against the defendant on the issue of liability, and for an immediate trial to assess damages. The plaintiff states, in an affidavit dated December 12, 2016, the plaintiff operated a car southbound on East Shore Road, near its intersection with Northern Boulevard, in Thomaston, New York. The plaintiff stated the vehicle slowly stopped for a stop sign. The plaintiff stated the car stopped for approximately three-seconds. The plaintiff stated the defendant operated a car which then struck the rear end of the plaintiff's car.

The defense attorney asserted the motion is premature, in affirmations dated April 12, 2017 and April 19, 2017. The defense attorney contended the plaintiff's motion should be denied because disclosure was incomplete and depositions have not been held.

The plaintiff's attorney replied, in an affirmation dated April 18, 2017, the plaintiff was free of comparative negligence. The plaintiff pointed out the defense attorney failed to provide an affidavit from the defendant which disputed any of the material facts, namely that the plaintiff's stopped car was rear-ended due to the defendant's negligence. The plaintiff noted the defendant failed to provide a non-negligent explanation for the happening of the accident. The plaintiff maintained the defense attorney's hope that discovery may yield issues of fact was insufficient to deny this motion.

The Court determines the motion is not premature. The defense needs to conduct discovery does not require denial of this motion because the defendant failed to demonstrate that discovery might produce relevant evidence or that there are facts crucial for opposition to this motion which are solely within the plaintiff's knowledge and control (*Orellana v Maggies Paratransit Corp.*, 138 A.D.3d 941 [2d Dept. 2016]). "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 [citations omitted]" (*Lopez v WS Distrib., Inc.*, 34 A.D.3d 759, 760 [2d Dept. 2006]).

The Court determines the plaintiff establishes a prima facie entitlement to summary judgment as a matter of law. The plaintiff proffers evidence in admissible form regarding the happening of the accident. The evidence shows the plaintiff's car stopped, and the defendant's car struck the plaintiff's car in the rear. "A rear-end collision with a stopped or stopping vehicle creates a prima facie case of liability with respect to the operator of the moving vehicle and imposes a duty on that operator to rebut the inference of negligence to provide a non-negligent explanation for the collision [citations omitted]" (*Rainford v Han*, 18 A.D.3d 638, 639 [2d Dept. 2005]). The plaintiff shows the plaintiff's conduct was reasonable, and the plaintiff was not a proximate cause of an accident (*Katz v Masada II Car & Limo Serv., Inc.*, 43 A.D.3d 876 [2d Dept. 2007]).

In opposition, the defendant fails to raise a triable issue of fact regarding liability for the happening of the accident (*see Emil Norsic & Son, Inc. v L.P. Transp., Inc.*, 30 A.D.3d 368 [2d Dept. 2006]). It is incumbent upon the defendant, under these circumstances, to come forward with a non-negligent explanation for this accident. The defendant fails to come forward with evidence to rebut the inference of the defendant's negligence. The defendant failed to provide proof in admissible form by a person with personal knowledge of the occurrence, rather only the affirmations by an attorney. "An attorney's affirmation that is not based upon personal knowledge is of no probative or evidentiary significance" (*Warrington v Ryder Truck Rental, Inc.*, 35 A.D.3d 455, 456 [2d Dept. 2006]).

ORDERED that the motion is GRANTED for partial summary judgment against the defendant on the issue of liability, and the entry of judgment is staying pending a trial to assess damages. This decision will constitute the order of the Court.

So ordered.

Dated: May 16, 2017

ENTERED

MAY 22 2017

NASSAU COUNTY
COUNTY CLERK'S OFFICE

ENTER:



J. S. C.

NON FINAL DISPOSITION