

Posy v Scuderi

2017 NY Slip Op 33436(U)

May 15, 2017

Supreme Court, Nassau County

Docket Number: Index No. 604323/16

Judge: Randy Sue Marber

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This opinion is uncorrected and not selected for official publication.

SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

Present: **HON. RANDY SUE MARBER**
JUSTICE

TRIAL/IAS PART 10

VANESSA POSY,

X

Plaintiff,

Index No.: 604323/16
Motion Sequence...01
Motion Date...03/09/17

-against-

DANIELLE L. SCUDERI,

Defendant.

X

Papers Submitted:

Notice of Motion.....X

Upon the foregoing papers, the Plaintiff's unopposed motion seeking summary judgment pursuant to CPLR § 3212 on the issue of liability, is decided as hereinafter provided.

The instant action involves a rear-end motor vehicle collision on September 1, 2015 between the Plaintiff's vehicle and the vehicle driven by the Defendant, DANIELLE L. SCUDERI. The collision took place at the intersection of Merrick Road and Atlantic Boulevard in Hempstead, County of Nassau, State of New York.

According to the Plaintiff, her vehicle came to a gradual and complete stop at a red traffic light prior to being struck by the vehicle operated by the Defendant (*See* Plaintiff's Affidavit, sworn to on February 16, 2017, annexed to Plaintiff's Motion as

Exhibit "C").

The Plaintiff claims that she sustained severe and permanent personal injuries as defined by § 5102 (d) of the Insurance Laws of the State of New York.

Summary judgment is a drastic remedy and should only be granted when there are no triable issues of fact. *Andre v. Pomeroy*, 35 N.Y.2d 361 (1974). The goal of summary judgment is to issue find, rather than issue determine. *Hantz v. Fleischman*, 155 A.D.2d 415 (2d Dept. 1989). In the instant matter, neither party denies that the front of the Defendant's vehicle struck the rear of the Plaintiff's vehicle. Indeed, no opposition has been submitted by the Defendant.

Rear-end collision cases create a *prima facie* case of liability with respect to the party who collides with the vehicle in front of it. This *prima facie* liability imposes a duty of explanation upon the operator of the rear vehicle to rebut the inferences of negligence by providing some non-negligent explanation for the collision. *Crisano v. Comp Tools Corp.*, 295 A.D. 2d 393 (2d Dept. 2002); *Brothers v. Bartling*, 130 A.D.3d 554 (2d Dept. 2015). The instant matter involves a vehicle stopped at a red traffic light. No evidence is submitted that there is a dispute of these facts and nothing is submitted alleging that the Plaintiff's car was in motion at the time of the accident. A rear-end collision with a stopped or stopping vehicle creates a *prima facie* case of liability with respect to the operator of the rearmost vehicle, imposing a duty of explanation on that operator to excuse the collision either through a mechanical failure, a sudden stop of the

vehicle ahead, an unavoidable skidding on a wet pavement, or any other reasonable cause.

Filippazzo v. Santiago, 277 A.D.2d 419 (2d Dept. 2000).

When a 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. *Id.*; see Vehicle and Traffic Law § 1129 (a); *Brothers v. Bartling*, 130 A.D.3d 554 (2d Dept. 2015); *Gallo v. Jairath*, 122 A.D.3d 795 (2d Dept. 2014). This rule imposes upon drivers the duty to be aware of traffic conditions, including vehicle stoppages. *Johnson v. Phillips*, 261 A.D.2d 269 (1st Dept. 1999).

In the instant matter, the Defendant has not submitted any opposition, warranting summary judgment in favor of the Plaintiff on the issue of liability.

Accordingly, it is hereby

ORDERED, that the Plaintiff's motion for summary judgment on the issue of liability, is **GRANTED**. This matter shall proceed to trial on the issue of damages at the conclusion of discovery on damages; and it is further

ORDERED, that the parties are directed to appear in the Preliminary Conference Part of this Court on **June 13, 2017 at 9:30 a.m.** for a Preliminary Conference; and it is further

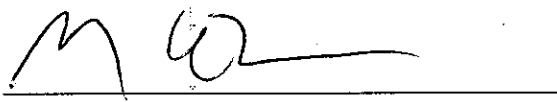
ORDERED, that counsel for the Plaintiff shall serve a copy of this Order on counsel for the Defendant, pursuant to CPLR § 2103 (b) 1, 2 or 3 within ten (10) days

of the date of this Order. **PROOF OF SERVICE MUST BE FILED WITH THE COURT PRIOR TO JUNE 13, 2017.**

This constitutes the decision and order of this Court.

DATED: Mineola, New York
May 15, 2017

ENTERED
MAY 18 2017
NASSAU COUNTY
COUNTY CLERK'S OFFICE



Hon. Randy Sue Marber, J.S.C.

HON. RANDY SUE MARBER