

Syla v Erickson

2017 NY Slip Op 33447(U)

August 16, 2017

Supreme Court, Nassau County

Docket Number: Index No. 608282/16

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

_____ X
FATIME SYLA,

Plaintiff,

Index No.: 608282/16

Motion Sequence...01

-against-

Motion Date...07/11/17

MARCELLO L. ERICKSON,

Defendant.

_____ X
Papers Submitted:
Notice of Motion.....x
Affirmation in Opposition.....x

Upon the foregoing papers, the Plaintiff's motion, seeking summary judgment, pursuant to CPLR § 3212, on the issue of liability, and setting this matter down for a trial on the issue of damages, is decided as hereinafter provided.

The instant action involves a rear end motor vehicle accident, occurring on December 1, 2015, wherein the motor vehicle operated by the Defendant struck the rear of the Plaintiff's motor vehicle. The collision took place on Brower Avenue, at its intersection with Waukena Avenue, Hempstead, New York (*See the Plaintiff's Supplemental Summons and Amended Verified Complaint attached to the Notice of Motion as Exhibit "A"*).

The Affidavit of the Plaintiff, FATIME SYLA, is submitted in support of the motion (*See the Plaintiff's Affidavit attached to the Notice of Motion as Exhibit "D"*). The Plaintiff attests that, on June 18, 2014, her vehicle was struck by the Defendant while she

was stopped at a red traffic light, in the left turning lane, on Brower Avenue. The Plaintiff attests that she came to a gradual stop prior to impact (*Id.*).

In opposition to the Plaintiff's motion, the Defendant's counsel contends that the Plaintiff has failed to meet his burden of eliminating all possible questions of fact with respect to liability that might require a jury trial. The Defendant's counsel argues that questions exist with respect to how long the Plaintiff was stopped prior to impact and the rate of speed she was traveling before she slowed. Further, the Defendant's counsel argues that the Plaintiff's motion is premature as depositions of the parties have not yet been held.

Summary judgment is a drastic remedy and should only be granted when there are no triable issues of fact (*See Andre v. Pomeroy*, 35 N.Y.2d 361 [1974]). The goal of summary judgment is to issue find, rather than issue determine (*See Hantz v. Fleischman*, 155 A.D.2d 415 [2d Dept. 1989]).

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 (*See Crisano v. Comp Tools Corp.*, 295 A.D.2d 393 [2d Dept. 2002]). 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 (*See 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.*; Vehicle and Traffic Law § 1129 (a)). This rule imposes upon drivers the duty to be aware of traffic conditions, including vehicle stoppages (*See Johnson v. Phillips*, 261 A.D.2d 269 [1st Dept. 1999]).

Here, the Defendant has failed to proffer a non-negligent explanation rebut the inference of negligence (*See Filippazzo v. Santiago*, 277 A.D.2d 419 [2d Dept. 2000]). Moreover, contrary to the Defendant's position in opposing this motion, seeking summary judgment in this case is not premature. Pursuant to CPLR § 3212, incomplete discovery will not necessarily bar summary judgment (*See Rainford v. Han*, 18 A.D.3d 638 [2d Dept. 2005]). A motion for summary judgment will not be denied based on a "mere hope or speculation" that discovery may uncover evidence sufficient to defeat the motion (*See Kimyagarov v. Nixon Taxi Corp.*, 45 A.D.3d 736 [2d Dept. 2007]). Additionally, the Defendant has failed to provide an evidentiary basis that suggests discovery may lead to relevant evidence or that the Plaintiff has exclusive knowledge of facts essential to opposing the motion (*Id.*). Lastly, the Defendant failed to suggest what non-negligent excuse may be obtained from the Plaintiff if there was a deposition of the Plaintiff conducted in this matter prior to the Court determining this motion.

The sworn affidavit of the Plaintiff clearly establishes that she was struck in the rear while stopped at a red traffic light. The Defendant fails to present a non-negligent

excuse and fails to rebut the presumption of negligence arising from the rear end collision. As such, the Defendant has not raised a triable issue of fact in this matter.

Accordingly, it is hereby

ORDERED, that the Plaintiff's motion for summary judgment, pursuant to CPLR § 3212, 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 **September 20, 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 SEPTEMBER 20, 2017.**

This decision constitutes the decision and order of the Court.

DATED: Mineola, New York
August 16, 2017

ENTERED



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

AUG 18 2017

NASSAU COUNTY
COUNTY CLERK'S OFFICE