

Legros v Nagel

2017 NY Slip Op 33453(U)

November 3, 2017

Supreme Court, Nassau County

Docket Number: Index No. 607868/16

Judge: Denise L. Sher

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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

PRESENT: HON. DENISE L. SHER
Acting Supreme Court Justice

JONATHAN LEGROS a/k/a JONATHAN JACQUES,

Plaintiff,

- against -

SHARON NAGEL and GARY NAGEL,

Defendants.

TRIAL/IAS PART 35
NASSAU COUNTY

Index No.: 607868/16
Motion Seq. No.: 01
Motion Date: 09/18/17

The following papers have been read on this motion:

	Papers Numbered
Notice of Motion, Affirmation, Affidavit and Exhibits	1

Upon the foregoing papers, it is ordered that the motion is decided as follows:

Plaintiff moves, pursuant to CPLR § 3212, for an order granting partial summary judgment against defendants on the issue of liability; and moves, pursuant to CPLR § 3212, for an order dismissing the First, Third, Fourth and Sixth Affirmative Defenses set forth in defendants' Answer. No opposition was submitted to the motion.

This action arises from a motor vehicle accident which occurred on November 30, 2013, at approximately 4:50 p.m., on Old Country Road, at or near its intersection with Glen Cove Road, Carle Place, County of Nassau, State of New York. The accident involved two (2) vehicles, a 2006 Honda, operated by plaintiff, and a 2013 Dodge, owned by defendant Gary Nagel and operated by defendant Sharon Nagel. See Plaintiff's Affirmation in Support Exhibit A. Plaintiff commenced the action with the filing of a Summons and Verified Complaint on or about October 12, 2016. See Plaintiff's Affirmation in Support Exhibit B. Issue was joined on or about October 28, 2016. See Plaintiff's Affirmation in Support Exhibit C.

In his Affidavit in Support, plaintiff submits that, “[o]n November 30, 2013 at approximately 4:50 p.m., I was involved in a car crash. At that time, I was operating my mother’s 2006 Honda with her permission and consent. I was traveling from my home to visit a friend in Franklin Square. I was in the middle lane of westbound Old County Road and was stopped for (sic) red light at Glen Cove Road with a few cars when (sic) ahead of me. I was stopped for a while, when I was rear ended by a woman (defendant SHARON NAGEL), who struck me in (sic) rear right and turned me slightly counter-clockwise. The impact was hard and caused nearly three thousand dollars in damages to our car.” See Plaintiff’s Affidavit in Support.

Counsel for plaintiff contends that defendant Sharon Nagel was the negligent party in that she failed to maintain a safe distance behind plaintiff’s vehicle, as well as failed her duty to exercise reasonable care under the circumstances to avoid an accident. Counsel for plaintiff additionally claims that defendants cannot come up with a reasonable excuse or a non-negligent explanation for their vehicle striking plaintiff’s vehicle in the rear.

It is well settled that the proponent of a motion for summary judgment must make a *prima facie* showing of entitlement to judgment as a matter of law by providing sufficient evidence to demonstrate the absence of material issues of fact. See *Sillman v. Twentieth Century-Fox Film Corp.*, 3 N.Y.2d 395, 165 N.Y.S.2d 498 (1957); *Alvarez v. Prospect Hospital*, 68 N.Y.2d 320, 508 N.Y.S.2d 923 (1986); *Zuckerman v. City of New York*, 49 N.Y.2d 557, 427 N.Y.S.2d 595 (1980); *Bhatti v. Roche*, 140 A.D.2d 660, 528 N.Y.S.2d 1020 (2d Dept. 1988). To obtain summary judgment, the moving party must establish its claim or defense by tendering sufficient evidentiary proof, in admissible form, sufficient to warrant the court, as a matter of law, to direct judgment in the movant’s favor. See *Friends of Animals, Inc. v. Associated Fur Mfrs., Inc.*, 46 N.Y.2d 1065, 416 N.Y.S.2d 790 (1979). Such evidence may include deposition transcripts, as well as other proof annexed to an attorney’s affirmation. See CPLR § 3212 (b);

Olan v. Farrell Lines Inc., 64 N.Y.2d 1092, 489 N.Y.S.2d 884 (1985).

If a sufficient *prima facie* showing is demonstrated, the burden then shifts to the non-moving party to come forward with competent evidence to demonstrate the existence of a material issue of fact, the existence of which necessarily precludes the granting of summary judgment and necessitates a trial. *See Zuckerman v. City of New York, supra*. When considering a motion for summary judgment, the function of the court is not to resolve issues but rather to determine if any such material issues of fact exist. *See Sillman v. Twentieth Century-Fox Film Corp., supra*. Mere conclusions or unsubstantiated allegations are insufficient to raise a triable issue. *See Gilbert Frank Corp. v. Federal Ins. Co.*, 70 N.Y.2d 966, 525 N.Y.S.2d 793 (1988).

Further, to grant summary judgment, it must clearly appear that no material triable issue of fact is presented. The burden on the Court in deciding this type of motion is not to resolve issues of fact or determine matters of credibility, but merely to determine whether such issues exist. *See Barr v. Albany County*, 50 N.Y.2d 247, 428 N.Y.S.2d 665 (1980); *Daliendo v. Johnson*, 147 A.D.2d 312, 543 N.Y.S.2d 987 (2d Dept. 1989). It is the existence of an issue, not its relative strength that is the critical and controlling consideration. *See Barrett v. Jacobs*, 255 N.Y. 520 (1931); *Cross v. Cross*, 112 A.D.2d 62, 491 N.Y.S.2d 353 (1st Dept. 1985). The evidence should be construed in a light most favorable to the party moved against. *See Weiss v. Garfield*, 21 A.D.2d 156, 249 N.Y.S.2d 458 (3d Dept. 1964).

When 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 pursuant to New York State Vehicle and Traffic Law ("VTL") § 1129(a). *See Krakowska v. Niksa*, 298 A.D.2d 561, 749 N.Y.S.2d 55 (2d Dept. 2002); *Bucceri v. Frazer*, 297 A.D.2d 304, 746 N.Y.S.2d 185 (2d Dept. 2002).

A rear end collision with a vehicle establishes a *prima facie* case of negligence on the part of the operator of the offending vehicle. See *Tutrani v. County of Suffolk*, 10 N.Y.3d 906, 861 N.Y.S.2d 610 (2008). Such a collision imposes a duty of explanation on the operator. See *Hughes v. Cai*, 55 A.D.3d 675, 866 N.Y.S.2d 253 (2d Dept. 2008); *Gregson v. Terry*, 35 A.D.3d 358, 827 N.Y.S.2d 181 (2d Dept. 2006); *Belitsis v. Airborne Express Freight Corp.*, 306 A.D.2d 507, 761 N.Y.S.2d 329 (2d Dept. 2003).

As noted, 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, thereby requiring the operator to rebut the inference of negligence by providing a non-negligent explanation for the collision. See *Francisco v. Schoepfer*, 30 A.D.3d 275, 817 N.Y.S.2d 52 (1st Dept. 2006); *McGregor v. Manzo*, 295 A.D.2d 487, 744 N.Y.S.2d 467 (2d Dept. 2002).

Vehicle stops which are foreseeable under the prevailing traffic conditions, even if sudden and frequent, must be anticipated by the driver who follows, since the following driver is under a duty to maintain a safe distance between his or her car and the car ahead. See *Shamah v. Richmond County Ambulance Service, Inc.*, 279 A.D.2d 564, 719 N.Y.S.2d 287 (2d Dept. 2001).

Drivers must maintain safe distances between their cars and the cars in front of them and this rule imposes on them a duty to be aware of traffic conditions including stopped vehicles. See VTL § 1129(a); *Johnson v. Phillips*, 261 A.D.2d 269, 690 N.Y.S.2d 545 (1st Dept. 1999).

Drivers have a duty to see what should be seen and to exercise reasonable care under the circumstances to avoid an accident. See *Filippazzo v. Santiago*, 277 A.D.2d 419, 716 N.Y.S.2d 710 (2d Dept. 2000).

Plaintiff, in his motion, has demonstrated *prima facie* entitlement to summary judgment on the issue of liability against defendants. Therefore, the burden shifts to defendants to demonstrate an issue of fact which precludes summary judgment. See *Zuckerman v. City of New York*, *supra*.

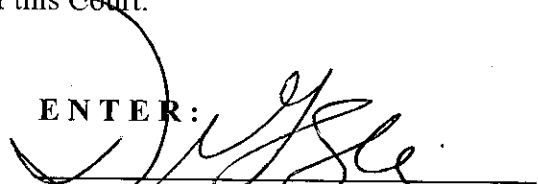
As previously indicated, no opposition was submitted to the instant motion. Therefore, defendants have failed to meet their burden to demonstrate an issue of fact which precludes summary judgment. Counsel for defendants has not submitted any admissible evidence to rebut plaintiff's *prima facie* showing of entitlement to judgment as a matter of law.

Accordingly, the branch of plaintiff's motion, pursuant to CPLR § 3212, for an order granting partial summary judgment against defendants on the issue of liability, is hereby **GRANTED**.

The branch of plaintiff's motion, pursuant to CPLR § 3212, for an order dismissing the First, Third, Fourth and Sixth Affirmative Defenses set forth in defendants' Answer, is also hereby **GRANTED**.

All parties shall appear for a Certification Conference in IAS Part 35, Nassau County Supreme Court, 100 Supreme Court Drive, Mineola, New York, on November 14, 2017, at 9:30 a.m.

This constitutes the Decision and Order of this Court.

ENTER: 
DENISE L. SHER, A.J.S.C.

Dated: Mineola, New York
November 3, 2017

ENTERED
NOV 08 2017
NASSAU COUNTY
COUNTY CLERK'S OFFICE