

Sydnor v Westchester County
2018 NY Slip Op 34121(U)
July 31, 2018
Supreme Court, Westchester County
Docket Number: Index No. 68352/2015
Judge: Sam D. Walker
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To commence the statutory
time for appeals as of right
(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
WESTCHESTER COUNTY
PRESENT: HON. SAM D. WALKER , J.S.C.**

-----X
SHANNEN SYDNOR and JACQUETTA SYDNOR,

Plaintiff,

-against-

WESTCHESTER COUNTY, BURIM SYLAJ, and
LIBERTY LINES TRANSIT, INC.,

Defendants.
-----X

DECISION & ORDER

Index No. 68352/2015

Motion Sequence 2

The following papers were read and considered in deciding the present motion:

Notice of Motion/Affirmation in Support/Exhibits A-D
Affirmation in Opposition/Exhibit A
Reply Affirmation

1-6
7-8
9

The plaintiffs commenced this action on October 19, 2015, to recover monetary damages for injuries they allegedly sustained as a result of a motor vehicle accident which occurred on March 3, 2015.

The plaintiffs now file the instant motion for an order granting summary judgment against the defendants on the issue of liability. The plaintiff, Shannen Sydnor, states that she was driving her vehicle with the plaintiff, Jacquetta Synor as a passenger, she was stopped at a red light on Nepperhan Avenue at the intersection on Lake Avenue, when her vehicle was hit from behind by a bus owned by the defendant Westchester County and operated by the defendant Burim Sylaj, an employee of the defendant, Liberty Lines Transit, Inc. The plaintiff states that she did not hear any honking, see any flashing headlights or see or hear any other warning from the defendant's vehicle.

In opposition, the defendants argue that the motion for summary judgment should be denied because it is premature and submitted prior to any discovery, that there are triable issues of fact as to how the accident occurred, and that the emergency doctrine, and comparative negligence applies. The defendants assert that the emergency doctrine is applicable, because as Burim Sylaj was approaching the light and applying the brakes to the bus, there was a mechanical failure that affected his ability to stop the bus completely and that he had no previous warning of such failure.

In support of the motion, the plaintiff submits her affidavit, an attorney's affirmation, and copies of the pleadings. The defendants submit Burim Sylaj's affidavit and an attorney's affirmation in opposition.

Discussion

A party on a motion for summary judgment must assemble affirmative proof to establish his entitlement to judgment as a matter of law (*see Zuckerman v City of N.Y.*, 49 NY2d 557[1980]). Furthermore, the proponent of a summary judgment motion must establish the absence of any material issues of fact (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). Only when a showing of entitlement to judgment as a matter of law has been made must the opposing party set forth evidentiary proof establishing the existence of a material issue of fact, (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]).

Generally, a rear-end collision with a stopped or stopping vehicle creates a prima facie case of negligence with respect to the operator of the rearmost vehicle (*see Ahmad v Grimaldi*, 40 AD3d 786, 786 [2d Dept 2007]). The burden then shifts to the party

opposing the motion to come forward with an adequate non-negligent explanation for the accident (*Vavoulis v Adler*, 43 AD3d 1154 [2d Dept 2007]; CPLR 3212[b]; *see also GTF Marketing, Inc. v Colonial Aluminum Sales, Inc.*, 66 NY2d 965 [1985]; *Zuckerman v City of New York*, 49 NY2d 557 [1980]).

"A nonnegligent explanation may include evidence of a mechanical failure, a sudden, unexplained stop of the vehicle ahead, an unavoidable skidding on wet pavement, or any other reasonable cause" (*see Binkowitz v Kolb*, 135 AD3d 884 [2d Dept 2016]). "In instances where the operator of the moving vehicle alleges that the rear-end collision was caused by brake failure, the operator must present evidence demonstrating that the brake problem was unanticipated, and that reasonable care had been exercised to keep the brakes in good working order" (*see Hollis v Kellog*, 306 AD2d 244 [2d Dept 2003]).

Here, the plaintiff established a prima facie case of negligence by presenting evidence, which was corroborated by Burim Sylaj's affidavit, that the defendants' vehicle struck the rear of the plaintiffs' vehicle, while the plaintiffs were stopped at a red light. Although, the defendants assert that the collision was due to brake failure, they failed to submit admissible evidence to rebut the inference of negligence. Burim Sylaj's affidavit states that he had no previous warning of the brake failure, however, the defendants did not submit any evidence to show that they exercised reasonable care to keep the brakes in good working order.

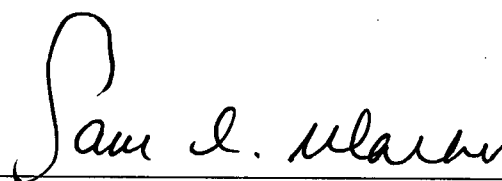
Further, the need to conduct discovery does not warrant denial of the motion, since Shannen Sydnor and Burim Sylaj, who submitted affidavits, both have personal knowledge of the relevant facts of the accident (*see Niyazov v Bradford*, 13 AD3d 501 [2d Dept 2004]).

Therefore, based on all the foregoing, the motion is GRANTED.

The determination of whether the plaintiffs sustained a serious injury within the meaning of the Insurance Law statute remains outstanding. The parties are directed to appear before the Preliminary Conference Part on August 27, 2018 at 9:30 a.m. in Courtroom 811.

The foregoing constitutes the Opinion, Decision and Order of the Court.

Dated: White Plains, New York
July 31, 2018

A handwritten signature in cursive script, reading "Sam D. Walker", is written over a horizontal line.

HON. SAM D. WALKER, J.S.C.