

Hiles-Briganti v Rivas
2018 NY Slip Op 34164(U)
March 26, 2018
Supreme Court, Westchester County
Docket Number: Index No. 69172/2017
Judge: Lawrence H. Ecker
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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
COUNTY OF WESTCHESTER**

-----X
ROBIN HILES-BRIGANTI,

Plaintiff,

-against-

ANDREW A. RIVAS and E.C. RUIZ-HERNANDEZ,

Defendants.
-----X

ECKER, J.

INDEX NO. 69172/2017

DECISION/ORDER

**Submission Date: 02/14/18
Motion Seq. 1**

The following papers numbered 1 through 9 were read on the motion of ROBIN HILES-BRIGANTI ("plaintiff"), made pursuant to CPLR 3212, seeking summary judgment against ANDREW A. RIVAS and E.C. RUIZ-HERNANDEZ ("defendants"):

PAPERS

NUMBERED

Notice of Motion, Affirmation, Exhibits A-D	1 - 6
Affirmation in Opposition, Exhibits A-B	7-8
Reply Affirmation	9

Upon the foregoing papers, the court determines as follows:

Plaintiff alleges that she sustained serious injuries as the result of a multi-car motor vehicle accident that occurred on August 18, 2016, at approximately 6:20 p.m. on Bowman Avenue at or near the intersection with the 800 Westchester Avenue Service Road in Rye Brook, N.Y. Plaintiff was a passenger in the vehicle of non-party Ray Maldonado ("Maldonado's vehicle"). In front of Maldonado's vehicle was a white Mercedes that was being driven by non-party Stephanie Solomons ("the White Vehicle"). The White Vehicle stopped, according to its driver, to make a left turn. Maldonado's vehicle came to a stop or was stopping and was struck in the rear by the vehicle operated by defendant Andrew A. Rivas and owned by defendant E. C. Ruiz-Hernandez ("defendants' vehicle"). This

impact caused Maldonado's vehicle to collide with the White Vehicle in front of it. Plaintiff moves for summary judgment as against defendants on liability.

On October 24, 2016, Maldonado commenced an action for personal injuries against defendants and Stephanie B. Solomons ("Solomons") and Seth M. Solomons as driver and owner of the White Vehicle respectively (Index No. 66046/2016). Plaintiff was not a party in that action ("the first action"). As part of the litigation, Maldonado, Rivas and Solomons were deposed. The parties in this action submit the depositions of Maldonado and Rivas in their motion papers in this action.¹

Maldonado testified that he was at a complete stop and four feet behind the White Vehicle when his car was hit by Rivas' vehicle, forcing his car forward into the White Vehicle. Maldonado testified that the White Vehicle was stopped in anticipation of making a left turn, although Maldonado did not observe a directional signal turned on for the White Vehicle. Maldonado stated that his car was struck from behind within seconds of his coming to a complete stop.

At his deposition in the first action, Rivas testified that he was ten feet from Maldonado's vehicle when he noticed the White Vehicle had stopped. He stated that he did not see Maldonado's car before that moment because of the glare of the sun hitting his windshield. He testified that he had only forty-five seconds to stop, applied the brakes hard, but was unable to stop his car before hitting Maldonado's vehicle, which he said was stopped or was stopping. Rivas testified that he did not see a turn signal on for the White Vehicle.

After the accident, the police completed an accident report which stated:

"V3 was stopped in traffic . . . V3 was yielding to oncoming traffic while attempting to make a left turn into . . . [a] service road . . . V2 was stopped behind V3 waiting for V3 to make the turn when it was rear ended by V1 causing V2 to rear end V3. The operator of V1 stated that there was a glare and did not see the vehicles" [NYCEF No. 12].

While Solomons filed a motion for summary judgment in the first action, the litigation was discontinued on December 14, 2017, before a decision on the motion was issued.

This action was commenced by the filing of a summons and complaint on November 16, 2017. Defendants Rivas and E.C. Ruiz-Hernandez filed an answer dated January 8, 2018.

On this motion seeking summary judgment on liability, plaintiff submits an affidavit, depositions from the first action and a certified copy of the police report of the accident. In

¹The parties do not submit Solomons' deposition from the first action, which was submitted as an exhibit to the motion for summary judgment in that action. [Index No. 66046/2016, NYSCEF No. 35].

her affidavit, plaintiff avers that the White Vehicle was stopped because it was yielding to oncoming traffic while waiting to turn left onto the service road. In addition, plaintiff states that the Maldonado vehicle was stopped for at least one second before it was rear-ended by Rivas.

In opposition, defendants argue that Maldonado's and Rivas' testimony that the White Vehicle stopped abruptly combined with Rivas' testimony that Maldonado's vehicle was not completely stopped prior to impact, he was momentarily blinded by sun glare, and he did not see a turn signal on the White Vehicle, generate questions of fact which preclude summary judgment before discovery is completed.

On reply, plaintiff asserts that Maldonado's testimony corroborates plaintiff's statement that their vehicle was at a complete stop before being hit by Rivas. In addition, the fact that Maldonado testified that the White Vehicle came to an abrupt stop is irrelevant as it is undisputed that Maldonado was able to stop without hitting the White Vehicle, as confirmed by plaintiff. Moreover, given that Rivas admitted to having forty-five seconds in which to stop, there is no way that the vehicles can be considered to have stopped suddenly. Furthermore, Rivas' claim of sun glare cannot create an issue of fact as a matter of law. Finally, the motion is not premature, plaintiff contends, as defendants had the opportunity to fully litigate these issues in the first action, and defendants have failed to identify any facts that plaintiff might exclusively know in terms of liability for the accident.

A plaintiff in a personal injury action who moves for summary judgment on the issue of liability in a multiple chain reaction collision has the burden of establishing, *prima facie*, both that the defendant was negligent and that he or she was free from comparative fault. *McLaughlin v Lunn*, 137 AD3d 757 [2d Dept 2016]. Further, "[w]hen 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." *Id.*; *Gaeta v Carter*, 6 AD3d 576 [2d Dept 2004]; VTL § 1129[a]; *Williams v Spencer-Hall*, 113 AD3d 759, 759-760 [2d Dept 2014]. "A rear-end collision with a stopped or stopping vehicle establishes a *prima facie* case of negligence on the part of the operator of the rear vehicle, requiring that operator to come forward with evidence of a nonnegligent explanation for the collision in order to rebut the inference of negligence." *McLaughlin v Lunn, supra*; *Pyo v Tribino*, 141 AD3d 639 [2d Dept 2016], quoting *Delgado v Bang*, 120 AD3d 608, 609 [2d Dept 2014]; *Wooldridge-Solano v Dick*, 143 AD3d 698 [2d Dept 2016]; *Niosi v Jones*, 133 AD3d 578 [2d Dept 2015].

The court has reviewed the affidavits, depositions and exhibits submitted in support of the motion and finds that plaintiff has established her *prima facie* entitlement to judgment as a matter of law in this multi-car, chain reaction, rear-end collision accident by demonstrating that the vehicle in which plaintiff was a passenger was propelled forward into another vehicle after her vehicle was struck in the rear by defendant. *Strickland v Tirino*, 99 AD3d 888, 890 [2d Dept 2012]; *Daramboukas v Samlidis*, 84 AD3d 719 [2d Dept 2011]. As for Rivas' allegation that he was temporarily blinded by sun glare, it is

insufficient to generate an issue of fact under the circumstances. See *Lifson v City of Syracuse*, 17 NY3d 492 [2011]; *Barry v Pepsi-Cola Bottling Co. of New York, Inc.*, 130 AD3d 500 [1st Dept 2015]; *Marsella v Sound Distributing Corp.*, 248 AD2d 683 [2d Dept 1998]; *Agramonte v City of New York*, 288 AD2d 75 [1st Dept 2011]; see also *Lewis v City of New York*, 157 AD3d 879 [2d Dept 2018]. In addition, Rivas' allegation that the White Vehicle stopped suddenly, in and of itself, is insufficient to raise a triable issue of fact. *Hakakian v McCabe*, 38 AD3d 493 [2d Dept 2007]; *Nikolic v City-Wide Sewer & Drain Service Corp.*, 150 AD3d 754 [2d Dept 2017]. Rivas' testimony that Maldonado's car might have been rolling when Rivas' vehicle rear-ended it, moreover, does not create a question of fact as to liability. *Strickland v Tirino*, *supra*; *McLaughlin v Lunn*, *supra*.

As for defendants' argument in opposition to this motion for summary judgment that there is a need for disclosure, it lacks merit. Defendants, utilizing the same attorneys, deposed the relevant parties concerning the accident in the first action. Moreover, defendants fail to show that additional discovery might lead to relevant evidence, or that facts essential to justify opposition to the motion were exclusively within the knowledge and control of the plaintiff, who was a passenger. CPLR 3212[f]; *Pabarroo v TS 405 Lexington Owner, LLC*, 141 AD3d 634 [2d Dept 2016]; *Orellana v Maggies Paratransit Corp.*, 138 AD3d 941 [2d Dept 2016]; *Williams v Spencer-Hall*, *supra*; *Pierre v Demoura*, 148 AD3d 736 [2d Dept 2017]. The court finds, therefore, that plaintiff has established that she is entitled to summary judgment on liability as against defendants.

Accordingly, it is hereby

ORDERED that the motion of plaintiff ROBIN HILES-BRIGANTI made pursuant to CPLR 3212, for summary judgment on the issue of liability as against defendants ANDREW A. RIVAS and E.C. RUIZ-HERNANDEZ granted; and it is further

ORDERED that the parties shall appear at the Preliminary Conference Part of the Court, Room 811, on April 23, 2018 at 9:15 a.m.

Dated: White Plains, New York
March 26, 2018

ENTER,



HON. LAWRENCE H. ECKER, J.S.C.

Appearances

Alan R. Gray, Jr. Esq.
Attorneys for Plaintiff- via NYSCEF

Eugene G. Gallagher, Esq.
Attorneys for Defendants- via NYSCEF