Tait v Cruzparada
2018 NY Slip Op 34261(U)
October 12, 2018
Supreme Court, Suffolk County
Docket Number: Index No. 608380/2018
Judge: Paul J. Baisley, Jr.
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SHORT FORM ORDER **INDEX NO. 608380/2018**

SUPREME COURT - STATE OF NEW YORK
DCM-J - SUFFOLK COUNTY

PRESENT:
Hon. Paul J. Baisley, Jr., J.S.C.

MARGARET TAIT,

Plaintiff,

-against-

EVA CRUZPARADA, JOSE J. CRESPIN, ABIGAIL K. PEREZ and RUTH PEREZ,

Defendants.

ORIG. RETURN DATE: August 16, 2018
FINAL RETURN DATE: September 13, 2018
MOT. SEQ. #: 001 MotD

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Upon the following papers read on this motion for summary judgment ; Notice of Motion and supporting papers dated July 16, 2018 ; Answering Affidavits and supporting papers dated August 23, 2018; September 6, 2018 ; Replying Affidavits and supporting papers dated September 12, 2018 ; (~~and after hearing counsel in support and opposed to the motion~~) it is,

ORDERED that the motion by plaintiff Margaret Tait for partial summary judgment in her favor on the issue of defendants' liability is granted to the extent provided herein and is otherwise denied; and it is further

ORDERED that the parties shall appear for a preliminary conference at 10:00 a.m. on November 5, 2018, at the DCM-J Part of the Supreme Court, One Court Street, Riverhead, New York.

This action was commenced by plaintiff Margaret Tait to recover damages for injuries she allegedly sustained on May 17, 2016, when her motor vehicle was struck in the rear by a vehicle owned by defendant Jose Crespin and operated by defendant Eva Cruzparada. Plaintiff alleges her vehicle was struck in the rear a second time when a vehicle owned by defendant Ruth Perez and operated by defendant Abigail K. Perez struck the Crespin vehicle.

Plaintiff now moves for partial summary judgment in her favor, arguing that defendants' negligence is the sole proximate cause of her injuries. In support of her motion, plaintiff submits copies of the pleadings, her own affidavit, and a certified copy of an MV-104A police accident report. The

Court notes it did not consider that portion of the police accident report entitled "Accident Description/Officer's notes," as statements therein, despite plaintiff's arguments to the contrary, are inadmissible hearsay (*see Memenza v Cole*, 131 AD3d 1020, 16 NYS3d 287 [2d Dept 2015]). The "Accident Description/Officer's notes" section of the subject police report indicates that "[Defendants] stated the same as [plaintiff]," following plaintiff's alleged description of the accident in that section of the police report. The Court finds, in this particular instance, defendant drivers' alleged statements are insufficiently specific to constitute admissible party admissions.

In her affidavit, plaintiff states that at 1:00 p.m. on the date in question, she was operating her motor vehicle westbound on Pine Aire Drive in the Town of Islip, New York. She indicated that as she approached Pine Aire Drive's intersection with Manatuck Boulevard, she brought her vehicle to "a slow, gradual and complete stop for a red traffic light controlling [her] direction of travel." After being completely stopped for at least 30 seconds, her vehicle was struck in the rear by a vehicle operated by Eva Cruzparada. Plaintiff indicates that her vehicle was struck in the rear a second time when Ms. Cruzparada's vehicle was propelled into hers after being struck in the rear by a vehicle operated by Abigail K. Perez. Plaintiff avers she felt "two distinct impacts" as a result of the collisions.

A party moving for summary judgment "must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact" (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324, 508 NYS2d 923 [1986]). Failure to make such showing requires denial of the motion, regardless of the sufficiency of the opposing papers (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853, 487 NYS2d 316 [1985]). If the moving party produces the requisite evidence, the burden then shifts to the nonmoving party to establish the existence of material issues of fact which require a trial of the action (*see Vega v Restani Constr. Corp.*, 18 NY3d 499, 942 NYS2d 13 [2012]; *Zuckerman v City of New York*, 49 NY2d 557, 427 NYS2d 595 [1980]). Mere conclusions or unsubstantiated allegations are insufficient to raise a triable issue (*see O'Brien v Port Auth. of N.Y. & N.J.*, 29 NY3d 27, 52 NYS3d 68 [2017]). In deciding the motion, the Court must view all evidence in the light most favorable to the nonmoving party (*see Ortiz v Varsity Holdings, LLC*, 18 NY3d 335, 339, 937 NYS2d 157 [2011]).

"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" (*Cortese v Pobejimov*, 136 AD3d 635, 636, 24 NYS3d 405, 406 [2d Dept 2016]; *see Tutrani v County of Suffolk*, 10 NY3d 906, 861 NYS2d 610 [2008]). Examples of such non-negligent explanations include mechanical failure, a sudden, unexplained stop of the vehicle ahead, an unavoidable skidding on wet pavement, or any other reasonable cause (*Tumminello v City of New York*, 148 AD3d 1084, 49 NYS3d 739 [2d Dept 2017]; *see also Foti v Fleetwood Ride, Inc.*, 57 AD3d 724, 871 NYS2d 215 [2d Dept 2008]; *Klopchin v Masri*, 45 AD3d 737, 846 NYS2d 311 [2d Dept 2007]; *Filippazzo v Santiago*, 277 AD2d 419, 716 NYS2d 710 [2d Dept 2000]). It is also well settled that when a driver of a motor vehicle approaches another automobile from the rear, he or she is bound to maintain a safe rate of speed and has the duty to keep control over his or her vehicle, and to exercise reasonable care to avoid colliding with the other vehicle (*Carhuayano v J & R Hacking*, 28 AD3d 413, 813 NYS2d 162 [2d Dept 2006]; *Gaeta v Carter*, 6 AD3d 576, 775 NYS2d 86 [2d Dept 2004]; *see also* Vehicle and Traffic Law § 1129 [a]).

Moreover, an operator of a motor vehicle has a "common-law duty to see that which [he or she] should have seen through the proper use of [his or her] senses" (*Botero v Erraez*, 289 AD2d 274, 275, 734 NYS2d 565, 566 [2d Dept 2001]; *see also Ferrara v Castro*, 283 AD2d 392, 724 NYS2d 81 [2d Dept 2001]).

Plaintiff's submissions established a prima facie case of entitlement to judgment in her favor on the issue of defendant drivers' liability for her alleged injuries (*see Cortese v Pobejimov*, *supra*; *see generally Rodriguez v City of New York*, 31 NY3d 312, 76 NYS3d 898 [2018]; *Alvarez v Prospect Hosp.*, *supra*). In addition, as to defendants Jose Crespin and Ruth Perez, Vehicle and Traffic Law § 388 (1) provides that "[e]very owner of a vehicle used or operated in this state shall be liable and responsible for . . . injuries to person or property resulting from negligence in the use or operation of such vehicle . . . by any person using or operating the same with the permission, express or implied, of such owner." Thus, the burden shifts to defendants to raise a triable issue of material fact (*see generally Vega v Restani Constr. Corp.*, *supra*).

In opposition, defendants Jose Crespin and Eva Cruzparada argue that, among other things, plaintiff stopped at a green light for no reason, and that their vehicle did not strike plaintiff's vehicle until a third vehicle struck their vehicle in the rear. Therein, Ms. Cruzparada states that she was operating a motor vehicle westbound on Pine Aire Drive when plaintiff's vehicle "came to an abrupt stop" at the intersection of Pine Aire Drive and Manatuck Boulevard. She indicates that the traffic light at that intersection was lighted green in their direction of travel. Ms. Cruzparada states that she brought her vehicle to a complete stop behind plaintiff's vehicle without skidding. Then, after being at a complete stop for approximately three seconds, her vehicle was struck in the rear by a vehicle operated by Abigail Perez, propelling Ms. Cruzparada's vehicle forward into plaintiff's vehicle. "Evidence that a vehicle was struck in the rear and propelled into the vehicle in front of it may provide a sufficient non-negligent explanation [for a collision]" (*Ortiz v Haidar*, 68 AD3d 953, 954, 892 NYS2d 122 [2d Dept 2009]). Thus, the Crespin defendants have raised a triable issue regarding their liability for happening of the subject accident (*see generally Alvarez v Prospect Hosp.*, *supra*). Accordingly, plaintiff's motion seeking partial summary judgment in her favor as to defendants Jose Crespin and Eva Cruzparada is denied.

Turning to the opposition of defendants Ruth and Abigail Perez, they argue that plaintiff violated Vehicle & Traffic Law § 1128 by making an unsafe lane change which, in turn, caused the accident. They submit Abigail Perez's own affidavit, wherein she states that she was operating a motor vehicle owned by Ruth Perez westbound on Pine Aire Drive. Immediately ahead of her vehicle was another vehicle, which she subsequently learned was operated by Eva Cruzparada. Ms. Perez indicates that she was traveling at approximately 20 miles per hour and that the traffic light at the approaching intersection of Pine Aire Drive and Manatuck Boulevard was green. She states that just prior to the accident in question, a vehicle operated by plaintiff exited the parking lot of a 7-Eleven store located on the southern side of Pine Aire Drive, crossed over the eastbound lane of Pine Aire Drive, and entered the westbound lane of Pine Aire Drive "just ahead" of the vehicle operated by Ms. Cruzparada. Ms. Perez states that plaintiff's actions forced Ms. Cruzparada's vehicle to make "an abrupt and unforeseeable stop," which caused the front of Ms. Perez's vehicle to strike the rear of Ms. Cruzparada's vehicle.

While an unsafe lane change can provide a non-negligent excuse for striking another vehicle in the rear (*see Finney v Morton*, 127 AD3d 1134, 7 NYS3d 508 [2d Dept 2015]), that is not the situation here. Ms. Perez does not claim that plaintiff's vehicle made an unsafe lane change, causing her to collide with plaintiff's vehicle. Rather, Ms. Perez asserts that plaintiff's alleged unsafe lane change caused Ms. Cruzparada's vehicle to make a sudden stop which, as a result, caused Ms. Perez's vehicle to impact the rear of Ms. Cruzparada's vehicle. As Ms. Perez had a duty to maintain a safe distance behind Ms. Cruzparada's vehicle (*see Carhuayano v J & R Hacking, supra*; Vehicle and Traffic Law § 1129 [a]), an unsafe lane change by plaintiff is insufficient to raise a triable issue (*see Lopez v Dobbins*, ___AD3d___, 79 NYS3d 566 [2d Dept 2018]; *see generally Rodriguez v City of New York*, 31 NY3d 312, 76 NYS3d 898 [2018]; *Alvarez v Prospect Hosp.*, *supra*). Accordingly, plaintiff's motion for partial summary judgment as to defendants Ruth and Abigail Perez's liability is granted.

Dated: 10/12/18

HON. PAUL J. BAISLEY, JR., J.S.C.

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