

**Zumaeta v Robertson**

2018 NY Slip Op 34537(U)

October 18, 2018

Supreme Court, Queens County

Docket Number: Index No. 716842/2017

Judge: Joseph Risi

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

Part 3

-----X  
MERCEDES ZUMAETA,

Plaintiff,

--against--

JOHN A. ROBERTSON and JANINE S.  
SAUNDERS,

Defendants,  
-----X

Index Number 716842/2017

DECISION/ORDER

Motion Sequence No. 1

The following papers numbered 1 to 9 read on this motion by plaintiff for an order pursuant to CPLR § 3212 granting plaintiff partial summary judgment on the issue of liability.

	<u>PAPERS NUMBERED</u>
N.M., Aff., Exhibits and Service.....	1-4
Answering Aff., Exhibits and Service.....	5-7
Reply and Service.....	8-9

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

Plaintiff commenced this action for damages by filing a summons and complaint on December 5, 2017. Defendants filed a verified answer on March 23, 2018. Plaintiff now moves for partial summary judgment on the issue of liability against the defendants.

This action arises out of a two car motor vehicle accident that occurred on July 11, 2017 on the eastbound side of the Brooklyn-Queens Expressway at or near the intersection of 65<sup>th</sup> Place, County of Queens, City and State of New York. In support of the motion, plaintiff submits an affirmation from counsel; a certified copy of the police accident report (MV-104A), a copy of the pleadings; and an affidavit from plaintiff driver Mercedes Zumaeta (“Zumaeta”).

Plaintiff driver Zumaeta states that she was operating a vehicle at approximately 4:45 p.m. on July 11, 2017. She states that she was stopped in traffic on the eastbound side of the Brooklyn-Queens Expressway. Plaintiff claims that she was stopped for approximately 5-10 seconds when her vehicle was struck from behind by a vehicle operated by defendant driver Janine S. Saunders (“Saunders”). Plaintiff alleges traffic in front of her came to a stop and that she stopped her car safely behind the car in front of her.

In opposition, defendants submit an affidavit stating that prior to the accident, she was traveling on the Brooklyn Queens Expressway at the rate of speed of forty (40) miles per hour. Both plaintiff and defendant driver concede that it was raining and the roads were wet, although defendant driver states it was raining very hard. Defendant driver claims that the plaintiff was driving in the middle lane ahead of defendant driver. Defendant Saunders claims that a third vehicle abruptly changed lanes from the left lane to the middle lane in front of plaintiff’s vehicle. Saunders further claims she applied her brakes and turned her steering wheel in an attempt to stop but the roadway was wet and her car hydroplaned into plaintiffs’ vehicle. Defendant avers that due to the condition of the roadway and the third vehicle abruptly changing lanes, she was unable to avoid coming into contact with plaintiff’s vehicle.

The proponent of summary judgment motion must tender evidentiary proof in admissible form eliminating any material issues of fact from the case. If the proponent succeeds, the burden shifts to the party opposing the motion, who then must show the existence of material issues of fact by producing evidentiary proof in admissible form in support of his position (see Zuckerman v. City of New York, 49 N.Y.2d 557).

A driver of a vehicle approaching another vehicle from the rear is required to maintain a reasonably safe distance and rate of speed under prevailing conditions to avoid colliding with the other vehicle (see Plummer v. Nourddine, 82 A.D.3d 1069; Gubala v Gee, 302 A.D.2d 911 ). As such, it is well-settled that a rear-end collision with a stopped or stopping vehicle creates a prima facie case of liability as to the offending vehicle's driver and imposes a duty on that operator to provide a non-negligent explanation for the collision (Katz v Masada II Car & Limo Service, Inc., 43 A.D.3d 876; Mead v Marino, 205 A.D.2d 669).

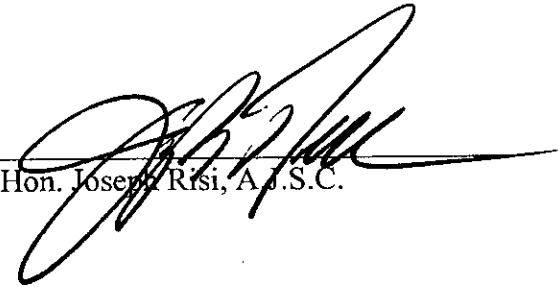
Here, plaintiff driver stated that her vehicle was at a complete stop due to traffic when it was struck from behind by the defendant's vehicle. Accordingly, the plaintiff has satisfied her prima facie burden of entitlement to judgment as a matter of law on the issue of liability. Thus, the burden shifts to defendants to provide a non-negligent explanation for the collision.

In opposition to the motion, the defendant Saunders has alleged that she was unable to stop on the wet roadway and hydroplaned into the plaintiff's vehicle. The court finds that the defendant has failed to offer a non-negligent excuse for the collision. The mere assertion that a vehicle is unable to stop because of the wet roadway is insufficient. Defendant driver must demonstrate that her hydroplaning on the wet roadway was unavoidable (see Sayyed v Murray, 109 A.D.3d 464). In the instant matter, the defendant admitted that she knew it was raining but was driving at forty (40) miles per hour. Defendant driver should have taken the adverse conditions of the roadway into consideration and compensated for it by maintaining a safe distance behind plaintiff's vehicle (see Warren v. Donovan, 254 A.D.2d 201; Volpe v. Limoncelli, 74 A.D.3d 795).

Accordingly, the plaintiff's motion for partial summary judgment on the issue of liability against the defendants is granted.

This is the decision and order of the Court.

Dated: October 18, 2018

  
Hon. Joseph Risi, A.J.S.C.

FILED  
OCT 29 2018  
COUNTY CLERK  
QUEENS COUNTY