

Estrada v Danzi

2019 NY Slip Op 34316(U)

January 3, 2019

Supreme Court, Westchester County

Docket Number: 70916/2018

Judge: Charles D. Wood

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This opinion is uncorrected and not selected for official publication.

To commence the statutory time period 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
BRUNILDA ESTRADA,

Plaintiff,

-against-

**DECISION & ORDER
Index No. 70916/2018
Sequence No. 1**

RONNIE DANZI,

Defendant.

-----X

WOOD, J.

The court read NYSCEF documents Numbers 11-22, in connection with plaintiffs' motion for partial summary judgment on liability.

This is an action for serious personal injuries arising out of an automobile accident which occurred on November 25, 2018. Defendant's motor vehicle struck plaintiff's motor vehicle in the rear while plaintiff's motor vehicle was at stopped at or near a red light on Route 119 near Chatterton Avenue, County of Westchester. Plaintiff brings this motion for summary judgment on the issue of liability, claiming that there is no triable issue of fact.

Upon the foregoing papers, the motion is decided as follows:

A proponent of a summary judgment motion 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 Hospital, 68 NY2d 320, 324 [1986]; Orange County-Poughkeepsie Ltd. Partnership v Bonte, 37 AD3d 684, 686-687 [2d

Dept 2007]; Rea v Gallagher, 31 AD3d 731 [2d Dept 2007]). Failure to make a prima facie showing requires a denial of the motion, regardless of the sufficiency of the motion papers (Winegrad v New York University Medical Center, 64 NY2d 851, 853 [1986]; Jakabovics v Rosenberg, 49 AD3d 695 [2d Dept 2008]; Menzel v Plotkin, 202 AD2d 558, 558-559 [2d Dept 1994]). Once the movant has met this threshold burden, the opposing party must present the existence of triable issues of fact (Zuckerman v New York, 49 NY2d 557, 562 [1980]; Khan v Nelson, 68 AD3d 1062 [2d Dept 2009]). In deciding a motion for summary judgment, the court is “required to view the evidence presented in the light most favorable to the party opposing the motion and to draw every reasonable inference from the pleadings and the proof submitted by the parties in favor of the opponent to the motion” (Yelder v Walters, 64 AD3d 762, 767 [2d Dept 2009]; Nicklas v Tedlen Realty Corp., 305 AD2d 385, 386 [2d Dept 2003]). Summary judgment is a drastic remedy and should not be granted where there is any doubt as to existence of a triable issue (Alvarez v Prospect Hospital, 68 NY2d 320,324 [1986]).

Generally, Vehicle and Traffic Law §1129(a) imposes a duty on all drivers to drive at a safe speed and maintain a safe distance between vehicles, always compensating for any known adverse road conditions (Ortega v City of New York, 721 NYS2d 790 [2d Dept 2000]). “When a driver approaches another vehicle from the rear, he is bound to maintain a reasonably safe rate of speed and to maintain control of his vehicle and use reasonable care to avoid colliding with the other vehicle” (Young v City of New York, 113 AD2d 833, 834 [2d Dept 1985]). “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, thereby requiring that operator to rebut the inference of negligence by providing a nonnegligent explanation for the collision” (Fernandez v Babylon Mun. Solid Waste, 117 AD3d 678 [2d Dept 2014]). In other words,

proof of a rear-end collision establishes a prima facie case of negligence on the part of the driver of the vehicle that strikes the forward vehicle and imposes a duty upon said offending vehicle to come forward with admissible proof to establish an adequate, non negligent explanation for a rear-end collision (Parise v Meltzer, 204 AD2d 295 [2d Dept 1994]; Moran v Singh, 10 A.D.3d 707, 708 [2d Dept 2004]); Cerda v Parsley, 273 AD2d 339 [2d Dept 2000]). In addition, where a vehicle is lawfully stopped, there is a duty imposed on the operators of vehicles traveling behind it in the same direction to come to a timely halt (Carter v Castle Elec. Contr. Co., 26 A.D.2d 83 [2d Dept 1966]). The operator of the moving vehicle is required to rebut the inference of negligence created by an unexplained rear-end collision because he or she is in the best position to explain whether the collision was due to a reasonable, non-negligent cause (Carter v Castle Elec. Contr. Co., at 85).

The sudden stop of a lead car is a non-negligent explanation of a rear-end collision, because the operator of that car has a duty to avoid stopping suddenly without properly signaling to avoid a collision “when there is opportunity to give such signal” (VTL §1163; *see id.*; Colonna v Suarez, 278 AD2d 355 [2d Dept 2000]) ; Taveras v Amir, 24 AD3d 655, 656 [2d Dept 2005]). “Vehicle stops which are foreseeable under the prevailing traffic conditions, even if sudden and frequent, must be anticipated by the driver who follows, since he or she is under a duty to maintain a safe distance between his or her car and the car ahead’ (Gutierrez v Trillium USA, LLC, 111 AD3d 669, 671 [2d Dept 2013]). If defendant cannot present evidence to rebut the inference of negligence, plaintiffs may properly be awarded judgment as a matter of law on the issue of liability (Lopez v Minot, 258 AD2d 564 [2d Dept 1999]).

Here, plaintiff’s motion for summary judgment is supported by evidence that establishes prima facie entitlement to judgment as a matter of law that plaintiff’s car was at a

complete stop at or near a red light, when it was rear-ended by defendant.. Thus, plaintiff has met her prima facie burden of establishing defendant's negligence, and plaintiff is entitled to summary judgment unless defendant presents a nonnegligent explanation for the car accident.

However, the parties' deposition testimony was conflicting as to the location of the accident, and whether traffic was controlled by a traffic signal. Plaintiff's submissions included a transcript of the defendant driver's deposition testimony, wherein defendant stated that plaintiff's vehicle came to an abrupt stop without vehicular traffic in front of it, in the middle of the roadway, not controlled by a traffic device. Therefore, plaintiff's own motion papers presented a triable issue of fact as to whether defendant driver was negligent in the happening of the subject accident (Richter v Delutri, 166 AD3d 695, 696 [2d Dept 2018]).

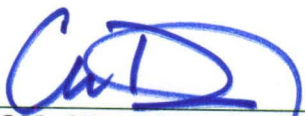
NOW, therefore for the above stated reasons, it is hereby

ORDERED, that plaintiff's motion for summary judgment on the issue of liability is denied; and it is further

ORDERED, that the parties are directed to appear in the Compliance Conference Part on January 8, 2020, at 9:30 A.M. in Room 800 of the Westchester County Courthouse, 111 Dr. Martin Luther King Jr. Blvd., White Plains, New York 10601.

All matters not herein decided are denied. This constitutes the Decision and Order of the court.

Dated: January 3, 2019
White Plains, New York



HON. CHARLES D. WOOD
JUSTICE OF THE SUPREME COURT

TO: All Parties by NYSCEF