Wilms v Remy
2019 NY Slip Op 34366(U)
September 26, 2019
Supreme Court, Suffolk County
Docket Number: Index No. 625213/2018
Judge: Sanford Neil Berland

SHORT FORM ORDER **INDEX NO.: 625213/2018**

E-FILE

SUPREME COURT - STATE OF NEW YORK
PART 6- SUFFOLK COUNTY

PRESENT:
Hon. Sanford Neil Berland, A.J.S.C.

STEPHANIE WILMS,

Plaintiff,

-against-

CORTEZE C. REMY JR., ADT SECURITY SERVICES, INC., and PROTECTION 1 ALARM MONITORING, INC.,

Defendants.

ORIG. RETURN DATE: June 25, 2019
FINAL RETURN DATE: July 30, 2019
MOT. SEQ. #: 001 **MG**

PLAINTIFF'S ATTORNEYS:
KAPLAN LAWYERS PC
6901 Jericho Turnpike, Suite 100
Syosset, New York 11791

DEFENDANTS' ATTORNEYS:
GOLDBERG SEGALLA LLP
200 Garden City Plaza, Suite 520
Garden City, New York 11530

Upon the reading and filing of the following papers: (1) Notice of Motion by plaintiff dated May 23, 2019, and supporting papers; (2) Affirmation In Opposition by defendants dated July 22, 2019, and supporting papers and (3) Reply Affirmation by plaintiff dated July 24, 2019, it is

ORDERED that the motion by plaintiff Stephanie Wilms for partial summary judgment on the issue of liability pursuant to CPLR 3212 is **GRANTED**.

This action involves a motor vehicle accident that occurred on March 2, 2018 at approximately 5:35 p.m. and in which the vehicle owned by defendants ADT Security Services, Inc. and Protection 1 Alarm Monitoring, Inc. and operated by defendant Corteze C. Remy Jr. struck the rear of a vehicle owned and operated by plaintiff on Joshua's Path at or near its intersection with Central Avenue, Hauppauge, New York. Plaintiff contends that her vehicle was stopped at a stop sign when the defendants' vehicle struck the rear of her vehicle. Plaintiff seeks to recover for serious physical injuries that she claims she sustained as a result of the accident.

Plaintiff now moves for partial summary judgment in her favor pursuant to CPLR 3212 on the issue of liability on the grounds that no triable issue of fact exists and that she is entitled to judgment in her favor as a matter of law. In support of her motion, plaintiff offers the pleadings, a certified copy of the police accident report and her own affidavit.

In her affidavit, plaintiff avers that prior to the accident, she was traveling northbound

on Joshua's Path. She states that she was stopped at the stop sign on Joshua's Path at its intersection with Central Avenue when the defendants' vehicle struck her vehicle in the rear. In support of her motion, plaintiff proffers a certified copy of the form MV-104A Police Accident Report, which recites defendant's admission that "while attempting to stop for traffic [Remy's vehicle] did strike [the rear of] [plaintiff's vehicle]." As the police report is certified as a true and accurate copy, and as "[t]he police officer who prepared the report was acting within the scope of his duty in recording the defendant driver's statement" and this statement is an admission of a party, it is admissible on the issue of liability (*see* CPLR 4518 [a]; ***Jackson v Trust***, 103 AD3d 851, 962 NYS2d 267 [2d Dept 2013]).

The 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 eliminate any material issues of fact from the case. Before summary judgment may be granted, it must clearly appear that no material and triable issue of fact is presented (***Sillman v Twentieth Century-Fox Film Corp.***, 3 NY2d 395, 165 NYS2d 498 [1957]). The movant has the initial burden of proving entitlement to summary judgment (***Winegrad v New York Univ. Med. Ctr.***, 64 NY2d 851, 487 NYS2d 316 [1985]). Failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers (***Winegrad v New York Univ. Med. Ctr.***, *supra*). Once such proof has been offered, the burden then shifts to the opposing party, who, in order to defeat the motion for summary judgment, must proffer evidence in admissible form...and must "show facts sufficient to require a trial of any issue of fact" (CPLR 3212 [b]; *see* ***Zuckerman v City of New York***, 49 NY2d 557, 427 NYS2d 595 [1980]). As the court's function on such a motion is to determine whether issues of fact exist, not to resolve issues of fact or to determine matters of credibility, the facts alleged by the opposing party and all inferences that may be drawn from them are to be accepted as true (*see* ***Roth v Barreto***, 289 AD2d 557, 735 NYS2d 197 [2d Dept 2001]; ***O'Neill v Fishkill***, 134 AD2d 487, 521 NYS2d 272 [2d Dept 1987]).

It is 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 & Rappaport Hacking***, 28 AD3d 413, 813 NYS2d 162 [2d Dept 2006]; ***Gaeta v Carter***, 6 AD3d 576, 775 NYS.2d 86 [2d Dept2004]; ***Chepel v Meyers***, 306 AD2d 235, 762 NYS2d 95 [2d Dept 2003]; ***Power v Hupart***, 260 AD2d 458, 688 NYS2d 194 [2d Dept 1999]; *see also* Vehicle and Traffic Law § 1129 [a]).

Moreover, a rear-end collision with a stopped or stopping vehicle creates a *prima facie* case of liability regarding the operator of the moving vehicle and imposes a duty of explanation on the operator of the moving vehicle to excuse the collision by providing a non-negligent explanation, such as a mechanical failure, a sudden stop of the vehicle ahead or unavoidable skidding on a wet pavement or some other reasonable excuse (*see* ***Davidoff v Mullokandov***, 74 AD3d 862, 903 NYS2d 107 [2d Dept 2010]; ***Carhuayano v J & Rappaport Hacking***, *supra*; ***Rainford v Sung S. Han***, 18 AD3d 638; 795 NYS2d 645 [2d Dept 2005]; ***Thoman v Rivera***, 16 AD3d 667, 792

NYS2d 558 [2d Dept 2005]; ***Gaeta v Carter***, *supra*).

Here, plaintiff has established a *prima facie* case of entitlement to judgment as a matter of law by demonstrating that she was stopped when defendants' vehicle struck her vehicle in the rear. The burden, therefore, shifts to the defendants to raise a triable issue of fact (*see* ***Zuckerman v City of New York***., *supra.*).

In opposition to the motion, defendants proffer an affidavit by defendant Corteze C. Remy Jr. in which he states that he was stopped at a stop sign and plaintiff's vehicle was stopped in front of him. Remy states that as plaintiff's vehicle moved forward from the stop sign and into the intersection, Remy let his foot off the brake and began to move forward when plaintiff slammed on her brakes suddenly and without warning and came to a sudden stop. Remy states that he immediately hit his brakes, but was not able to avoid hitting plaintiff's vehicle because of the suddenness of her stop combined with the wet and slippery condition of the roadway. Remy states that he "believe[s] that [p]laintiff stopped suddenly because [Remy] observed several vehicles of oncoming cross traffic in the intersection [plaintiff] was entering." Remy contends in his affidavit that he was not driving in a negligent manner and was at a safe and reasonable distance and driving at a safe and reasonable speed prior to the accident.

In a rear-end collision, allegations of a sudden stop without more are insufficient to raise a triable issue of fact sufficient to defeat a motion for summary judgment (*see* ***Kastritsios v Marcello***, 84 AD3d 1174, 923 NYS2d 863 [2d Dept 2011]; ***Franco v Breceus***, 70 AD3d 767, 895 NYS2d 152 [2d Dept 2010]; ***Mallen v Su***, 67 AD3d 974, 890 NYS2d 79 [2d Dept 2009]; ***Rainford v Sung S. Han***, 18 AD3d 683, 795 NYS2d 645 [2d Dept 2005]). Indeed, Remy concedes that he he himself observed the same cross traffic that, he contends, caused plaintiff to bring her vehicle to a stop. Hence, defendants have failed to raise any triable issue of fact with respect to liability sufficient to defeat plaintiff's motion (*see* ***Malone v Morillo***, 6 AD3d 324, 775 NYS2d 312 [1st Dept 2004]; ***David v New York City Bd. of Educ.***, 19 AD3d 639, 797 NYS2d 294 [2d Dept 2005]; ***Hakakian v McCabe***, 38 AD3d 493, 833 NYS2d 106 [2d Dept 2007]; ***Chowdhury v Matos***, 118 AD3d 488, 987 NYS2d 132 [1st Dept 2014]).

The fact that defendant Remy was negligent as a matter of law for rear-ending plaintiff's vehicle does not mean that plaintiff was necessarily free of negligence (*see* ***Fitzgerald v New York City Transit Authority***, 2 AD3d 577, 578, 769 NYS2d 300 [2d Dept 2003]; *see e.g.* ***Heal v Liszewski***, 294 AD2d 911, 741 NYS2d 374 [4th Dept 2002]). However, the plaintiff does not bear the double-burden of establishing a *prima facie* case of defendant's liability and the absence of her own comparative fault in order to be entitled to partial summary judgment against defendants on the issue of liability (***Rodriguez v City of New York***, 31 NY3d 312, 76 NYS3d 898 [2018]). Further, because defendant Remy has personal knowledge of the relevant facts underlying the accident, defendants' purported need to conduct discovery does not warrant a denial of the motion (*see* ***Turner v Butler***, 139 AD3d 715, 32 NYS3d 174 [2d Dept 2016]; ***Deleg v Vinci***, 82 AD3d 1146, 919 NYS2d 396 [2d Dept 2011]; ***Monteleone v Jung Pyo Hong***, 79 AD3d 988, 913 NYS2d 755 [2d Dept

2010]).

Accordingly, the motion by plaintiff for partial summary judgment in her favor on the issue of liability is granted.

The foregoing constitutes the decision and order of the court.

Dated: 9/26/2019
Riverhead, New York

HON. SANFORD NEIL BERLAND, A.J.S.C.