

Brown v Dileo

2019 NY Slip Op 34429(U)

December 30, 2019

Supreme Court, Orange County

Docket Number: Index No. EF003726-2018

Judge: Sandra B. Sciortino

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This opinion is uncorrected and not selected for official publication.

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 ORANGE

-----X
OMAR BROWN

Plaintiff,

-against-

JOSEPH DILEO and CSX TRANSPORTATION,

Defendants.

-----X
SCIORTINO, J.

DECISION AND ORDER
INDEX NO.: EF003726-2018
Motion Date: 10/30/19
Sequence No. 1

The following papers numbered 1 to 6 were considered in connection with plaintiff's motion seeking an order granting partial summary judgment on the issue of liability:

<u>PAPERS</u>	<u>NUMBERED</u>
Notice of Motion/Affirmation (DeFazio)/Affidavit(Brown)	1 - 3
Exhibits A-C	4 - 6

Background and Procedural History

This personal injury action arises out of a motor vehicle accident that took place on October 17, 2017, at the intersection 9W and Fostertown Road, Town of Newburgh, Orange County, New York. Plaintiff commenced this action by filing a Summons and Complaint (Exhibit 1) on or about May 4, 2018. Issue was joined by service of the defendants' answer on or about June 6, 2018.

The essential facts underpinning this action are not disputed. Defendant Joseph DiLeo was operating a 2015 Freight, owned by defendant CSX Transportation, when it struck the vehicle operated by the plaintiff. At the time of the impact, the plaintiff was slowing down for a

red light. The collision is alleged to have caused severe and serious personal injuries to plaintiff.

Defendants filed a Verified Answer dated May 21, 2018. (Exhibit 2).

Current Motion

By Notice of Motion filed October 2, 2019, plaintiff seeks partial summary judgment on the issue of liability. The motion is supported by an attorney's affirmation and plaintiff's affidavit. Both aver that plaintiff's vehicle was traveling southbound on 9W and, while slowing down for a red light, was struck by defendant's vehicle from behind. The impact occurred when defendant DiLeo's foot accidentally came off the break.

Plaintiff posits that a rear-end collision establishes *prima facie* negligence on the part of the operator of the vehicle causing the impact. Plaintiff further avers that defendant DiLeo had a duty to maintain a safe distance between his vehicle and plaintiff's vehicle, and defendant's failure to do so constitutes negligence as a matter of law.

Once a *prima facie* case has been established, an obligation is imposed upon the allegedly negligent operator to provide an explanation for the accident.

Defendants have submitted no opposition to this motions.

Discussion

Summary judgment is a drastic remedy, appropriate only when there is a clear demonstration of the absence of any triable issue of fact. *Piccirillo v. Piccirillo*, 156 A.D.2d 748 (2nd Dep't. 1989), citing *Andre v. Pomeroy*, 35 N.Y.2d 361 (1974). The Court's function on such a motion is issue finding, not issue determination. *Sillman v. Twentieth Century-Fox Film Corp.*, 3 N.Y.2d 395 (1957). The Court is not to engage in the weighing of evidence; instead, the Court must determine whether "by no rational process could the trier of facts find for the non-moving

party.” *Jastrzebski v. N. Shore Sch. Dist.*, 232 A.D.2d 677, 678 (2nd Dep’t. 1996).

In the matter at bar, plaintiff has established a *prima facie* entitlement to summary judgment with his sworn statement alleging that he was slowing down for a red light at the intersection of 9W and Fostertown Road when struck by a vehicle owned by defendant CSX Transportation and operated by defendant Joseph DiLeo. A rear-end collision with a stopped or stopping vehicle establishes a *prima facie* case of negligence on the part of the driver of the moving vehicle, thereby requiring the operator to rebut the inference of negligence by providing a non-negligent explanation. *Williams v. Spencer-Hall*, 113 AD3d 759 (2nd Dep’t 2014)

A driver is expected to drive at a sufficiently safe speed and to maintain enough distance between herself and cars ahead of her so as to avoid collisions with stopped vehicles, taking into account the weather and road conditions. Veh. & Traffic Law §1129(1). A failure to do so constitutes negligence as a matter of law, in the absence of an adequate explanation. *Velasquez v. Quijada*, 269 AD2d 592 (2nd Dep’t 2000). As the instant motion is not opposed on the issue of liability, defendants have failed to provide such an explanation.

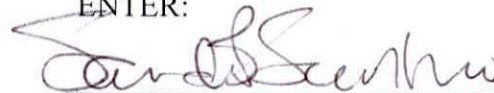
The denials and affirmative defenses in defendants’ Answer do not suggest, much less demonstrate, that there are any facts in dispute that would rebut the presumption of negligence established by the rear-end collision.

Accordingly, the motion for partial summary judgment on the issue of liability is granted.

This decision shall constitute the order of the Court.

Dated: December 30, 2019
Goshen, New York

ENTER:



HON. SANDRA B. SCIORTINO, J.S.C.

To: *Counsel of Record via NYSCEF*