Ruggieri v Gluck
2019 NY Slip Op 34490(U)
February 13, 2019
Supreme Court, Suffolk County
Docket Number: Index No. 005052/2018
Judge: Paul J. Baisley, Jr.

SHORT FORM ORDER **INDEX NO. 005052/2018**

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

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

TODD RUGGIERI,

Plaintiff,

-against-

SHERYL GLUCK,

Defendant.

ORIG. RETURN DATE: October 16, 2018
FINAL RETURN DATE: December 6, 2018
MOT. SEQ. # 001 MG

PLTF'S ATTORNEY:
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MELVILLE, NY 11747

DEFT'S ATTORNEY:
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GARDEN CITY, NY 11530

Upon the following papers read on this motion for summary judgment ; Notice of Motion/ Order to Show Cause and supporting papers by plaintiff, dated September 21, 2018 ; Notice of Cross Motion and supporting papers _____; Answering Affidavits and supporting papers by defendant, dated November 15, 2018 ; Replying Affidavits and supporting papers by plaintiff, dated November 26, 2018 ; Other _____; (~~and after hearing counsel in support and opposed to the motion~~) it is,

ORDERED that the motion by plaintiff Todd Ruggieri for summary judgment in his favor on the issue of negligence is granted; and it is further

ORDERED that parties in the instant action shall appear on March 11, 2019 at 10:00 a.m. at the DCM-J Part of the Supreme Court, 1 Court Street, Riverhead, New York for a preliminary conference.

Plaintiff Todd Ruggieri commenced this action to recover damages for injuries he allegedly sustained as a result of a motor vehicle accident that occurred at the intersection of Edgewood Avenue and Harness Road in the Town of Smithtown on January 9, 2017. It is alleged that the accident occurred when the vehicle owned and operated by defendant Sheryl Gluck struck the rear end of the vehicle owned and operated by plaintiff while it was stopped at red traffic light on Edgewood Avenue in front of Nesaquake Middle School.

Plaintiff now moves for summary judgment in his favor on the issue of negligence, arguing that the sole proximate cause of the subject accident was defendant's negligent operation of her vehicle. In support of the motion, plaintiff submits, among other things, copies of the pleadings, his own affidavit, and a certified copy of the police accident report. Defendant opposes the motion on the grounds that the motion is procedurally defective, since plaintiff failed to include a copy of the bill of particulars, and that there are triable issues of material fact as to the accident's occurrence. Defendant also asserts that plaintiff's motion is premature since discovery has not been completed. In opposition to the motion, defendant submits her own affidavit.

To establish prima facie entitlement to judgment as a matter of law, a movant must come forward with evidentiary proof, in admissible form, demonstrating the absence of any material issues of fact (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 508 NYS2d 923 [1986]; *Sillman v Twentieth Century Fox Film Corp.*, 3 NY2d 395, 165 NYS2d 498 [1957]). The failure to make such showing requires a denial of the motion, regardless of the sufficiency of the opposing papers (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 487 NYS2d 316 [1985]).

"A rear-end collision with a stopped or stopping vehicle creates a prima facie case of negligence against the operator of the rear vehicle, thereby requiring that operator to rebut the inference of negligence by providing a non-negligent explanation " (*DeLouise v S.K.I. Wholesale Beer Corp.*, 75 AD3d 489, 490, 904 NYS2d 761 [2d Dept 2010]; *see Reitz v Seagate Trucking, Inc.*, 71 AD3d 975, 898 NYS2d 173 [2d Dept 2010]; *Harrington v Kern*, 52 AD3d 473, 859 NYS2d 480 [2d Dept 2008]). However, the lead vehicle also has a duty not to stop suddenly or slow down without proper signaling so as to avoid a collision (*Chepel v Meyers*, 306 AD2d 235, 237, 762 NYS2d 95 [2d Dept 2003]; *see 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]; *Purcell v Axelsen*, 286 AD2d 379, 729 NYS2d 495 [2d Dept 2001]; *Colonna v Suarez*, 278 AD2d 355, 718 NYS2d 618 [2d Dept 2000]; *see also* Vehicle and Traffic Law § 1163). A non-negligent explanation for the collision, such as mechanical failure or the sudden and abrupt stop of the vehicle ahead, is sufficient to overcome the inference of negligence and preclude an award of summary judgment (*Danner v Campbell*, 302 AD2d 859, 859, 754 NYS2d 484 [4th Dept 2003]; *see Davidoff v Mullokandov*, 74 AD3d 862, 903 NYS2d 107 [2d Dept 2010]; *Rodriguez-Johnson v Hunt*, 279 AD2d 781, 718 NYS2d 501 [3rd Dept 2001]).

Initially, the Court notes that contrary to defendant's assertion, plaintiff's motion papers are not procedurally defective (*see Sensible Choice Contr., LLC v Rodgers*, 164 AD3d 705, 83 NYS3d 298 [2d Dept 2018]; *Washington Realty Owners, LLC v 260 Wash. St. LLC*, 105 AD3d 675, 964 NYS2d 137 [1st Dept 2013]). Despite CPLR 3212 requiring a motion for summary judgment to include all of the pleadings, the court has discretion to overlook the procedural defectiveness when the record is sufficiently complete (*Welch v Hauck*, 18 AD3d 1096, 1098, 795 NYS2d 789 [3d Dept 2005], *lv denied* 5 NY3d 708, 803 NYS2d 29 [2005]; *see* CPLR 2001). A motion is considered to be sufficiently complete when a complete set of the papers is available from the materials submitted (*see e.g. Studio A Showroom, LLC v Yoon*, 99 AD3d 632, 952 NYS2d 879 [1st Dept 2012]). The record here is sufficiently complete, and defendant has not argued or proven that plaintiff's failure to include a copy of the bill of particulars has prejudiced her in any way (*see Wade v Knight Transp., Inc.*, 151 AD3d 1107,58 NYS3d 458 [2d Dept 2017]; *Long Is. Pine Barrens Socy., Inc. v County of Suffolk*, 122 AD3d 688, 996 NYS2d 162 [2d Dept 2014]). Furthermore, pursuant to CPLR 3212, a motion for summary judgment may be made by any party after issue has been joined, and it is undisputed that the issue has been joined in this action.

In his affidavit, plaintiff states that at the time of the accident he was stopped at a red traffic light in the eastbound lane of Edgewood Avenue in front of the Nesaquake Middle School when his vehicle was impacted from the rear by defendant's vehicle. Plaintiff further avers that he was stopped at the red light for approximately 30 to 45 seconds prior to the accident, that he did not see defendant's vehicle prior to the impact, because he was staring straight ahead at the red light, and that the force from the

impact pushed his vehicle into the intersection of Edgewood Avenue and the entrance/exit to the middle school as well as into the oncoming westbound traffic.

Plaintiff's submissions are sufficient to establish his prima facie entitlement to judgment as a matter of law on the issue of negligence (*see Rodriguez v City of New York*, *supra*; *Abbott v Picture Cars East, Inc.*, 78 AD3d 869, 911 NYS2d 449 [2d Dept 2010]; *Costa v Eramo*, 76 AD3d 942, 907 NYS2d 510 [2d Dept 2010]; *Carman v Arthur J. Edwards Mason Contr. Co., Inc.*, 71 AD3d 813, 897 NYS2d 191 [2d Dept 2010]). A driver approaching a vehicle from the rear is bound to maintain a reasonably safe rate of speed and control over his or her vehicle, and to exercise reasonable care to avoid colliding with the other vehicle (*see* Vehicle and Traffic Law § 1129 [a]; *Brooks v High St. Professional Bldg., Inc.*, 34 AD3d 1265, 825 NYS2d 330 [4th Dept 2006]). Additionally, defendant stated in a certified police report that " when driving, she did hit [plaintiff's] vehicle." The police officer who prepared the report was acting within the scope of his duty in recording defendant's statement, and the statement is admissible as an admission of a party (*see Sydnor v Home Depot U.S.A., Inc.*, 74 AD3d 1185, 906 NYS2d 279 [2d Dept 2010]; *Scott v Kass*, 48 AD3d 785, 851 NYS2d 649 [2d Dept 2008]; *Guevara v Zaharakis*, 303 AD2d 555, 756 NYS2d 465 [2d Dept 2003]; *cf. Bailey v Reid*, 82 AD3d 809, 918 NYS2d 364 [2d Dept 2011]). Further, vehicle stops that are foreseeable under the prevailing traffic conditions, even if sudden and frequent, must be anticipated by the driver who follows, since he or she has a duty to maintain a safe distance between his or her vehicle and the car ahead (*Shamah v Richmond County Ambulance Serv.*, 279 AD2d 564, 565, 719 NYS2d 287 [2d Dept 2001]; *see* Vehicle and Traffic Law § 1129[a]).

In opposition to the motion, defendant has failed to raise a triable issue of fact as to the existence of a non-negligent explanation for the subject accident's occurrence (*see Hill v Ackall*, 71 AD3d 829, 895 NYS2d 837 [2d Dept 2010]; *Johnson v First Student, Inc.*, 54 AD3d 492, 863 NYS2d 303 [3d Dept 2008]; *Faul v Reilly*, 29 AD3d 626, 816 NYS2d 502 [2d Dept 2006]). Defendant has submitted an affidavit in which she attests that she was traveling in the eastbound lane of Edgewood Avenue, and that she was traveling at the posted speed limit as she approached Edgewood Avenue and its intersection with Nesaquake Middle School. She further states that as she approached the subject intersection, the entire lane of traffic she was traveling in came to a complete stop, and that the "sudden and unavoidable circumstance of the traffic coming to an unexpected stop was the cause of the accident." Defendant, in her affidavit, is not asserting that she did not make the earlier statement to the police officer at the scene of the accident, nor is she disputing the accuracy of the statement attributed to her in the police accident report (*see Odetalla v Rodriguez*, 165 AD3d 826, 85 NYS3d 560 [2d Dept 2018]; *Ricci v Lo*, 95 AD3d 859, 942 NYS2d 644 [2d Dept 2012]; *cf. Imamkhodjaev v Kartvelishvili*, 44 AD3d 619, 843 NYS2d 160 [2d Dept 2007]). Therefore, defendant's affidavit is a belated attempt to avoid the consequences of her earlier admission to the police officer at the scene of the accident by raising a feigned issue of fact, and is insufficient to defeat plaintiffs' prima facie showing (*see Benedikt v Certified Lbr. Corp.*, 60 AD3d 798, 875 NYS2d 526 [2d Dept 2009]; *Grange v Jacobs*, 11 AD3d 582, 783 NYS2d 634 [2d Dept 2004]; *Guevara v Zaharakis*, 303 AD2d 555, 756 NYS2d 465 [2d Dept 2003]). Defendant was under a duty to see that which her senses should have readily seen, and to maintain a safe distance between her vehicle and plaintiff's vehicle in order to avoid colliding with the vehicle in front of her vehicle (*see Rieman v Smith*, 302 AD2d 510, 755 NYS2d 256 [2d Dept 2003]; *Karkowska v Niksa*, 298 AD2d 561, 749 NYS2d 55 [2d Dept 2002]; *Stiles v County of Dutchess*, 278 AD2d 304, 717 NYS2d 325 [2d Dept

2000]; *see also* Vehicle and Traffic Law § 1129(a)]. As a consequence, defendant has failed to come forth with a nonnegligent excuse for the happening of the accident (*see Hernandez v Burkitt*, 271 AD2d 648, 706 NYS2d 456 [2d Dept 2000]; *Bolta v Lohan*, 242 AD2d 356, 661 NYS2d 286 [2d Dept 1997]; *Rebecchi v Whitmore*, 172 AD2d 600, 568 NYS2d 423 [2d Dept 1991] *cf. Guzman v Bowen*, 38 AD3d 837, 833 NYS2d 548 [2d Dept 2007]; *Perla v Wilson*, 287 AD2d 606, 732 NYS2d 35 [2d Dept 2001]).

Furthermore, defendant's assertion that plaintiff's summary judgment motion on the issue of negligence is premature, because discovery has yet to be conducted, is without merit. Before a party can defeat or delay a motion for summary judgment claiming ignorance of fact due to unconducted discovery (*see* CPLR 3212 [f]), a party must demonstrate that the needed proof is within the exclusive knowledge of the moving party (*see Berkeley v Fed. Bank & Trust v 229 E. 53rd St. Assoc.*, 242 AD2d 489, 662 NYS2d 481 [1st Dept 1997]), that the claims in opposition are supported by something more than mere hope or conjecture (*see Neryaev v Solon*, 6 AD3d 510, 775 NYS2d 348 [2d Dept 2004]), and that the party has made reasonable attempts to discover these facts and that the facts sought would give rise to a triable issue (*see Cruz v Ortis El. Co.*, 238 AD2d 540, 656 NYS2d 688 [2d Dept 1997]). Here, defendant has failed to make such showing. Accordingly, plaintiff's motion for partial summary on the issue of negligence is granted.

Dated: 2/13/19

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