

Augustin-Alarcon v Shannon
2019 NY Slip Op 34573(U)
September 23, 2019
Supreme Court, Rockland County
Docket Number: 037358/2018
Judge: Sherri L. Eisenpress
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

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REMBERTO AUGUSTIN-ALARCON,

Plaintiff,

-against -

TARA ROSE SHANNON, DAWN SHANNON,
CANDACE B. PERKINS,

Defendants.

-----X
HON. SHERRI L. EISENPRESS, A.J.S.C.

DECISION/ORDER

Index No. 037358/2018

(Motions #1 and #2)

The following papers, numbered 1-7, were read in connection with (Motion #1) Defendant Candace B. Perkins Notice of Motion for summary judgment and dismissal of the Complaint as against her; and (Motion #2) Plaintiff's cross-motion for summary judgment as to liability against Defendants Tara Rose Shannon and Dawn Shannon:

<u>PAPERS</u>	<u>NUMBERED</u>
NOTICE OF MOTION/AFFIRMATION IN SUPPORT/AFFIDAVIT OF CANDACE B. PERKINS/EXHIBITS "A-D"	1-3
NOTICE OF CROSS-MOTION/AFFIRMATION IN SUPPORT OF CROSS-MOTION/BILL OF PARTICULARS	4-5
AFFIRMATION IN OPPOSITION/AFFIDAVIT OF TARA ROSE SHANNON/EXHIBIT "A-B"	6-7

Plaintiff commenced the instant action with the filing of a Summons and Verified Complaint through the NYSCEF system on December 17, 2018, to recover damages for personal injuries arising out of a three car chain collision which occurred on January 27, 2017, on West Route 59 at or near its intersection with Kemmer Lane, in the Town of Clarkstown, State of New York. At the time of the subject occurrence, Plaintiff was a passenger in a vehicle owned and operated by non-party Julyssa D. Pinos, Car #2, which was struck in the rear during the course of a chain collision by Car #3, which was operated by Defendant Tara Rose Shannon and owned by Defendant Dawn Shannon. Car #2, struck the rear of Car #1, which was owned and operated by Defendant Candace B. Perkins.

Defendant Perkins brings this summary judgment motion prior to discovery and argues that the action must be dismissed against her as she is not responsible for the accident as a matter of law. She avers in her affidavit that she was traveling westbound on Route 59 towards the intersection. Prior to entering the intersection, she came to a complete stop at the red light. While her car remained stopped, she was suddenly rear ended by the vehicle directly behind her, driven by non-party Julyssa D. Pinos. She claims there was only one impact to her vehicle.

Plaintiff cross-moves for summary judgment against Defendants Tara Rose Shannon and Dawn Shannon.¹ Plaintiff does not submit an affidavit with respect to the happening of the accident, nor an affidavit from non-party driver Julyssa Pinos, but rather relies on the affidavit of Defendant Perkins for his contention that only Defendants Tara Rose Shannon and Dawn Shannon are liable for the accident.

In opposition to the motions, Defendants Tara Rose Shannon and Dawn Shannon contend that the motions are premature, as a Preliminary Conference has been held and discovery has been scheduled. Defendant Tara Rose Shannon also submits an affidavit in opposition to the motion. She avers that on January 27, 2017, she was operating a 2013 Hyundai Elantra owned by her father, and was not driving a 2010 Jeep, as indicated in the police accident reports. She states that at the time of the accident, she brought her vehicle to a complete stop at the red traffic signal located at the intersection of West Rt. 59 and Grandview Avenue, approximately half a car length behind a silver Honda CR-V. Defendant Shannon states that after the traffic signal turned to green, all the vehicles on the roadway, including the Honda CR-V began to move. She contends that the Honda CR-V stopped suddenly and she was unable to stop in time to avoid a slight impact with Plaintiff's vehicle, which took place less than two seconds after seeing the brake lights of the vehicle that Plaintiff was a

¹Technically, Plaintiff's motion is not a "cross-motion" as he is not moving against Candace Perkins but against co-defendants.

passenger in. Defendants argue that the sudden stop is a non-negligent explanation for the rear end collision.

The proponent of a summary judgment motion must establish his or her claim or defense sufficient to warrant a Court directing judgment in its favor as a matter of law, tendering sufficient evidence to demonstrate the lack of material issues of fact. Giuffrida v Citibank Corp., et al., 100 N.Y.2d 72 (2003) (citing Alvarez v Prospect Hosp., 68 N.Y.2d 320 (1986)). The failure to do so requires a denial of the motion without regard to the sufficiency of the opposing papers. Lacagnino v Gonzalez, 306 A.D.2d 250 (2d Dept 2003). However, once such a showing has been made, the burden shifts to the party opposing the motion to produce evidentiary proof in admissible form demonstrating material questions of fact requiring trial. Gonzalez v. 98 Mag Leasing Corp., 95 N.Y.2d 124 (2000). Mere conclusions or unsubstantiated allegations unsupported by competent evidence are insufficient to raise a triable issue. Gilbert Frank Corp. v. Federal Ins. Co., 70 N.Y.2d 966 (1988); Zuckerman v. City of New York, 49 N.Y.2d 557 (1980).

It is well-settled that a rear-end collision with a stopped or stopping vehicle creates a prima facie case of liability with respect to the operator of the moving vehicle, unless the operator of the moving vehicle can come forward with an adequate, non-negligent explanation for the accident. See Smith v. Seskin, 49 A.D.3d 628, 854 N.Y.S.2d 420 (2d Dept. 2008); Harris v. Ryder, 292 A.D.2d 499, 739 N.Y.S.2d 195 (2d Dept. 2002). A non-negligent explanation for a rear-end collision with a stopped or stopping vehicle may include a mechanical failure, a sudden unexplained stop of the vehicle ahead, an unavoidable skidding on wet pavement, or any other reasonable excuse. Tumminello v. City of New York, 148 A.D.3d 1084, 49 N.Y.S.3d 739, 741 (2d Dept. 2017).

While a non-negligent explanation for a rear-end collision, necessary to rebut the inference of negligence, may include evidence of a sudden stop of the lead vehicle, 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. Theo v. Vasquez, 136 A.D.3d 795, 796, 26 N.Y.S.3d 85 (2d Dept. 2016).

However, not every rear-end collision is the exclusive fault of the rearmost driver as the frontmost driver also has the duty not to stop suddenly or slow down without proper signaling so as to avoid collision. Martinez v. Allen, 163 A.D.3d 951, 82 N.Y.S.3d 130, 131 (2d Dept. 2018). In Martinez, the Court found triable issues of fact as to whether the leading driver caused or contributed to the collision based upon plaintiff's affidavit in which he averred that defendant made a sudden stop and failed to give proper signals. Id. See also Amador v. City of New York, 120 A.D.3d 526, 991 N.Y.S.2d 637 2d Dept. 2014)(triable issues of fact based upon defendant's testimony that plaintiff's vehicle came to an abrupt stop for no apparent reason as it was approaching the intersection with the traffic light in its favor.); Kertesz v. Jason Transportation Corp., 102 A.d.3d 658, 957 N.Y.S.2d 730 (2d Dept. 2013)(triable issue of fact where defendant averred that plaintiff's vehicle stopped suddenly and without warning approximately 40-50 feet from nearest intersection, despite the fact that there was no traffic in front of that vehicle.); Gleason v. Villegas, 81 A.D.3d 889, 917 N.Y.S.2d 890 (2d Dept. 2011); Costa v. Eramo, 76 A.D.3d 942, 907 N.Y.S.2d 510 (2d Dept. 2010).

In the instant matter, the Court finds that Defendant Candace B. Perkins has met her burden upon summary judgment as she avers that she was stopped at a red light at the time her vehicle was hit in the rear. In opposition thereto, neither co-defendants nor Plaintiff have demonstrated a triable issue of fact, as no party contends that Defendant Perkins stopped short at the time of the subject occurrence nor do they offer any other non-negligent explanation. Accordingly, Defendant Perkins' motion for summary judgment and dismissal of the Complaint against her is granted.

Plaintiff, however, has failed to establish his prima facie entitlement to summary judgment against Tara Rose Shannon and Dawn Shannon. Plaintiff does not submit an affidavit

that the vehicle he was a passenger in at the time of the accident was stopped when struck in the rear. The affidavit of Defendant Perkins is silent with respect to this issue. In any event, Defendants have demonstrated a triable issue of fact as to whether the non-party driver, Julyssa D. Pinos, stopped short, without warning or signaling, at the time of the occurrence. Accepting defendants' version of the accident as true, as the Court must on a summary judgment motion, a stop at an intersection without traffic control devices would not be foreseeable. "On a motion for summary judgment, the function of the court is not to determine issues of fact or credibility, but merely to determine the existence of such issues." *Dykeman v. Heht*, 52 A.D.3d 767, 769, 52 A.D.3d 767 (2d Dept. 2008). As such, Plaintiff's summary judgment motion made prior to discovery must be denied, with leave to re-file upon completion of discovery.

Accordingly, it is hereby

ORDERED that Defendant Candace B. Perkins' Notice of Motion (#1) for summary judgment and dismissal of the Complaint against her is GRANTED in its entirety; and it is further

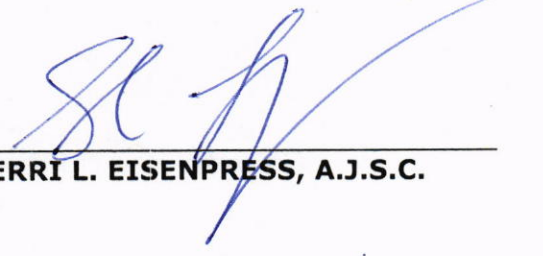
ORDERED that Plaintiff's Notice of Cross-Motion (#2) for summary judgment, pursuant to CPLR § 3212, is DENIED, with leave to renew after the completion of discovery; and it is further and it is further

ORDERED that the remaining parties shall continue with discovery pursuant to the discovery schedule set forth at the Preliminary Conference ; and it is further

ORDERED that this matter is scheduled for a Compliance Conference on **WEDNESDAY, NOVEMBER 13, 2019, at 9:45 a.m.**

The foregoing constitutes the Opinion, Decision & Order of the Court on Motions #1 and #2.

Dated: New City, New York
September 23, 2019



HON. SHERRI L. EISENPRESS, A.J.S.C.

TO:
All Parties (by e-file)