Luna v Carmody
2019 NY Slip Op 34641(U)
October 15, 2019
Supreme Court, Orange County
Docket Number: Index No. EF010424/2018
Judge: Maria S. Vazquez-Doles
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At a term of the IAS Part of the Supreme Court of the State of New York,
held in and for the County of Orange, at285 Main Street
Goshen, New York 10924 on the 15th day of October, 2019.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

RACHEL A. LUNA and SOL M. LUNA-ROMAN,

PLAINTIFFS,

-AGAINST-

DOROTHY T. CARMODY,

DEFENDANTS.

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, on all parties.

DECISION & ORDER
INDEX #EF010424/2018
Motion date: 08/19/19
Motion Seq.#1 & 2

VAZQUEZ-DOLES, J.S.C.

The following papers numbered 1 - 8 were read on plaintiffs' motion for partial summary judgment on the issue of liability(seq. #1); and on the motion for summary judgment(seq. #2), dismissing the counterclaim as against plaintiff, Rachel A. Luna:

Notice of Motion/Affirmation (Ilori)/ Exhibits 1-4 .... 1 - 3
Notice of Cross-Motion/Affirmation (Rogers)/Exhibits A-C .... 4 - 6
Affirmation in Opposition (Walsh)/Affidavit (Carmody)/ExhibitsA-F .... 7 - 9
Reply Affirmation (Ilori) 8

In this negligence action, plaintiffs seek to recover damages for personal injuries they allegedly sustained as a result of a rear-end motor vehicle accident that occurred on October 6, 2017 on Dolson Avenue in the City of Middletown, County of Orange, State of New York. Plaintiff, Rachel A. Luna, was operating her vehicle, traveling on Dolson Avenue with plaintiff, Sol M. Luna-Roman as a passenger. Defendant was traveling behind her. Prior to impact, the plaintiff's vehicle was stopped for traffic on Dolson Avenue at the intersection with County Route 78 when it was struck in the rear by defendant's vehicle.

[* 1]
Filed in Orange County 10/16/2019 09:29:02 AM $0.00 Bk: 5133 Pg: 710 Index: # EF010424-2018 Clerk: DK

Plaintiffs assert that they are entitled to summary judgment on liability based on the rear-end collision, which establishes a *prima facie* case of negligence on the part of defendant. They argue that defendant's purported non-negligent explanation, that plaintiff stopped suddenly after a Jeep made a left hand turn onto Dolson Avenue in front of plaintiffs' vehicle and came to a stop, is insufficient to raise a triable issue of fact, based upon the Vehicle & Traffic Law which requires a driver to maintain a safe distance between his vehicle and the vehicle in front of him. McKinney's Veh. & Traffic Law §1129. Defendant's admission that she actually saw the Jeep making the left hand turn in front of plaintiffs' vehicle is sufficient to disavow any non-negligent explanation for the collision.

In opposition, defendant asserts that there are bona fide issues of fact regarding her own liability and plaintiff, Luna's, comparative negligence, in light of Luna's sudden stop. A sudden stop of the lead vehicle has frequently been deemed a potential non-negligent explanation for a rear-end collision, which precludes an award of summary judgment. Even the driver of a stopped car can be found to be negligent, and the actions of that driver a proximate cause of the collision, where the stop was sudden. Defendant argues that there are issues of fact regarding whether Luna's conduct in stopping suddenly, contributed to the happening of the accident.

Summary judgment is a drastic remedy, and is appropriate only when there is a clear demonstration of the absence of any triable issue of fact. (*Piccirillo v. Piccirillo*, 156 AD2d 748 [2d Dept 1989], citing *Andre v. Pomeroy*, 35 NY2d 361 [1974]) The function of the Court on such a motion is issue finding, and not issue determination. (*Sillman v. Twentieth Century-Fox Film Corp.*, 3 NY2d 395 [1957]) The Court is not to engage in the weighing of evidence; rather, the Court's function is to determine whether "by no rational process could the trier of facts find

for the non-moving party." (*Jastrzebski v. N. Shore Sch. Dist.*, 232 AD2d 677, 678 [2d Dept 1996]).

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, requiring that operator to come forward with evidence of a non-negligent explanation for the collision in order to rebut the inference of negligence (*see Tutrani v. County of Suffolk*, 10 N.Y.3d 906, 908 [2008]; *Theo v Vasquez*, 136 AD3d 795 [2d Dept 2016]).

Here, plaintiffs have established their entitlement to judgment as a matter of law by demonstrating that their vehicle was stopped in traffic when they were struck in the rear by defendant's vehicle (*see Prosen v Mabella*, 107 AD3d 870, 871 [2d Dept 2013]; *Strickland v. Tirino*, 99 A.D.3d 888, 890 [2d Dept 2012]). Defendant has failed to proffer any non-negligent explanation for the collision. In fact, she does not refute the facts as presented in plaintiff's motion and therefore has admitted to her negligence.

Further, the Court of Appeals has recently held that a plaintiff does not bear the burden of establishing the absence of her own comparative negligence in order to obtain partial summary judgment in a comparative negligence case. (*Rodriguez v. City of New York*, 2018 NY Slip Op. 02287 [April 3, 2018])

In *Rodriguez*, the Court of Appeals reversed the finding of the Appellate Division, First Department, that affirmed the denial of plaintiff's motion for partial summary judgment, on the basis that plaintiff failed to make a *prima facie* showing that he was free of comparative negligence. (*See, Rodriguez v. City of New York*, 142 AD3d 778 [1st Dept 2016])

The Court of Appeals held that Article 14-A of the Civil Practice Law & Rules provides

that comparative negligence does not *bar* recovery, but can act to diminish the amount of damages otherwise recoverable, in the proportion of the claimant's culpable conduct. Civ. Prac. Law & Rules §1411. Moreover, section 1412 provides that such culpable conduct shall be an affirmative defense to be pleaded and proved by the party asserting the same.

The majority thus reasoned that to place the burden on the plaintiff to show an absence of comparative fault is inconsistent with the language of section 1412. 2018 NY Slip Op. at 3 "Comparative fault is not a defense to the cause of action of negligence, because it is not a defense to any element (duty, breach, causation) of plaintiff's prima facie cause of action for negligence...but rather a diminishment of the amount of damages." 2018 NY Slip Op. at 4

Accordingly, it is hereby

ORDERED that plaintiffs' motion for partial summary judgment on the issue of liability is granted as against defendant, Dorothy T. Carmody; and it is further

ORDERED that the cross-motion of plaintiff, Rachel A. Luna, dismissing the counterclaim against her is denied, and it is further

ORDERED that this matter is scheduled for a preliminary conference on October 23, 2019 at 9:15a.m..

The foregoing constitutes the Decision and Order of this Court

Dated: October 15, 2019
Goshen, New York

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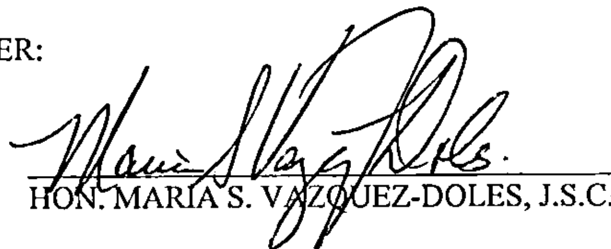

HON. MARIA S. VAZQUEZ-DOLES, J.S.C.

TO: Counsel of record via NYSCEF