Treglia v Doyle
2019 NY Slip Op 34692(U)
August 8, 2019
Supreme Court, Dutchess County
Docket Number: Index No. 2019-50112
Judge: Peter M. Forman
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

LISA TREGLIA,

Plaintiff,

- against –

DANIEL DOYLE,

Defendant.

DECISION AND ORDER

Index No.: 2019-50112

FORMAN, J., Acting Supreme Court Justice

The following papers were read and considered in deciding this motion:

	Papers Numbered
Notice of Motion	**1**
Affirmation of Levi Lipton	**2**
Affidavit of Lisa Treglia	**3**
Exhibits (A-B)	**4-5**
Affirmation of Thomas R. Mazzaro in Opposition	**6**
Affidavit of Daniel Doyle in Opposition	**7**
Reply Affirmation of Levi Lipton	**8**
Exhibit	**9**

This is a personal injury action arising out of a motor vehicle collision that occurred on June 11, 2018, in the eastbound lane of Myers Corners Road, in the Town of Wappinger, County of Dutchess, State of New York. The Complaint alleges that a vehicle operated by Defendant was caused to collide with the vehicle operated by Plaintiff, resulting in bodily injury, mental anguish, and impairment of earning capacity.

Following joinder of issue, Plaintiff now moves for an order, pursuant to CPLR §3212, for partial summary judgment on the issue of liability. Defendant opposes the motion, asserting that: the motion is premature because no discovery has been conducted; Plaintiff's comparative

negligence precludes summary judgment; and triable issues of fact exist to defeat the motion. For the reasons stated herein, Plaintiff's motion is granted.

Plaintiff submitted an affidavit in support of her motion for summary judgment. In the affidavit, Plaintiff attests that on June 11, 2018, she was in her vehicle travelling eastbound on Myers Corners Road. As she slowed down to make a right turn into the parking lot of a deli, Defendant's vehicle struck her vehicle from the rear. Plaintiff further states that at the time of the collision, she was driving under the speed limit as she was in the process of slowing down to make a right turn [*see* ECF Docket No. 7, Affidavit of Lisa Treglia, ¶¶3-4].

Defendant offers his own affidavit in opposition to the motion. In the affidavit, Defendant attests that on June 11, 2018, he was operating his vehicle behind Plaintiff's vehicle on Myers Corners Road when Plaintiff, "suddenly and without warning, slowed abruptly right" by the deli driveway entrance. Defendant states that Plaintiff never engaged her right turn signal and that he did not have enough time to avoid colliding into the rear of Plaintiff's vehicle [*see* ECF Docket No. 12, Affidavit of Daniel Doyle, ¶¶2, 4-6].

DISCUSSION

Because summary judgment "deprives the litigant of its day in court it is considered a drastic remedy which should only be employed when there is no doubt as to the absence of triable issues." *Andre v. Pomeroy*, 35 NY2d 361, 364 (1974). "But when there is no genuine issue to be resolved at trial, the case should be summarily decided." *Id.* Although negligence cases do not usually lend themselves to summary judgment [*Ugarriza v Schmieder*, 46 NY2d 471, 474 (1979)], negligence cases are not immune from summary judgment, and the courts should not harbor an unfounded reluctance to employ the remedy of summary judgment when there are no triable issues of fact. *Andre*, *supra* at 364.

"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 demonstrate the absence of any material issue of fact." *Alvarez v Prospect Hospital*, 68 NY2d 320, 324 (1986). "Failure to make such showing requires denial of the motion, regardless of the sufficiency of the opposing papers." *Winegrad v. New York University Medical Center*, 64 NY2d 851, 853 (1985). "Once this showing has been made, however, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action." *Alvarez, supra*, at 324. "Mere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient" to establish a triable issue of fact. *Zuckerman v. City of New York*, 49 N.Y.2d 557, 562 (1980).

"A rear-end collision with a stopped or stopping vehicle creates a prima facie case of negligence with respect to the operator of the rear vehicle and imposes a duty on that operator to rebut the inference of negligence by providing a nonnegligent explanation for the collision." *LeGrand v. Silberstein*, 123 AD3d 773, 774 (2d Dept. 2014); *see also Buchanan v. Keller*, 169 AD3d 989 (2d Dept. 2019); *DeCastillo v. Sormeley*, 140 AD3d 918 (2d Dept. 2016); *Schmertzler v. Lease Plan U.S.A., Inc.*, 137 AD3d 1101 (2d Dept. 2016). "A driver of a vehicle approaching another vehicle from the rear is required to maintain a reasonably safe distance and rate of speed under the prevailing conditions to avoid colliding with the other vehicle." *Buchanan, supra* at 991 (internal quotation marks and citations omitted); *see also* Vehicle and Traffic Law §1129(a). "Although a sudden stop of the lead vehicle may constitute a nonnegligent explanation for a rear-end collision, 'vehicle stops which are foreseeable under the prevailing traffic conditions, even if

sudden and frequent, must be anticipated by the driver.'" *Id.* at 991-992 (quoting *LeGrand*, 123 AD3d at 774); *see also Theo v. Vasquez*, 136 AD3d 795, 796 (2d Dept. 2016).

Here, Plaintiff established her prima facie entitlement to judgment as a matter of law by proffering her affidavit, which demonstrated that Plaintiff was operating her vehicle eastbound on Myers Corners Road when she was struck in the rear by Defendant's vehicle as she was slowing down to make a right turn. Defendant, relying on his affidavit in opposition, failed to raise a triable issue of fact as to whether there was a nonnegligent explanation for the collision. *Catanzaro v. Edery*, 172 AD3d 995 (2d Dept. 2019); *Arslan v. Costello,* 164 AD3d 1408 (2d Dept. 2018); *Cajas-Romero v. Ward*, 106 AD3d 850, 852 (2d Dept. 2013) (the defendant's version of events leading to the rear-end collision, even if accepted as true, demonstrated that his failure to maintain reasonably safe distance was the proximate cause of the collision).

Furthermore, contrary to Defendant's argument, a plaintiff is no longer required to show freedom from comparative fault in order to establish prima facie entitlement to judgment as a matter of law on the issue of liability. *See Rodriguez v. City of New York*, 31 NY3d 312 (2018).

Finally, Defendant's contention that summary judgment should be denied as premature due to outstanding discovery is without merit. Defendant failed to demonstrate that discovery might lead to relevant evidence or that facts essential to justify opposition to the motion were exclusively within the knowledge and control of the plaintiff. *Pierre v. Demoura*, 148 AD3d 736, 737 (2d Dept. 2017); *Le Grand, supra* at 775; *Cajas-Romero, supra* at 852; CPLR 3212(f). Here, Defendant failed to satisfy his burden of demonstrating that Plaintiff's motion is premature since "[t]he mere hope or speculation that evidence sufficient to defeat the motion might be uncovered during discovery is an insufficient basis for denying the motion." *Skura v. Wojtlowski*, 165 AD3d

1196, 1200 (2d Dept. 2018) (citations omitted); *Bentick v. Gatchalian*, 147 AD3d 890, 892 (2d Dept. 2017) (quoting *Lopez v. WS Distrib., Inc.*, 34 AD3d 759 [2d Dept. 2006]).

Based upon the foregoing, it is hereby

ORDERED, that Plaintiff's motion for summary judgment on the issue of liability is granted; and it is further

ORDERED, that counsel for the parties shall appear for a conference in this matter on September 6, 2019, at 9:30 a.m.

The foregoing constitutes the Decision and Order of the Court.

Dated: August 8, 2019
Poughkeepsie, New York

Hon. Peter M. Forman, A.J.S.C.

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