

Finn v Amsler

2020 NY Slip Op 34726(U)

July 22, 2020

Supreme Court, Suffolk County

Docket Number: Index No. 611980/2018

Judge: Paul J. Baisley, Jr.

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Short Form Order

**SUPREME COURT - STATE OF NEW YORK
I.A.S. PART XXXVI SUFFOLK COUNTY**

PRESENT:

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

-----X
CATHERINE L. FINN,

Plaintiff,

-against-

DONALD E. AMSLER,

Defendant.
-----X

INDEX NO.: 611980/2018
CALENDAR NO.: 202000216MV
MOTION DATE: 6/11/20
MOTION SEQ. NO.: 001 MG

PLAINTIFF'S ATTORNEYS:
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DEFENDANT'S ATTORNEYS:
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Upon the following papers read on this motion for summary judgment : Notice of Motion/ Order to Show Cause and supporting papers by plaintiff, dated February 7, 2020 ; Notice of Cross Motion and supporting papers ___ ; Answering Affidavits and supporting papers by defendant, dated February 25, 2020 ; Replying Affidavits and supporting papers by plaintiff, dated February 27, 2020 ; Other ___ ; (~~and after hearing counsel in support and opposed to the motion~~) it is,

ORDERED that the motion (motion sequence no. 001) by plaintiff Catherine L. Finn seeking summary judgment in her favor on the issue of negligence is granted.

Plaintiff Catherine Finn commenced this action to recover damages for injuries she allegedly sustained as a result of a motor vehicle accident that occurred at the intersection of North Ocean Avenue and Horseblock Road in the Town of Brookhaven on February 18, 2018. By her complaint, plaintiff alleges, among other things, that the vehicle owned and operated by defendant Donald Amsler struck the rear of her vehicle while was it stopped in traffic waiting for the emergency vehicles that were traveling through the intersection to pass.

Plaintiff now moves for summary judgment in her favor on the issue of negligence on the basis that defendant's violation of Vehicle and Traffic Law §1129 (a) is the sole proximate cause of the subject accident. In support of the motion, plaintiff submits copies of the pleadings, the parties' deposition transcripts, an uncertified copy of the police accident report, and photographs of the parties' vehicles following the subject collision. Defendant opposes the motion on the grounds that there are triable issues of fact as to whether he was faced with an emergency situation not of his own making at the time of the subject accident's occurrence.

A court's task on a motion for summary judgment is issue finding rather than issue determination (*see Sillman v Twentieth Century Fox Film Corp.*, 3 NY2d 395, 165 NYS2d 498

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[1957]), and it must view the evidence in the light most favorable to the party opposing the motion (*see Boyce v Vazquez*, 249 AD2d 724, 671 NYS2d 815 [3d Dept 1998]). Therefore, in determining a motion for summary judgment, the facts alleged by the nonmoving party and all inferences that may be drawn are to be accepted as true (*see Roth v Barreto*, 289 AD2d 557, 735 NYS2d 197 [2d Dept 2001]). In the first instance, the moving party bears the burden and must tender evidence sufficient to eliminate all material issues of fact (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 487 NYS2d 316 [1985]). However, a plaintiff does not bear the double burden of establishing a *prima facie* case of defendant's liability and the absence of his or her own comparative fault (*Rodriguez v City of New York*, 31 NY3d 312, 324, 76 NYS3d 898 [2018]). Once such showing has been made, the burden shifts to the nonmoving party to demonstrate the existence of material issues of fact (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 508 NYS2d 923 [1986]). Mere conclusions and unsubstantiated allegations are insufficient to raise any triable issues of fact (*see Zuckerman v City of New York*, 49 NY2d 557, 427 NYS2d 595 [1980]; *Perez v Grace Episcopal Church*, 6 AD3d 596, 774 NYS2d 785 [2d Dept 2004]).

“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]).

Plaintiff testified at an examination before trial that she was traveling northbound on North Ocean Avenue prior to the accident's occurrence, that the traffic light at the intersection of North Ocean Avenue and Horseblock Road was green as she approached it, and that she began slowing down as she approached the intersection, because she heard sirens blaring and observed emergency lights flashing. Plaintiff testified that she brought her vehicle to a gradual stop behind the vehicle preceding her vehicle, which was stopped prior to entering the intersection to allow the emergency vehicles that were traveling east on Horseblock Road to pass through the intersection. She testified that after coming to a complete stop behind the preceding vehicle she began blowing her horn to alert the vehicle ahead to pull up, because she was concerned her

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vehicle was going to be hit in the rear. Plaintiff further testified that while she was blowing her horn, her vehicle was struck in the rear by defendant's vehicle, and that following the collision she pulled over into the gas station across the street on Horseblock Road.

Defendant testified at an examination before trial that prior to the accident he was traveling, approximately 30 miles per hour, northbound, in the right lane of North Ocean Avenue, he was very familiar with the roadway, traffic conditions were light, and that the accident occurred south of the North Ocean Avenue's intersection with Horseblock Road. He testified that when he first observed the traffic light at the intersection it was green, he heard sirens and saw a lot of flashing lights as he was heading towards the intersection; and as he approached the intersection, he was looking around to determine the location of the emergency vehicles, because he did not want to enter the intersection at the same time as the vehicles, and that when he first observed plaintiff's vehicle it was at the intersection and appeared to be stopped, since the vehicle preceding it was stopped. Defendant further testified that the impact between his vehicle and plaintiff's occurred at the same moment the emergency vehicles, four police vehicles, entered the intersection against the red light controlling their direction of travel, that he does not recall if plaintiff's brake lights were illuminated prior to the impact, that he and plaintiff pulled over into the gas station on Horseblock Road following the accident, and that, although he used a cane to walk after having undergone surgery on the quadriceps of his left leg, his driving was not affected.

Here, plaintiff has demonstrated her *prima facie* entitlement to judgment as a matter of law by presenting evidence that defendant's negligent operation of his vehicle at the time of the accident was the sole proximate cause of the subject accident (*see Clements v Giatas*, 178 AD3d 894, 112 NYS3d 539 [2d Dept 2019]; *Motta v Gomez*, 161 AD3d 725, [2d Dept 2018]; *O'Rourke v Carucci*, 117 AD3d 1015, 986 NYS2d 521 [2d Dept 2014]; *see also Rodriguez v City of New York, supra*). The record demonstrates that plaintiff's vehicle was stopped in traffic awaiting the passing of emergency vehicles through the aforementioned intersection at the time it was struck in the rear by defendant's vehicle. 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]). Further, vehicle stops that are foreseeable under the prevailing traffic conditions, even if sudden and infrequent, 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]*). Therefore, plaintiff has shifted the burden to defendant to come forward with a non-negligent explanation to raise a triable issue of fact warranting a trial on the merits (*see Emil Norsic & Son, Inc. v L.P. Transp., Inc.*, 30 AD3d 368, 815 NYS2d 736 [2d Dept 2006]; *see generally Zuckerman v City of New York*, 49 NY2d 557, 427 NYS2d 595 [1980]).

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In opposition to plaintiff's *prima facie* showing, defendant failed to provide a non-negligent explanation for the collision (*see (see Yong Dong Liu v Lowe*, 173 AD3d 946, 102 NYS3d 713 [2d Dept 2019]); *De La Cruz v Ock Wee Leong*, 16 AD3d 199, 791 NYS2d 102 [1st Dept 2005]; *Agramonte v City of New York*, 288 AD2d 75, 732 NYS2d 414 [1st Dept 2001]). Defendant's simple offer of his attorney's affirmation is insufficient to defeat plaintiff's motion for partial summary judgment (*see Lazarre v Gragston*, 164 AD3d 574, 81 NYS3d 541 [2d Dept 2018]; *1375 Equities Corp. v Buildgreen Solutions, LLC*, 120 AD3d 783, 992 NYS2d 288 [2d Dept 2014]; *Schickler v Cary*, 59 AD3d 700, 874 NYS2d 233 [2d Dept 2009]). Contrary to defendant's argument, the emergency doctrine generally is not available to defendants in rear-end collisions (*see Cascio v Metz*, 305 AD2d 354, 759 NYS2d 502 [2d Dept 2003]; *Campanella v Moore*, 266 AD2d 423, 699 NYS2d 76 [2d Dept 1999]). Moreover, defendant testified that immediately prior to striking the rear of plaintiff's vehicle, which he admitted appeared to be stopped behind the vehicle ahead of it, he was looking around for the location of the emergency vehicles, because he heard the sirens and saw the lights and did not want to interfere with the vehicles, and that he slammed on his brakes in an attempt to avoid colliding with plaintiff's stopped vehicle, but failed to do so. As a result, defendant has failed to produce any evidence that he was faced with an emergency situation not of his own making at the accident's occurrence (*see Mughal v Rajput*, 106 AD3d 886, 965 NYS2d 545 [2d Dept 2013]; *Muye v Liben*, 282 AD2d 661, 723 NYS2d 510 [2d Dept 2001]). Accordingly, plaintiff's motion for summary judgment in her favor on the issue of negligence is granted.

Dated: July 22, 2020



.S.C.

HON. PAUL J. BAISLEY, JR.