

Collins v Lopez

2020 NY Slip Op 34821(U)

August 3, 2020

Supreme Court, Orange County

Docket Number: Index No. EF003213-2018

Judge: Robert A. Onofry

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT-STATE OF NEW YORK
IAS PART-ORANGE COUNTY

Present: HON. ROBERT A. ONOFRY, J.S.C.

SUPREME COURT : ORANGE COUNTY

DARRYL H. COLLINS and STACIE COLLINS,
Plaintiff,

- against -

THOMAS JOHN LOPEZ,
Defendant.

To commence the statutory time
period for appeals as of right
(CPLR 5513[a]), you are advised
to serve a copy of this order, with
notice of entry, upon all parties.

Index No. EF003213-2018

DECISION and ORDER

Motion Date: July 1, 2020

The following papers numbered 1 to 5 were read and considered on a motion by the
Plaintiff, pursuant to CPLR § 3212, for summary judgment on the issue of liability.

Notice of Motion- Monroe Affirmation- Exhibits A-E 1-3
Affirmation in Opposition- McCoy-Turner 4
Affirmation in Reply- Monroe 5

Upon the foregoing papers, it is hereby,

ORDERED, that the motion is denied.

Factual/Procedural Background

The Plaintiffs commenced this action to recover damages allegedly arising from a
multiple vehicle accident.

The Plaintiffs move for summary judgment on the issue of liability.

In support of their motion, the Plaintiffs submit an affirmation from counsel, James
Monroe.

Monroe argues that the relevant facts are as follows.

On Saturday, April 1, 2017, at approximately 12:21 p.m., the Plaintiff Darryl Collins was in a vehicle at a fully stopped position at a red traffic light. The Defendant Thomas Lopez was fully stopped at the same traffic light, behind Collins's vehicle. In front of Collins was vehicle being operate by non-party Brian Hughson.

Monroe asserts that, when the traffic light turned green, without warning or an opportunity to react, the rear portion of Collins's vehicle was struck from behind by the motor vehicle operated by Lopez. This caused the front of the Collins vehicle to collide with the rear of Hughson's vehicle.

Monroe argues that it is well-established law that a rear-end collision with a stopped or stopping vehicle creates a prima facie case of negligence on the part of the driver of the rearmost vehicle, requiring the operator to proffer an adequate, non-negligent explanation for the accident.

Here, he asserts, although all relevant parties have been deposed, Lopez has not done so.

Thus, he argues, the Plaintiffs should be awarded summary judgment on liability.

In opposition to the motion, Lopez submits an affirmation from counsel, Tara McCoy-Evans.

McCoy-Evans argues that, contrary to what is suggested by the Plaintiffs, there are different versions of how this accident occurred. Indeed, she asserts, this is not a simple three car accident, and it did not even occur at the location stated in Plaintiffs' motion papers.

First, she argues, the accident did not occur as the parties were just leaving a traffic light, as stated by the Plaintiffs, but rather as the vehicles were already moving in traffic.

Further, she asserts, significantly, there was a fourth vehicle involved in the accident, to wit: there is testimony that a black Toyota Camry, being driven recklessly, veered in front of the

Hughson vehicle and slammed on its brakes, causing the chain reaction accident at issue.

Thus, she asserts, summary judgment must be denied.

In reply, counsel for Plaintiffs, James Monroe, argues that Lopez's opposition "centers solely upon the fact that a fourth vehicle - - the phantom black Toyota Camry" was the cause of the accident. However, he asserts, this "attempted siphoning of blame from defendant to the driver of this fourth vehicle is unsupported by the facts underlying this accident, [and] should not be considered by this Court."

Monroe notes that it is not disputed that Lopez's vehicle struck Collin's vehicle from the rear. Given such, he argues, Lopez is liable in the happening of the accident, regardless of any fourth vehicle, because he was duty bound to maintain a reasonably safe rate of speed and control over his vehicle, and to exercise reasonable care to avoid colliding with another vehicle. Thus, Monroe asserts, while the Plaintiffs do not dispute the existence of the fourth vehicle, the actions of the same are irrelevant to the accident at issue, and do not provide a non-negligent explanation for the accident.

Discussion/Legal Analysis

A party seeking summary judgment bears the initial burden of establishing a *prima facie* entitlement to judgment as a matter of law by tendering competent evidence in admissible form sufficient to eliminate any triable, material issues of fact from the case. If the moving party fails to meet this burden, the papers submitted in opposition need not be considered. If the moving party makes such a *prima facie* showing, the burden shifts to the opposing party to demonstrate the existence of an issue of fact requiring a trial. *Phillip v. D & D Carting Co., Inc.*, 136 A.D.3d 18 [2nd Dept. 2015]; *Dempster v. Liotti*, 86 A.D.3d 169 [2nd Dept. 2011].

Relevant to the case at bar, 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. *Nikolic v. City-Wide Sewer & Drain Service Corp.*, 150 A.D.3d 754 [2nd Dept. 2017]; *Tumminello v. City of New York*, 148 A.D.3d 1084 [2nd Dept. 2017]. A non-negligent explanation may include a mechanical failure, a sudden, unexplained stop of the vehicle ahead, an unavoidable skidding on wet pavement, or any other reasonable cause. *Tumminello v. City of New York*, 148 A.D.3d 1084 [2nd Dept. 2017]. However, while a non-negligent explanation for a rear-end collision 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. *Tumminello v. City of New York*, 148 A.D.3d 1084 [2nd Dept. 2017].

To prevail on a motion for summary judgment on the issue of liability in a negligence case, the movant need no longer demonstrate that he or she was free from comparative fault. *Davis v. Commack Hotel, LLC*, 174 A.D.3d 501 [2nd Dept. 2019].

Here, the Plaintiffs demonstrated a *prima facie* entitlement to judgment as a matter of law with the testimony of Collins.

However, in opposition, Lopez raised a triable issue of fact as to comparative fault.

As noted by Lopez, the Plaintiffs' recounting of the relevant facts is not accurate.

At examinations before trial, the following relevant testimony was elicited.

Collins testified that, as Hughson, Lopez and he were stopped at the traffic light, a fourth

vehicle— a black Toyota- pulled into the left passing lane (T 31-37). When the light turned green, the Toyota took off and got ahead of the Hughson vehicle. Three to five seconds later, when the vehicles were traveling 40 to 45 miles per hour, the Toyota, for no apparent reason, slammed on its brakes in front of the Hughson vehicle, causing a chain reaction. Collins testified that he was barely able to stop before striking the Hughson vehicle, and that he stopped mere inches from his rear bumper.

Hughson testified that the vehicles were several hundred yards beyond the traffic light, going 30 to 35 miles per hour, when the Toyota veered in front of him and slammed on the brakes.

Given this testimony, the Court finds issues of fact as to comparative fault.

Accordingly, and for the reasons cited herein, it is hereby,

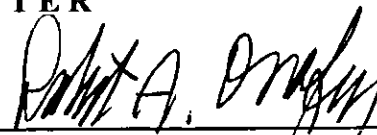
ORDERED, that the motion is denied, and it is further,

ORDERED that the parties are directed to appear for a status conference on Tuesday, September 8, 2020, at 1:30 p.m., at the Orange County Supreme Court, Court room #3, 285 Main Street, Goshen, New York. If the Courts are not open to the public at that time, a virtual conference will be scheduled on said date, at a time to be determined by the Court.

The foregoing constitutes the decision and order of the court.

Dated: August 3 , 2020
Goshen, New York

ENTER



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