Bono v Patel
2020 NY Slip Op 34948(U)
April 30, 2020
Supreme Court, Suffolk County
Docket Number: Index No. 615177/2018
Judge: Linda Kevins

SHORT FORM ORDER

INDEX No. 615177/2018
CAL. No. _____

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 29 - SUFFOLK COUNTY

PRESENT:

HON. LINDA KEVINS
Justice of the Supreme Court

MOTION DATE 5-1-19
ADJ. DATE 8-13-19
Mot. Seq. # 002 - MG

----------X

NANCY BONO

Plaintiff,

- against -

RAKESHKUMAR PATEL

Defendant.

----------X

Upon the following papers e-filed and read on this motion for partial summary judgment : Notice of Motion and supporting papers by plaintiff, dated April 2, 2019; Notice of Cross Motion and supporting papers _____ ; Answering Affidavits and supporting papers by defendant, dated June 25, 2019 ; Replying Affidavits and supporting papers by plaintiff, dated July 5, 2019 ; Other ___; (~~and after hearing counsel in support and opposed to the motion~~) it is,

ORDERED that plaintiff's motion for an order pursuant to CPLR 3212 (e) granting partial summary judgment in her favor on the issue of liability is granted; and it is further

ORDERED that counsel for the parties, and if a party has no counsel, then the party, are directed to appear before the Court in IAS Part 29, located at the Alan D. Oshrin Courthouse, One Court Street, Riverhead, New York 11901, on **July 7, 2020 at 9:30 a.m.**, for a Conference, or if the court is still operating remotely due to the COVID-19 health crisis, such appearance shall be held remotely on the same date. Counsel and any parties who are not represented by counsel shall contact the court by email at Sufkevins@nycourts.gov at least five days prior to the date of the scheduled conference to obtain the time and manner of such conference; and it is further

ORDERED that if this Order has not already been entered, plaintiff is directed to promptly serve a certified copy of this Order, pursuant to CPLR §§8019(c) and 2015, upon the Suffolk County Clerk who is directed to hereby enter such order; and it is further

ORDERED that upon Entry of this Order, plaintiff is directed to promptly serve a copy of this Order with Notice of Entry upon all parties or their attorneys and to promptly file the affidavits of service with the Clerk of the Court; and it is further

ORDERED that due to the current health crisis caused by COVID-19 and the resulting filing restrictions imposed upon the Suffolk County Clerk and the Court, the term "promptly" shall mean within ten days of the rescission of such filing restrictions.

This is an action to recover damages for personal injuries allegedly sustained by plaintiff as a result of a motor vehicle accident which occurred on the Long Island Expressway near Bagatelle Road, in the Town of Huntington, New York on August 5, 2015. The accident allegedly happened when a vehicle driven by defendant Rakeshkumaf Patel collided with the rear of plaintiff's vehicle.

Plaintiff now moves for partial summary judgment on the issue of liability, arguing that defendant is negligent as a matter of law and was the sole proximate cause of the accident. In support of the motion, plaintiff submits copies of the pleadings, a bill of particulars, a police accident report, and an affidavit of plaintiff.

The court notes that the police accident report submitted by plaintiff is not certified, nor does the police officer state that he witnessed the accident. Consequently, the police report constitutes hearsay and is, thus, inadmissible (*see* ***Jiang-Hong Chen v Heart Tr., Inc.***, 143 AD3d 945, 39 NYS3d 504 [2d Dept 2016]; ***Allstate Ins. Co. v Ramlall***, 132 AD3d 617, 17 NYS3d 308 [2d Dept 2015]; ***Lacagnino v Gonzalez***, 306 AD2d 250, 760 NYS2d 533 [2d Dept 2003]).

In her affidavit, plaintiff states that at the time of the accident, she was traveling eastbound on the Long Island Expressway approximately 25 feet west of exit 49 north and brought her vehicle to a gradual stop due to heavy traffic conditions. She states that her vehicle was stopped in traffic for one minute when it was struck in the rear by a vehicle driven by defendant. The accident report indicates that plaintiff's vehicle sustained damage to its rear end, and that the front end of defendant's vehicle was damaged.

It is well settled that a party moving for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law, offering sufficient evidence to demonstrate the absence of any material issues of fact (*see* ***Alvarez v Prospect Hosp.***, 68 NY2d 320, 508 NYS2d 923 [1986]; ***Zuckerman v City of New York***, 49 NY2d 557, 427 NYS2d 595 [1980]). Once such a showing has been made, 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 v Prospect Hosp.***, 68 NY2d 320, 508 NYS2d 923; ***Zuckerman v City of New York***, 49 NY2d 557, 427 NYS2d 595).

When the driver of a vehicle approaches another vehicle from the rear, he or she 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 (***Tumminello v City of New York***, 148 AD3d 1084, 49 NYS3d 739 [2d Dept 2017]; ***Brothers v Bartling***, 130 AD3d 554, 13 NYS3d 202 [2d Dept 2015]; ***Gutierrez v Trillium USA, LLC***, 111 AD3d 669, 974 NYS2d 563 [2d Dept 2013]; ***Macauley v ELRAC, Inc.***, 6 AD3d 584, 585, 775 NYS2d 78 [2d Dept 2003]). A rear-end collision with a stopped 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 (***Tutrani v County of Suffolk***, 10 NY3d 906, 861 NYS2d 610 [2008]; ***Edgerton v City of New York***, 160 AD3d 809, 74 NYS3d 617 [2d Dept 2018]; ***Nowak v Benites***, 152 AD3d 613, 60 NYS3d 48 [2d Dept 2017]; ***Le Grand v Silberstein***, 123 AD3d 773, 999 NYS2d 96 [2d Dept 2014]).

Here, plaintiff's submissions are sufficient to establish, prima facie, her entitlement to judgment as a matter of law on the issue of negligence (*see* ***Motta v Gomez***, 161 AD3d 725, 72 NYS3d 840 [2d Dept 2018]; ***Singh v Avis Rent A Car Sys., Inc.***, 119 AD3d 768, 989 NYS2d 363 [2d Dept 2014]; ***Markesinis v Jaquez***, 106 AD3d 961, 965 NYS2d 363 [2d Dept 2013]). Therefore, the burden shifts to defendant to rebut the inference of negligence by providing a nonnegligent explanation for the accident (*see* ***Arslan v Costello***, 164 AD3d 1408, 84 NYS3d 229 [2d Dept 2018]).

In opposition, defendant submits his own affidavit and states that he was traveling eastbound on the Long Island Expressway "at or below the posted speed limit." He states that he was traveling in the left lane of traffic behind plaintiff's vehicle, at a "safe distance" from plaintiff's vehicle and that her vehicle swerved towards the right lane, then swerved back to the left lane, and then abruptly stopped. He states that he firmly applied the brakes, but he was unable to avoid the collision. Defendant alleges that he had no time to take evasive actions.

Defendant's justification for the collision is insufficient to raise a triable issue of fact regarding whether he had a nonnegligent explanation for the accident (***Catanzaro v Edery***, 172 AD3d 995, 101 NYS3d 170 [2d Dept 2019]). "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" (***Witonsky v New York City Tr. Auth.***, 145 AD3d 938, 939, 43 NYS3d 505 [2d Dept 2016], quoting ***Nsiah-Ababio v Hunter***, 78 AD3d 672, 672, 913 NYS2d 659 [2d Dept 2010]; see Vehicle and Traffic Law § 1129 [a]). Defendant was required to anticipate such stop, as it was foreseeable according to plaintiff's affidavit regarding the prevailing traffic conditions, and he was under a duty to maintain a safe distance between his vehicle and plaintiff's vehicle, which was directly ahead (*see* ***Lopez v Dobbins***, 164 AD3d 776, 79 NYS3d 556 [2d Dept 2018]; ***Waide v ARI Fleet, LT***, 143 AD3d 975, 39 NYS3d 512 [2d Dept 2016]).

Here, defendant's affidavit is conclusory and insufficient to raise a triable issue of fact, as his affidavit is devoid of any facts regarding the rate of speed he was traveling, the distance he maintained from plaintiff's vehicle, or the traffic conditions prior to the collision. Therefore, his assertion that plaintiff came to a sudden stop is insufficient to rebut the inference that defendant was negligent (*see* ***Auguste v Jeter***, 167 AD3d 560, 88 NYS3d 509 [2d Dept 2018]).

Defendant also opposes the motion on the grounds that it is premature as he has not conducted discovery. However, defendant has failed to demonstrate that additional discovery may have led to relevant evidence or that facts essential to oppose the motion were exclusively within the knowledge and control of plaintiff (*see* CPLR 3212 [f]; ***Figueroa v MTLR Corp.***, 157 AD3d 861, 69 NYS3d 359 [2d Dept 2018]; ***Richards v Burch***, 132 AD3d 752, 18 NYS3d 87 [2d Dept2015]; ***Suero-Sosa v Cardona***, 112 AD3d 706, 977 NYS2d 61 [2d Dept 2013]). The "mere hope or speculation that evidence sufficient to defeat a motion for summary judgment may be uncovered during the discovery process" is an insufficient basis for denying the motion (***Gasis v City of New York***, 35 AD3d 533, 534–535, 828 NYS2d 407, 409 [2d Dept 2006]).

Accordingly, plaintiff's motion for summary judgment in her favor on the issue of liability is granted.

Anything not specifically granted herein is hereby denied.

This constitutes the decision and Order of the Court.

Dated: 4/30/2020

LINDA KEVINS, J.S.C.

_____ **FINAL DISPOSITION** __X__ **NON-FINAL DISPOSITION**