

Adderley v Schlissfeld
2020 NY Slip Op 34983(U)
June 30, 2020
Supreme Court, Rockland County
Docket Number: Index No. 036816/2018
Judge: Sherri L. Eisenpress
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

-----X
ALISON M. ADDERLEY,

Plaintiff,

-against-

ELI SCHLISSFELD and A Y SCHLISSFELD,

Defendants.

-----X
Sherri L. Eisenpress, A.J.S.C.

DECISION & ORDER

Index No.: 036816/2018

(Motion # 1)

The following papers, numbered 1-4 , were considered in connection with Plaintiff's Notice of Motion for an Order, pursuant to Civil Practice Law and Rules § 3212, granting summary judgment as to liability in her favor:

<u>PAPERS</u>	<u>NUMBERED</u>
NOTICE OF MOTION/AFFIRMATION IN SUPPORT/EXHIBITS 1-7	1-2
AFFIRMATION IN OPPOSITION/EXHIBIT A	3
AFFIRMATION IN REPLY	4

Upon a careful and detailed review of the foregoing papers, the Court now rules as follows:

This action was commenced by Plaintiffs on November 15, 2018, with the filing of the Summons and Complaint through the NYSCEF system. Issue was joined as to Defendants through the NYSCEF system on January 17, 2019. This personal injury action arises out of a two car accident on March 9, 2017, on Union Road, in the Town of Ramapo, in Rockland County, when the vehicle operated by Eli Schlissfeld struck the rear of the vehicle operated by Plaintiff Alison M. Adderley.

Plaintiff moves for summary judgment on the ground that her vehicle was struck in the rear by defendant, who has no non-negligent explanation for the occurrence. Plaintiff testified that immediately prior to the accident, she and the car in front of her stopped in their

lane of travel because a school bus was discharging children in front of them. She testified that defendant suddenly and violently rear ended her stopped vehicle. The police report states that "Driver of veh 2 stated that the traffic was stop and go, veh 1 stopped in front of him and he didn't stop in time striking veh 1."

Defendant testified that traffic was "stop and go." He admitted that the front of his vehicle struck the rear of Plaintiff's vehicle but he had no specific recollection of a bus being in the area. Defendant argues that Plaintiff is not entitled to summary judgment because there are questions of fact with respect to the circumstances of the happening of the occurrence, namely, whether or not a school bus was present. He also argues that Plaintiff's counsel's moving affirmation raises the legal implications of whether there was a possible short stop by plaintiff, notwithstanding that there is no deposition testimony by Plaintiff, or Defendant, that Plaintiff stopped short.

The proponent of a summary judgment motion must establish his or her claim or defense sufficient to warrant a court directing judgment in its favor as a matter of law, tendering sufficient evidence to demonstrate the lack of material issues of fact. Giuffrida v. Citibank Corp., et al., 100 N.Y.2d 72, 760 N.Y.S.2d 397 (2003), citing Alvarez v. Prospect Hosp., 68 N.Y.2d 320, 508 N.Y.S.2d 923 (1986). The failure to do so requires a denial of the motion without regard to the sufficiency of the opposing papers. Lacagnino v. Gonzalez, 306 A.D.2d 250, 760 N.Y.S.2d 533 (2d Dept. 2003). However, once such a showing has been made, the burden shifts to the party opposing the motion to produce evidentiary proof in admissible form demonstrating material questions of fact requiring trial. Gonzalez v. 98 Mag Leasing Corp., 95 N.Y.2d 124, 711 N.Y.S.2d 131 (2000), citing Alvarez, supra, and Winegrad v. New York Univ. Med. Center, 64 N.Y.2d 851, 508 N.Y.S.2d 923 (1985). Mere conclusions or unsubstantiated allegations unsupported by competent evidence are insufficient to raise a triable issue. Gilbert Frank Corp. v. Federal Ins. Co., 70 N.Y.2d 966, 525 N.Y.S.2d 793 (1988); Zuckerman v. City of New York, 49 N.Y.2d 557 (1980), 427 N.Y.S.2d 595.

It is well-settled that a rear-end collision with a stopped or stopping vehicle creates a *prima facie* case of liability with respect to the operator of the moving vehicle, unless the operator of the moving vehicle can come forward with an adequate, non-negligent explanation for the accident. *See Smith v. Seskin*, 49 A.D.3d 628, 854 N.Y.S.2d 420 (2d Dept. 2008); *Harris v. Ryder*, 292 A.D.2d 499, 739 N.Y.S.2d 195 (2d Dept. 2002)]. Further, when the driver of an automobile approaches another 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. *VTL* § 1129(a) ("The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon the condition of the highway."); *Taing v. Drewery*, 100 A.D.3d 740, 954 N.Y.S.2d 175 (2d Dept. 2012). Drivers must maintain safe distances between their cars and cars in front of them and this rule imposes on them a duty to be aware of traffic conditions, including vehicle stoppages. *Johnson v. Phillips*, 261 A.D.2d 269, 271, 690 N.Y.S.2d 545 (1st Dept. 1999).

In the instant matter, Plaintiff has met her burden upon summary judgment since Ms. Adderley was at a stop when her vehicle was struck in the rear by Defendant's vehicle. Additionally, Plaintiff has demonstrated that she is free from any comparative negligence. In opposition thereto, Defendant has failed to raise a triable issue of fact or present a non-negligent excuse for the happening of the subject occurrence. It is irrelevant whether Plaintiff stopped because of the presence of a school bus or due to "stop and go" traffic, since Defendant has offered no excuse for striking the rear of a stopped vehicle and admitted to the police officer that he struck the rear of Plaintiff's vehicle because he didn't stop in time. Moreover, there is no evidence to support Defendant's claim that Plaintiff had "stopped short," thus causing Defendant to strike the rear of Plaintiff's vehicle. Even if there had been such testimony, where there are "stop and go" traffic conditions, a defendant should have anticipated that the plaintiff might have to make a sudden stop. *Robayo v. Aghaabdul*, 109 A.D.3d 892, 971 N.Y.S.2d 317 (2d Dept.

2013).

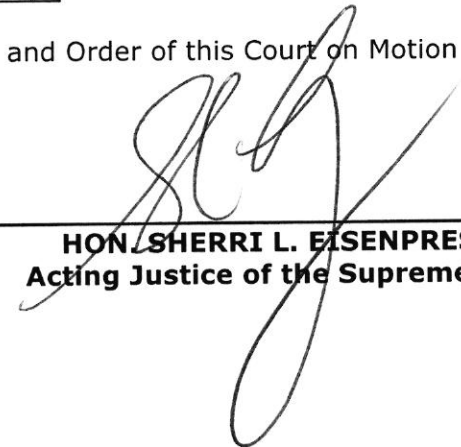
Accordingly, it is hereby

ORDERED that Plaintiffs' Notice of Motion for Summary Judgment on the issue of liability is GRANTED in its entirety; and it is further

ORDERED that counsel for the parties shall appear for a settlement conference on **WEDNESDAY, SEPTEMBER 16, 2020, at 9:45 a.m.**

The foregoing constitutes the Decision and Order of this Court on Motion # 1.

Dated: New City, New York
June 30, 2020



HON. SHERRI L. EISENPRESS
Acting Justice of the Supreme Court

To:
All parties via NYSCEF