

**Kasilowska v Dominika Kasilowska Academy Sch.
Bus Co., Inc.**

2020 NY Slip Op 35121(U)

March 31, 2020

Supreme Court, Westchester County

Docket Number: Index No. 54114/2019

Judge: Sam D. Walker

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This opinion is uncorrected and not selected for official publication.

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.

SUPREME COURT OF THE STATE OF NEW YORK
WESTCHESTER COUNTY
P R E S E N T: HON. SAM D. WALKER, J.S.C.

-----X
DOMINIKA KASILOWSKA and WIESLAWA
KASILOWASKA,

Plaintiff,

-against-

DECISION & ORDER
Index No. 54114/2019
(Consolidated into
50887/2019)
Seq. 1

DOMINIKA KASILOWSKA ACADEMY SCHOOL BUS
COMPANY, INC., KEISHA JENKINS
Defendants.
-----X

The following papers were read on a motion for summary judgment pursuant to CPLR 3212, on the issue of liability:

Notice of Motion/Affirmation/Exhibits A-G	1-9
Affirmation in Opposition/Exhibits A-C	10-13

Upon the foregoing papers it is ordered that the motion is GRANTED.

FACTUAL AND PROCEDURAL BACKGROUND

The plaintiff commenced this action to recover damages for alleged serious injuries she sustained in a motor vehicle accident that occurred on November 2, 2018 on the Cross County Parkway East in Westchester County, New York. At the time of the accident, the plaintiff alleges that she was a front seat passenger in a vehicle operated by Dominika Kasilowska ("Dominika") and alleges that her vehicle came to a complete stop due to stopped traffic and it was struck in the rear by a vehicle owned by the defendant, Academy

School Bus Company, Inc., and operated by the defendant, Keisha Jenkins ("Jenkins").

Wieslawa Kasilowska ("Wieslawa") now files the instant motion seeking summary judgment against the defendants, pursuant to CPLR 3212 on the issue of liability. The plaintiff's attorney argues that the defendants are in violation of VTL 1129(a) and based on the applicable case law Wieslawa is entitled to partial summary judgment on the issue of liability, since Jenkins lacks a non-negligent explanation for failing to stop her vehicle prior to the collision. Wieslawa argues that the accident was negligent as a matter of law in the operation of her vehicle when she failed to maintain a safe distance between her vehicle and the Kasilowska vehicle and the collision was the proximate cause of the plaintiff's injuries.

In opposition, defendants' attorney argues that the plaintiff failed to establish prima facie entitlement to summary judgment as a matter of law, that issues of material fact exist that preclude summary judgment and require a jury trial and that the plaintiff's motion for summary judgment is premature, since depositions have not been held. The defendants assert that there is an issue of fact as to what the Kasilowska vehicle was doing prior to the collision and the dash cam images show that the brake lights on the vehicle were not on prior to the collision.

The parties filed a Stipulation of Discontinuance as to Dominika under Index Number 54114/2019 and the other defendants filed a motion to consolidate this case into Index Number 50887/2019, which this Court granted. The Court also previously granted summary judgment to Dominika on the issue of liability under Index Number 50887/2019.

Discussion

"[T]he 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 issues of fact" (see *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). Only when such a showing has been made must the opposing party set forth evidentiary proof establishing the existence of a material issue of fact, *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]).

"A rear-end collision with a stopped or stopping vehicle creates a prima facie case of negligence with respect to the operator of the moving vehicle, and imposes a duty on that operator to rebut the inference of negligence by providing a nonnegligent explanation for the collision" (see *Sokolowska v Song*, 123 AD3d 1004 [2d Dept 2014]); see also *Agramonte v City of New York*, 288 AD2d 75, 76 [2001]; *Johnson v Phillips*, 261 AD2d 269, 271 [1999]; *Danza v Longieliere*, 256 AD2d 434, 435 [1998], lv dismissed 93 NY2d 957 [1999]).

In this case, Wieslawa has made out a prima facie showing of her entitlement to summary judgment. The evidence submitted establishes entitlement to summary judgment as a matter of law, thereby shifting the burden to the defendants to demonstrate the existence of a factual issue requiring a trial (see *Macauley v Elrac, Inc.*, 6 AD3d 584, 585 [2d Dept 2004]) [Rear-end collision is sufficient to create a prima facie case of liability.] If the operator of the striking vehicle fails to rebut this presumption and the inference of negligence, the operator of the stopped vehicle is entitled to summary judgment on the issue of liability (see *Leonard v City of New York*, 273 AD2d 205 [2d Dept 2000]; *Longhito v Klein*, 273 AD2d 281 [2d Dept 2000]; *Velasquez v Quijada*, 269 AD2d 592 [2d Dept 2000]; *Brant v Senatobia Operating Corp.*, 269AD2d 483 [2d Dept 2000]).

In opposition, the defendants' attorney argues that Jenkins has presented a non-negligent explanation with respect to the happening of the accident. However, the defendants' attorney did not provide the non-negligent explanation as to why Jenkins could not stop before hitting the plaintiff's vehicle.

New York Vehicle and Traffic Law § 1129 states in pertinent part that:

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 and the condition of the highway. NY VTL § 1129 (a)

In (*Leal v Wolff*), the Second Department held that "[s]ince the defendant was under a duty to maintain a safe distance between his car and [the plaintiff's] car (see Vehicle and Traffic Law Section 1129[a]), his failure to do so in absence of a non negligent explanation constituted negligence as a matter of law" (*Leal v Wolf*. 224 AD2d 392 [2d Dept 1996]).

Further, "[w]hen the driver of an automobile approaches 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" (see *Zweeres v Materi*, 94 AD3d 1111 [2d Dept 2012]). "Drivers have a duty to see what should be seen and to exercise reasonable care under the circumstances to avoid an accident" (*Id.*).

The defendants fail to offer any non-negligent explanation for the accident and the opposition does not create any issues of fact with regard to liability. Jenkin's assertion that the traffic was moving and not stopped, does not offer a non-negligent explanation for why she could not stop before hitting the plaintiff's vehicle and does not create an issue of material fact. Further, the plaintiffs are not required to show the absence of comparative fault for a grant of summary judgment (*Rodriguez v City of New York*, 31 NY3d 312 [2018]).

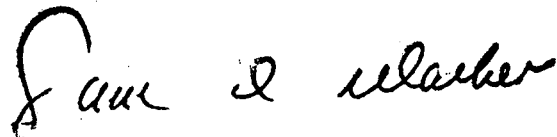
In addition, “[t]he right of an innocent passenger to an award of summary judgment on the issue of liability against one driver is not barred or restricted by potential issues of comparative fault as between that driver and the driver of another vehicle involved in the accident” (*Rodriguez vFarrell*, 115 AD3d 929, 931 [2d Dept 2014]). Therefore, the defendants did not establish the existence of any material issue of fact to rebut the plaintiffs’ prima facie showing of entitlement to summary judgment.

Therefore, based on all the foregoing, it is

ORDERED that the motion is GRANTED.

The foregoing shall constitute the Decision and Order of the Court.

Dated: White Plains, New York
March 31, 2020



HON. SAM D. WALKER, J.S.C.