

Dudek v Lee
2020 NY Slip Op 35139(U)
February 20, 2020
Supreme Court, Suffolk County
Docket Number: Index No. 18-604269
Judge: David T. Reilly
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SHORT FORM ORDER

INDEX No. 18-604269
CAL. No. 19-01786MV

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 30 - SUFFOLK COUNTY

PRESENT:

Hon. DAVID T. REILLY
Justice of the Supreme Court

MOTION DATE 11-20-19
ADJ. DATE 01-08-20
Mot. Seq. # 001 - MG

-----X
ALEKSANDRA DUDEK,

Plaintiff,

- against -

RICHARD J. LEE and KATHERINE R. LEE,

Defendants.
-----X

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Upon the following papers read on this e-filed motion for summary judgment : Notice of Motion/ Order to Show Cause and supporting papers by plaintiff, filed October 11, 2019 ; Notice of Motion/Order to Show Cause and supporting papers by defendant, filed October 11, 2019 ; Answering Affidavits and supporting papers by defendants, filed December 18, 2019 ; Replying Affidavits and supporting papers by plaintiff, filed December 20, 2019 ; Other _____ ; it is,

ORDERED that the motion by plaintiff Aleksandra Dudek for summary judgment in her favor on the issue of liability is granted.

This is an action to recover damages for injuries allegedly sustained by plaintiff Aleksandra Dudek, as a result of a motor vehicle accident, which occurred on April 4, 2017, on Church Street, at or near its intersection with Walnut Avenue, in the Town of Islip, New York. The accident allegedly occurred when a vehicle owned by defendant Richard Lee and operated by defendant Katherine Lee struck plaintiff's vehicle in the rear.

Plaintiff now moves for summary judgment in her favor on the issue of liability on the ground that Ms. Lee's negligence was the legal and proximate cause of the collision. Plaintiff submits, in support of the motion, copies of the pleadings, the bill of particulars, a certified police report, and the transcript of her deposition testimony. In opposition, defendants argue that Ms. Lee's inability to apply her brakes is a non-negligent explanation for the accident. Defendants submit, in opposition, the transcript of Ms. Lee's deposition testimony and a copy of the police report code sheet.

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The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law by tendering evidence in admissible form sufficient to eliminate any material issues of fact from the case (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 508 NYS2d 923 [1986]; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 487 NYS2d 316 [1985]). The movant has the initial burden of proving entitlement to summary judgment (*Winegrad v New York Univ. Med. Ctr.*, *supra*). Failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers (*Winegrad v New York Univ. Med. Ctr.*, *supra*). Once such proof has been offered, the burden then shifts to the opposing party who must proffer evidence in admissible form and must show facts sufficient to require a trial of any issue of fact to defeat the motion for summary judgment (CPLR 3212 [b]; *Alvarez v Prospect Hosp.*, *supra*; *Zuckerman v City of New York*, 49 NY2d 557, 427 NYS2d 595 [1980]).

The presumption of negligence in rear-end cases arises from the duty of the driver of the following vehicle to keep a safe distance and not collide with the traffic ahead (*see* Vehicle and Traffic Law § 1129 [a]; *Witonsky v New York City Tr. Auth.*, 145 AD3d 938, 43 NYS3d 505 [2d Dept 2016]; *Service v McCoy*, 131 AD3d 1038, 16 NYS2d 283 [2d Dept 2015]). 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 rear vehicle, and imposes a duty on that driver to proffer a non-negligent explanation for the collision (*Clements v Giatas*, 178 AD3d 894, 112 NYS3d 539 [2d Dept 2019]; *Conroy v New York City Tr. Auth.*, 167 AD3d 977, 91 NYS3d 183 [2d Dept 2018]; *Tsyganash v Auto Mall Fleet Mgt., Inc.*, 163 AD3d 1033, 83 NYS3d 74 [2d Dept 2018]; *Edgerton v City of New York*, 160 AD3d 809, 74 NYS3d 617 [2d Dept 2018]). If the driver of the offending vehicle cannot come forward with evidence to rebut the inference of negligence, the driver of the stopped or stopping vehicle is entitled to summary judgment on the issue of liability (*Tsyganash v Auto Mall Fleet Mgt., Inc.*, *supra*; *Cortes v Whelan*, 83 AD3d 763, 922 NYS2d 419 [2d Dept 2011]).

Plaintiff made a prima facie case of entitlement to summary judgment in her favor on the issue of liability by demonstrating that Ms. Lee's negligence was the legal and proximate cause of the accident (*see Lopez v Dobbins*, 164 AD3d 776, 79 NYS3d 566 [2d Dept 2018]; *Niyazov v Hunter EMS, Inc.*, 154 AD3d 954, 63 NYS3d 457 [2d Dept 2017]). She testified that she was completely stopped at a red traffic light for 5 to 10 seconds behind two or three vehicles when it was struck from behind by the vehicle operated by Ms. Lee.

The burden now shifts to defendants to raise a triable issue of fact as to whether there was a non-negligent explanation for the accident (*see Alvarez v Prospect Hosp.*, *supra*; *Cortes v Whelan*, *supra*). Ms. Lee testified that on the day of the accident, her vehicle was "working fair," that her brakes worked properly, and that it was raining. She stated that she was slowing her vehicle as she approached a yellow traffic light when she struck the rear of plaintiff's vehicle. Ms. Lee testified that she later told the police officer on the scene of the accident that because it was raining, she had trouble applying pressure to her brakes to fully stop her vehicle. She stated her belief that she had trouble applying her brakes, causing her vehicle to slide, because it was "wet out and raining." However, such testimony is insufficient to rebut Ms. Lee's inference of negligence, as defendants failed to demonstrate that Ms. Lee's vehicle's slide on known road conditions was unavoidable (*see Morgan v Flippen*, 173 AD3d 735, 102 NYS3d 108 [2d Dept 2019]; *Mosquera v Roach*, 151 AD3d 1056, 59 NYS3d 46 [2d Dept 2017]; *Tumminello v*

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City of New York, 148 AD3d 1084, 49 NYS3d 739 [2d Dept 2017]; *Grimm v Bailey*, 105 AD3d 703, 963 NYS2d 277 [2d Dept 2013]).

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

Dated: Feb 20, 2020



HON. DAVID T. REILLY

____ FINAL DISPOSITION X NON-FINAL DISPOSITION