

Alrabadi v JNR Auto Group Inc.
2020 NY Slip Op 35217(U)
April 28, 2020
Supreme Court, Westchester County
Docket Number: Index No. 60785/2019
Judge: Sam D. Walker
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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
ABDALLAH A. ALRABADI,
Plaintiff,

-against-

DECISION & ORDER
Index No. 60785/2019
Seq. 1

JNR AUTO GROUP INC., and RYAN J. MAHONEY,
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-D	1-6
Affirmation in Opposition	9

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

FACTUAL AND PROCEDURAL BACKGROUND

The plaintiff, Abdallah A. Alrabadi (“Alrabadi”), commenced this action to recover damages for alleged serious injuries sustained in a motor vehicle accident that occurred on August 3, 2018, at the intersection of Central Park Avenue and Midland Avenue. Alrabadi alleges that he was stopped in response to a stop sign at that intersection, when his vehicle was struck in the rear by a vehicle owned by the defendant, JNR Auto Group, Inc. (“JNR”), and operated by the defendant, Ryan J. Mahoney (“Mahoney”).

Alrabadi now files the instant motion seeking summary judgment against the defendants pursuant to CPLR 3212 on the issue of liability and dismissal of the

defendants' affirmative defenses for culpable conduct and contributory negligence, including the first, second and fifth affirmative defenses, and directing a trial on the issue of damages.

JNR and Mahoney, by their attorney, filed an affirmation in opposition, asserting that Alrabadi failed to make a prima facie showing of entitlement to summary judgment, in that, he failed to submit a certified police accident report and even if the report was admissible, it does not demonstrate his entitlement to summary judgment because the report states that Alrabadi's vehicle passed him on the left side and cut in front of Mahoney's vehicle, then stopped short, causing him to rear end Alrabadi's vehicle. Mahoney's attorney asserts that Mahoney has proffered a non negligent explanation sufficient to defeat a motion for summary judgment

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]).

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)

“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, Alrabadi has made out a prima facie showing of his entitlement to summary judgment. The affidavit submitted by Alrabadi 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]).

Upon viewing the evidence in a light most favorable to the non-moving party (*Pearson v Dix McBride, LLC*, 63 AD3d 895, 895 [2d Dept 2009]), and upon bestowing the benefit of every reasonable inference to that party (*Rizzo v Lincoln Diner Corp.*, 215 AD2d 546, 546 [2d Dept 1995]), the Court finds that the defendants have rebutted the plaintiff's prima facie showing by creating questions of fact as to the cause of the accident and a

possible non-negligent explanation.

Here, Mahoney submitted his own affidavit with a non-negligent explanation for the accident. He states that about a block before the accident, Alrabadi was driving behind him and had attempted on numerous occasions to get in front of his vehicle by driving over the double yellow lines. Each time he pulled back behind his vehicle, but just prior to the accident, he stopped at a stop sign and was about to turn onto Central Park Avenue. As he began to merge onto Central Park Avenue, Alrabadi's vehicle pulled out from behind him, passed him on the left side, driving over the double yellow lines and cutting directly in front of his vehicle, then stopping short when he realized there was a stop sign.

Additionally, although the police report submitted in support of the motion is uncertified, the statements in the report are admissible as party admissions. "The police officer who prepared the report was acting within the scope of his duty in recording the statements and the statements are admissible as the admissions of parties in the action (*Scott v Kass*, 48 AD3d 785 [2d Dept 2008]). The police report also states the same version of the events, providing a possible non-negligent explanation.

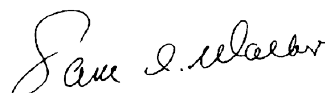
With regard to dismissal of the affirmative defenses, the Court also denies such relief since summary judgment on the issue of liability was denied.

Accordingly, based on all the foregoing, it is

ORDERED that the plaintiff's motion for summary judgment on the issue of liability and dismissal of affirmative defenses for culpable conduct and contributory negligence, is DENIED.

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

Dated: White Plains, New York
April 28, 2020



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