Mejia v Taylor
2020 NY Slip Op 35225(U)
May 8, 2020
Supreme Court, Suffolk County
Docket Number: Index No. 618336/2019
Judge: Paul J. Baisley, Jr.

SHORT FORM ORDER **INDEX NO. 618336/2019**

SUPREME COURT - STATE OF NEW YORK
DCM-J - SUFFOLK COUNTY

PRESENT:
Hon. Paul J. Baisley, Jr., J.S.C.

LENIN A. MEJIA, and ELLEN J. MAZARIEGOS,

Plaintiffs,

-against-

MARY A. TAYLOR, and BRIAN C. TAYLOR,

Defendants.

ORIG. RETURN DATE: January 22, 2020
FINAL RETURN DATE: February 13, 2020
MOT. SEQ. #: 001 MotD

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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 filed by plaintiff, on December 16, 2019 ; Notice of Cross Motion and supporting papers ___; Answering Affidavits and supporting papers filed by plaintiff Lenin A. Mejia on the counterclaim, on January 3, 2010; filed by defendants, on January 28, 2010 ; Replying Affidavits and supporting papers filed by plaintiffs, on February 7, 2020 ; Other _____; (~~and after hearing counsel in support and opposed to the motion~~) it is,

ORDERED that the motion by plaintiffs Lenin A. Mejia and Ellen J. Mazariegos for partial summary judgment on the issue of liability, and to dismiss all affirmative defenses and cross claims as to contributory and comparative negligence is granted in part and denied in part; and it is further

ORDERED that the parties shall appear for a preliminary conference on September 17, 2020 at 10:00 a.m. at the DCM-J Part of the Supreme Court, One Court Street, Riverhead, New York.

This is an action to recover damages for injuries allegedly sustained by plaintiffs Lenin A. Mejia and Ellen J. Mazariegos as a result of a motor vehicle accident, which occurred on April 1, 2019, on Park Avenue, near its intersection with Brennan Street, in Hungtington, New York. The accident allegedly occurred when a vehicle owned by defendant Brian C. Taylor and operated by defendant Mary A. Taylor struck plaintiffs' vehicle in the rear.

Plaintiffs now move for summary judgment in their favor on the issue of liability, and to dismiss all affirmative defenses and counterclaims of contributory and comparative negligence. Plaintiffs argue

that defendant driver's negligence was the sole proximate cause of the accident. Plaintiffs argue that defendant driver violated, inter alia, Vehicle and Traffic Law § 1129 (a) by following too closely. In support of their motion, plaintiffs submit, among other things, their affidavits and the certified police report. Defendants oppose the motion, arguing that plaintiffs' vehicle suddenly and without warning struck another vehicle in the rear, causing defendant driver to strike plaintiffs' vehicle in the rear, as plaintiffs' vehicle came to a sudden stop.

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 (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 508 NYS2d 923 [1986]; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 87 NYS2d 316 [1985]). The moving party has the initial burden of proving entitlement to summary judgment (*id.*). Once the moving party demonstrates a prima facie entitlement to judgment as a matter of law, the burden shifts to the party opposing the motion to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action (*see Vega v Restani Constr. Corp.*, 18 NY3d 499, 942 NYS2d 13 [2012]; *Alvarez v Prospect Hosp.*, *supra*; *Zuckerman v City of New York*, 49 NY2d 557; 427 NYS2d 595 [1980]; *see also* CPLR 3212 [b]). The failure to make such showing requires a denial of the motion, regardless of the sufficiency of the opposing papers (*see Winegrad v New York Univ. Med. Ctr.*, *supra*). In deciding the motion, the Court must view all evidence in the light most favorable to the nonmoving party (*see New York City Asbestos Litig. v Chevron Corp.*, 33 NY3d 20, 99 NYS3d 734 [2019]; *Stonehill Capital Mgt., LLC v Bank of the West*, 28 NY3d 439, 45 NYS3d 864 [2016]).

The driver of a vehicle approaching another vehicle from the rear must maintain a reasonably safe distance and rate of speed and control over his or her vehicle, under the prevailing traffic conditions and exercise reasonable care to avoid colliding with the other vehicle (*see Xin Fang Xia v Saft*, 177 AD3d 823, 113 NYS3d 249 [2d Dept 2019]; *Bloechle v Heritage Catering, Ltd.*, 172 AD3d 1294, 101 NYS3d 424 [2d Dept 2019]; *Schmertzler v Lease Plan U.S.A., Inc.*, 137 AD3d 1101, 27 NYS3d 648 [2d Dept 2016]). A rear-end collision with a stopped or stopping vehicle establishes a prima facie case of negligence on the part of the operator of the rear vehicle, and requires the operator of the rear vehicle to rebut the inference of negligence by providing a nonnegligent explanation for the collision (*see Samouhi v Retamales*, 180 AD3d 1099, 120 NYS3d 69 [2d Dept 2020]; *Clements v Giatas*, 178 AD3d 894, 112 NYS3d 539 [2d Dept 2019]; *Xin Fang Xia v Saft*, *supra*; *Edgerton v City of New York*, 160 AD3d 809, 74 NYS3d 617 [2d Dept 2018]). A nonnegligent explanation may include evidence of a mechanical failure, a sudden, unexplained stop of the lead vehicle, an unavoidable skidding on wet pavement, or any other reasonable cause (*see Clements v Giatas*, *supra*; *Grant v Carrasco*, 165 AD3d 631, 84 NYS3d 235 [2d Dept 2018]; *Binkowitz v Kolb*, 135 AD3d 884, 24 NYS3d 186 [2d Dept 2016]). However, a driver who follows another vehicle must anticipate that the lead vehicle may stop, even suddenly, based on prevailing traffic conditions (*see Xin Fang Xia v Saft*, *supra*; *Catanzaro v Edery*, 172 AD3d 995, 101 NYS3d 170 [2d Dept 2019]; *Buchanan v Keller*, 169 AD3d 989, 95 NYS3d 252 [2d Dept 2019]).

To establish prima facie entitlement to judgment as a matter of law on the issue of liability, a plaintiff is no longer required to show freedom from comparative fault (*Rodriguez v City of New York*, 31 NY3d 312, 76 NYS3d 898 [2018]; *Simon v Rent-A-Center E., Inc.*, 180 AD3d 1100, 2020 NY Slip

Op 01379 [2d Dept 2020]; *Bloechle v Heritage Catering, Ltd.*, *supra*; *Catanzaro v Edery*, *supra*; *Marks v Rieckhoff*, 172 AD3d 847, 101 NYS3d 63 [2d Dept 2019]; *Auguste v Jeter*, 167 AD3d 560, 560, 88 NYS3d 509 [2d Dept 2018]). The issue of a plaintiff's comparative negligence may, however, be decided in the context of a summary judgment motion if the plaintiff moves for summary judgment dismissing a defendant's affirmative defense of comparative negligence (*Poon v Nisanov*, 162 AD3d 804, 79 NYS3d 227 [2d Dept 2018]).

Plaintiffs have established prima facie entitlement to judgment as a matter of the law on the issue of defendant driver's negligence (*see Rosenblum v Schloss*, 175 AD3d 1339, 105 NYS3d 894 [2d Dept 2019]; *Montalvo v Cedeno*, 170 AD3d 1166, 96 NYS3d 638 [2d Dept 2019]; *Auguste v Jeter*, *supra*). Plaintiffs submit the affidavit of driver Lenin A. Mejia and passenger Ellen J. Mazariegos. Mejia states in his affidavit that he was the seat-belted driver of his vehicle, and that he was driving northbound on Park Avenue on April 1, 2019, at approximately 3:45 p.m. Mejia states that as he approached the intersection with Brennan Street, he observed the car in front of him slowing down to a stop to make a left turn. Mejia states that he brought his vehicle to a slow, gradual stop, and that he was stopped for approximately five to ten seconds, when he was struck in the rear by defendants' vehicle. Further, Mazariegos states that she was the seat-belted front-seat passenger of Meija's vehicle at the time of the accident. She states that as the vehicle was proceeding northbound on Park Avenue, she observed the car in front of them slow down, illuminate its left turn signal, and stop at the intersection of Brennan Street. She states that Mejia brought their vehicle to a slow, graduate and complete stop behind that vehicle, when their vehicle was struck in the rear by defendants' vehicle.

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*). Defendants submit the affirmation of Mary A. Taylor, who states that she was driving nothbound on Park Avenue at the time of the accident. She states that she was following behind plaintiffs' vehicle when she heard it come into contact with the vehicle in front of it and observed it to suddenly stop. She states that following the impact, she attempted to apply her brakes to avoid contact with plaintiffs' vehicle, but that she was unable to stop in time, and she hit plaintiffs' vehicle in the rear. However, in the absence of any evidence that the defendant driver was maintaining a reasonably safe distance and speed behind plaintiffs' vehicle as required by Vehicle and Traffic Law § 1129 (a), her claim that the plaintiffs' vehicle came to a sudden stop was insufficient to raise a triable issue of fact as to whether there was a non-negligent explanation for the collision (*see* ***Hackney v Monge***, 103 AD3d 844, 960 NYS2d 176 [2d Dept 2013]; ***Taing v Drewery***, 100 AD3d 740, 954 NYS2d 175 [2d Dept 2012]).

Further, plaintiff's motion was not premature, as defendants failed to offer any evidentiary basis to suggest that discovery may lead to relevant evidence, or that facts essential to opposing the motion were exclusively within the knowledge and control of plaintiff (*see* CPLR 3212[f]; *Romain v City of New York*, 177 AD3d 590, 112 NYS3d 162 [2d Dept 2019]; *Harrinarain v Sisters of St. Joseph*, 173 AD3d 983, 104 NYS3d 661 [2d Dept 2019]; *Kerolle v Nicholson*, 172 AD3d 1187, 101 NYS3d 387 [2d Dept 2019]). 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 plaintiff's motion (*see Batashvili v Veliz-Palacios*, 170 AD3d 791, 96 NYS3d 146 [2d Dept 2019]; *Figueroa v MTLR Corp.*, 157 AD3d 861, 69 NYS3d 359 [2d Dept 2018]; *Niyazov v Hunter EMS, Inc.*, 154 AD3d

954, 63 NYS3d 457 [2d Dept 2017]).

With respect to the branch of plaintiffs' motion seeking to dismiss all affirmative defenses and cross claims as to comparative and contributory negligence on the part of plaintiff, when moving to dismiss an affirmative defense, the plaintiff bears the burden of demonstrating that the affirmative defense is without merit as a matter of law (*see Bank of N.Y. v Penalver*, 125 AD3d 796, 797, 1 NYS3d 825 [2d Dept 2015]; *South Point, Inc. v Redman*, 94 AD3d 1086, 1087, 943 NYS2d 543 [2d Dept 2012]). "In reviewing a motion to dismiss an affirmative defense, the court must liberally construe the pleadings in favor of the party asserting the defense and give that party the benefit of every reasonable inference . . . [and] if there is any doubt as to the availability of a defense, it should not be dismissed" (*Fireman's Fund Ins. Co. v Farrell*, 57 AD3d 721, 723, 869 NYS2d 597 [2d Dept 2008]; *see Greco v Christoffersen*, 70 AD3d 769, 896 NYS2d 363 [2d Dept 2010]). Plaintiffs have established prima facie entitlement to the relief requested by submitting evidence that plaintiffs' vehicle was completely stopped in traffic when they were struck from behind by defendant driver. However, defendants have raised a triable issue of fact with respect to plaintiffs' comparative negligence. Defendants submit the affidavit of defendant driver, who states that plaintiffs' vehicle was involved in a sudden accident, which raises questions of fact that cannot be decided on a motion for summary judgment. As such, plaintiffs' motion to dismiss all affirmative defenses and cross claims as to plaintiffs' comparative or contributory negligence is denied.

Accordingly, the motion by plaintiffs for partial summary judgment on the issue of liability is granted, and the motion by plaintiffs to dismiss all affirmative defenses and cross claims of comparative or contributory negligence is denied.

Dated: May 8, 2020

HON. PAUL J. BAISLEY, JR., J.S.C.