Paladino v Silit
2020 NY Slip Op 35257(U)
September 1, 2020
Supreme Court, Suffolk County
Docket Number: Index No. 616244/2016
Judge: Linda Kevins
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SHORT FORM ORDER

INDEX No. 616244/2016
CAL. No.

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 29 - SUFFOLK COUNTY

PRESENT:

HON. LINDA KEVINS
Justice of the Supreme Court

MOTION DATE 4/21/20
ADJ. DATE 7/14/2020
Mot. Seq. # 001 - MG

---X

ANTHONY J. PALADINO,

Plaintiff,

- against -

JOLANTA SILIT

Defendant.

---X

Upon the following papers e-filed and read on this motion for summary judgment ; Notice of Motion and supporting papers by plaintiff, dated March 5, 2020; Answering Affidavits and supporting papers by defendant, dated April 13, 2020 ; Replying Affidavits and supporting papers by plaintiff, dated May 8, 2020; Other ___; (~~and after hearing counsel in support and opposed to the motion~~) it is,

ORDERED that plaintiff's motion for an order pursuant to CPLR 3212 (e) granting him partial summary judgment on the issue of liability is granted; and it is further

ORDERED that counsel for the parties, and if a party has no counsel, then the party, are directed to appear before the Court in IAS Part 29, located at the Alan D. Oshrin Courthouse, One Court Street, Riverhead, New York 11901, on **September 14, 2020 at 10:00 a.m.**, for a Conference, or if the court is still operating remotely due to the COVID-19 health crisis, such appearance shall be held remotely on the same date by counsel. Counsel and any parties who are not represented by counsel shall, **with a copy to all parties, contact the court by email at Sufkevins@nycourts.gov at least one week prior to the date of the scheduled conference** to obtain the time and manner of such conference; and it is further

ORDERED that if this Order has not already been entered, plaintiff is directed to promptly serve a certified copy of this Order, pursuant to CPLR §§8019(c) and 2105, upon the Suffolk County Clerk who is directed to hereby enter such order; and it is further

ORDERED that upon Entry of this Order, plaintiff is directed to promptly serve a copy of this Order with Notice of Entry upon all parties and to promptly file the affidavits of service with the Clerk of the Court.

Plaintiff commenced this action to recover damages for personal injuries he allegedly sustained as a result of a motor vehicle accident that occurred on December 23, 2015 on Wellwood Avenue near its intersection with Long Island Avenue in the Town of Babylon, New York. The complaint, as amplified by the bill of particulars alleges that the accident happened when a vehicle driven by defendant Jolanta Silit struck plaintiff's vehicle in the rear while it was stopped on Wellwood Avenue. Plaintiff alleges that defendant operated her vehicle in a negligent manner, among other things, and was the sole proximate cause of the accident and his injuries.

Plaintiff now moves for partial summary judgment on the issue of liability, arguing that defendant is negligent as a matter of law and was the sole proximate cause of the accident. In support of the motion, plaintiff submits copies of the pleadings, the bill of particulars, the transcripts of the parties' deposition testimony and a police accident report. Initially, the Court notes that the police accident report submitted by plaintiff is not certified, nor does the police officer state that he witnessed the accident. Consequently, the police report constitutes hearsay and is, thus, inadmissible (*see* ***Jiang-Hong Chen v Heart Tr., Inc.***, 43 AD3d 945, 39 NYS3d 504 [2d Dept 2016]; ***Allstate Ins. Co. v Ramlall***, 132 AD3d 617, 17 NYS3d 308 [2d Dept 2015]; ***Lacagnino v Gonzalez***, 306 AD2d 250, 760 NYS2d 533 [2d Dept 2003]).

Plaintiff testified that on the date of the accident, the weather was clear, the roads were dry, and he was traveling southbound on Wellwood Avenue to go to Pinelawn Memorial Park. He testified that Wellwood Avenue has two lanes of travel for northbound traffic and two lanes of travel for southbound traffic, and that he was traveling at a rate of speed of 30 mph and slowed his vehicle down to 5 mph before coming to a complete stop in front of the entrance to the cemetery. He testified that he activated his left-turn signal approximately 50 feet before stopping, and that he did not observe defendant's vehicle prior to the accident. Plaintiff testified that his vehicle was struck from behind, that the impact was strong, and that he became unconscious and woke up in the hospital.

Defendant testified that she was traveling southbound on Wellwood Avenue in the left lane of travel behind plaintiff's vehicle and observed it for some time. She testified that she was traveling at a rate of speed of approximately 40 mph, and that she had observed brake lights illuminate on plaintiff's vehicle a few times while traveling behind his vehicle. She testified that she intended to go to the cemetery which was on the right side of the road, and that she needed to move from the left lane to the right lane of travel, that she didn't expect plaintiff to stop, and that the front of her vehicle hit the rear of plaintiff's vehicle. Defendant testified that she pressed the brake pedal, but that her vehicle did not stop in time to avoid the collision.

It is well settled that a party moving for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law, offering sufficient evidence to demonstrate the absence of any

material issues of fact (*see* ***Alvarez v Prospect Hosp.***, 68 NY2d 320, 508 NYS2d 923 [1986]; ***Zuckerman v City of New York***, 49 NY2d 557, 427 NYS2d 595 [1980]). Once such a showing has been made, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action (***Alvarez v Prospect Hosp.***, 68 NY2d 320, 508 NYS2d 923; ***Zuckerman v City of New York***, 49 NY2d 557, 427 NYS2d 595).

When the driver of a vehicle approaches another vehicle 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 (***Tumminello v City of New York***, 148 AD3d 1084, 49 NYS3d 739 [2d Dept 2017]; ***Brothers v Bartling***, 130 AD3d 554, 13 NYS3d 202 [2d Dept 2015]; ***Gutierrez v Trillium USA, LLC***, 111 AD3d 669, 974 NYS2d 563 [2d Dept 2013]; ***Macauley v ELRAC, Inc.***, 6 AD3d 584, 585, 775 NYS2d 78 [2d Dept 2003]). A rear-end collision with a stopped or slowing vehicle creates a prima facie case of negligence with respect to the operator of the rear vehicle and imposes a duty on that operator to rebut the inference of negligence by providing a nonnegligent explanation for the collision (***Tutrani v County of Suffolk***, 10 NY3d 906, 861 NYS2d 610 [2008]; ***Edgerton v City of New York***, 160 AD3d 809, 74 NYS3d 617 [2d Dept 2018]; ***Nowak v Benites***, 152 AD3d 613, 60 NYS3d 48 [2d Dept 2017]; ***Le Grand v Silberstein***, 123 AD3d 773, 999 NYS2d 96 [2d Dept 2014]).

Here, plaintiff's submissions are sufficient to establish, prima facie, his entitlement to judgment as a matter of law on the issue of negligence (*see* ***Motta v Gomez***, 161 AD3d 725, 72 NYS3d 840 [2d Dept 2018]; ***Singh v Avis Rent A Car Sys., Inc.***, 119 AD3d 768, 989 NYS2d 363 [2d Dept 2014]; ***Markesinis v Jaquez***, 106 AD3d 961, 965 NYS2d 363 [2d Dept 2013]). Therefore, the burden shifts to defendant to rebut the inference of negligence by providing a nonnegligent explanation for the accident (*see* ***Arslan v Costello***, 164 AD3d 1408, 84 NYS3d 229 [2d Dept 2018]).

In opposition, defendant submits an affirmation of counsel who points to defendant's testimony where she testified that she did not expect plaintiff to stop, "he didn't give a signal." Such testimony is insufficient to raise a triable issue of fact, as "[a] driver of a vehicle approaching another vehicle from the rear is required to maintain a reasonably safe distance and rate of speed under the prevailing conditions to avoid colliding with the other vehicle" (***Witonsky v New York City Tr. Auth.***, 145 AD3d 938, 939, 43 NYS3d 505 [2d Dept 2016], quoting ***Nsiah-Ababio v Hunter***, 78 AD3d 672, 672, 913 NYS2d 659 [2d Dept 2010]; see Vehicle and Traffic Law § 1129 [a]). Defendant was required to anticipate such stop, as it was foreseeable based on her testimony, and she was under a duty to maintain a safe distance between her vehicle and plaintiff's vehicle, which was directly ahead (*see* ***Lopez v Dobbins***, 164 AD3d 776, 79 NYS3d 556 [2d Dept 2018]; ***Waide v ARI Fleet, LT***, 143 AD3d 975, 39 NYS3d 512 [2d Dept 2016]).

Here, defendant has failed to proffer competent proof to raise a triable issue of fact as to whether she has a nonnegligent explanation for the rear-end collision. Accordingly, plaintiff's motion for partial summary judgment on the issue of liability is granted.

Anything not specifically granted herein is hereby denied.

This constitutes the decision and Order of the Court.

LINDA KEVINS, JSC

Dated: 9/1/2020

____ **FINAL DISPOSITION** ___X___ **NON-FINAL DISPOSITION**