

State Farm Mut. Auto. Ins. Co. v Allison
2020 NY Slip Op 35333(U)
November 19, 2020
Supreme Court, Orange County
Docket Number: Index No. EF000093-2020
Judge: Maria S. Vazquez-Doles
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This opinion is uncorrected and not selected for official publication.

To commence the statutory time 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
COUNTY OF ORANGE

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STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY A/S/O MICHAEL CREDO
AND JILLIAN CREDO,

Plaintiffs,

-against-

ANDREW J. ALLISON, VIDHYA L. BABU,
BABU MUNUSAMY, ERIA M. HAUSER, EVAN M.
DAVIS AND SHEDISIA SHELDON A/K/A
SHEDISIA M. LANE,

Defendants.

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VAZQUEZ-DOLES, J.

The following documents numbered 1 to 6 were read on this motion by defendants Vidhya L. Babu and Babu Munusamy, for an Order pursuant to CPLR 3212 for summary judgment on the issue of liability, dismissing plaintiff's complaint and all cross-claims against defendants:

PAPERS

NUMBERED

Notice of Motion/Affirmation in Support (Piantadosi)/Exhibits A-C	1-5
Affirmation in Opposition (Murphy)	6

Background and Procedural History

This is a subrogation action brought by State Farm Mutual Automobile Insurance Company ("State Farm") to recover payment made on behalf of its subrogors, Michael Credo and Jillian Credo, for the damage to their vehicle. On November 1, 2018, defendant Vidhya Babu was operating the lead vehicle, owned by defendant Babu Munusamy, in a five-vehicle chain collision that occurred in the right westbound lane of Interstate 84 in Newburgh, New York

near Exit 10S (currently known as Exit 39A). Defendant Babu's vehicle was struck in the rear by defendant Andrew Allison.

Plaintiff commenced this action by e-filing its Summons and Complaint on January 3, 2020. Defendants Evan M Davis and Shedisia Sheldon a/k/a/ Shedisia M. Lane joined issue with the filing of their Answer with Cross Claims on February 6, 2020. On February 10, 2020, defendant Andrew J. Allison joined issue with the filing of his Answer and Cross Claims. Defendant Erica M Hauser joined issue with the filing of her Answer on February 11, 2020. The moving defendants joined issue with filing of their Answer on February 19, 2020. Counsel for plaintiff avers that discovery has not been completed and party depositions have not been held.

Defendants Babu and Munusamy now move for summary judgment on the issue of liability seeking dismissal of plaintiff's complaint.

Discussion

A party seeking summary judgment bears the initial burden of establishing a *prima facie* entitlement to judgment as a matter of law by tendering competent evidence in admissible form sufficient to eliminate any triable, material issues of fact from the case (*see Alvarez v Prospect Hosp.*, 68 NY2d 320 (1986); *De Souza v Empire Tr. Mix, Inc.*, 155 AD3d 605 [2d dept 2017]). A defendant moving for summary judgment in a negligence action has the burden of establishing, *prima facie*, that he or she was not at fault in the happening of the subject accident" (*Boulos v Lerner-Harrington*, 124 AD3d 709, 709 [2d Dept 2015]). If the moving party makes such a *prima facie* showing, the burden shifts to the opposing party to demonstrate the existence of an issue of fact requiring a trial (*see Phillip v D & D Carting Co., Inc.*, 136 AD3d 18 [2d Dept 2015]; *Dempster v Liotti*, 86 AD3d 169 [2d Dept 2011]). The Court is obliged to draw all reasonable inferences in favor of the non-moving party (*see Boulos v Lerner-Harrington*, 124

AD3d at 709). Where there is any doubt about the existence of a material and triable issue of fact, summary judgment must not be granted (*see Anyanwu v Johnson*, 276 AD2d 572 [2d Dept 2000]).

“A rear-end collision is sufficient to create a prima facie case of liability and imposes a duty of explanation with respect to the operator of the offending vehicle” (*Levine v Taylor*, 268 AD2d 566 [2d Dept 2000]). “If the operator of the offending vehicle cannot come forward with evidence to rebut the inference of negligence, the drivers of the lead vehicles may properly be awarded judgment as a matter of law” (*Vecchio v Hildebrand*, 304 AD2d 749, 750 [2d Dept 2003]). “However, not every rear-end collision is the exclusive fault of the rearmost driver. The frontmost driver also has the duty not to stop suddenly or slow down without proper signaling so as to avoid a collision” (*Tutrani v County of Suffolk*, 64 AD3d 53, 59-60 [2d Dept 2009])[quotations and citations omitted]; *see* Vehicle and Traffic Law § 1163).

In support of the instant motion, defendants have submitted an affidavit from Babu, the driver of the lead vehicle, as well as a certified copy of the police accident report. Babu states that at the time of the accident, traffic was flowing, and she was travelling approximately 45 mph when she was struck in the rear. Babu further states that she had not changed lanes, nor had she suddenly slowed or stopped before the impact. However, the police report indicates that Babu was slowing for traffic ahead at the time of the accident. Since defendants submitted the police report in support of their motion, they waived any objection to its admissibility (*see Cruz v Finney*, 148 AD3d 772, 773 [2d Dept 2017]). Under these circumstances, defendants failed to establish, prima facie, that defendants were free from comparative fault (*id.*). As such, defendants have failed to establish their prima facie entitlement to judgment as a matter of law regardless of the sufficiency of plaintiff’s opposition papers (*see id.*).

Conclusion

Based upon the foregoing, it is hereby

ORDERED that this motion for summary judgment of defendants Vidhya L. Babu and Babu Munusamy is denied; and it is further


ORDERED that the parties appear for a status conference on January 19, 2021 at 10:30 a.m.. A link will be forwarded by the Part Clerk.

Any matters not specifically addressed have been considered and denied.

The foregoing constitutes the Decision and Order of the Court.

Dated: November 19, 2020
Goshen, New York

ENTER:



HON. MARIA S. VAZQUEZ-DOLES, J.S.C.

TO: *Counsel of Record via NYSCEF*