McFarlane v Ungureanu
2020 NY Slip Op 35377(U)
February 19, 2020
Supreme Court, Kings County
Docket Number: Index No. 521493/2017
Judge: Lara J. Genovesi
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At an IAS Term, Part 34 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse thereof at 360 Adams St., Brooklyn, New York on the 19th day of February 2020.

PRESENT:
HON. LARA J. GENOVESI,
J.S.C.

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MICHELLE MCFARLANE,

Plaintiff(s),

-against-

DANIEL UNGUREANU, GRAHAM LAUNDRY MACHINERY CO., and L. CHARLES MYLANE,

Defendant(s).

--x

MOA 2/19/20 AMA

Index No.: 521493/2017

DECISION & ORDER

Recitation, as required by CPLR §2219(a), of the papers considered in the review of this motion:

	NYSCEF Doc. No.:
Notice of Motion/Cross Motion/Order to Show Cause and Affidavits (Affirmations) Annexed	65-70, 72-77
Opposing Affidavits (Affirmations)	78-81, 82, 83
Reply Affidavits (Affirmations)	85-87,

Introduction

Plaintiff, Michelle McFarlane moves by notice of motion, sequence number four, for summary judgment, pursuant to CPLR § 3212, on the issue of liability against the defendants, for an immediate trial on damages and for such further and other relief as

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may be just and proper. Defendants, Daniel Ungureanu, Graham Laundry Machinery Co., and L. Charles Mylane oppose this motion.

Defendant, L. Charles Mylane moves by notice of motion, sequence number five, for summary judgment, pursuant to CPLR § 3212, on the issue of liability, dismissing the complaint and all cross claims against her and such other and further relief as may be just and proper. Defendants, Daniel Ungureanu and Graham Laundry Machinery Co. oppose this motion. Plaintiff did not oppose this application.

Background

Plaintiff allegedly sustained personal injuries on August 11, 2017, in a motor vehicle accident. Plaintiff was a passenger in the vehicle owned and operated by defendant L. Charles Mylane (Charles)[1]. The Charles vehicle was stopped at a red traffic control signal on Atlantic Avenue when it was struck in the rear by the vehicle owned by defendant Graham Laundry Machinery Co. (Graham Laundry) and operated by Daniel Ungureanu's (Ungureanu).

Plaintiff stated by affidavit that she was a passenger in the Charles' vehicle when it was struck in the rear on August 11, 2017, at 6:15 p.m. (*see* NYSCEF Doc. #69, Exhibit C, Plaintiff Affidavit). At the time of the accident the weather was fair and the roads where clear. Plaintiff further states that the Charles vehicle was stopped at a red light for at least 30 seconds when Ungureanu's vehicle struck it in the rear. This collision occurred without warning; the Ungureanu vehicle did not honk its horn.

[1] Although defendant is sued as L. Charles Mylane, her affidavit states that her name is L. Mylane Charles.

Defendant, Charles stated by affidavit that at the time of the collision, traffic congestion was moderate on Atlantic Avenue (*see* NYSCEF Doc. #80, Exhibit A, Affidavit in Support). Charles's highest rate of speed on Atlantic Avenue before the collision was fifteen miles per hour. Charles came to a gradual and complete stop at the red light on Atlantic Avenue. She was stopped for several seconds when her vehicle was struck in the rear by defendant Ungureanu's vehicle. There was no warning of the accident prior to the contact.

Defendant Ungureanu failed to provide an affidavit in opposition. Rather, counsel for Ungureanu and Graham Laundry argues that the motion is procedurally defective since plaintiff did not delineate against which defendant plaintiff seeks summary judgment. Counsel further contends that the instant motion is premature because the parties have not been deposed. Since there can be more than one proximate cause of an accident Ungureanu and Graham Laundry contend that summary judgment is unwarranted since there are questions of fact as to defendant Charles' contributory negligence in the happening of this accident.

This action was commenced by the filing of the summons and complaint on November 6, 2017. Issue was joined as to defendants Ungureanu and Graham Laundry on January 9, 2018. Issue was joined as to defendant Charles on April 30, 2018. A preliminary conference was held on March 15, 2018, which ordered that depositions were to be held by July 17, 2018 (*see* NYSCEF Doc. #22). A compliance conference was held on September 12, 2018, which ordered that depositions were to be held by December 12, 2018 (*see* NYSCEF Doc. #44). A final pre-note of issue conference was held on January

16, 2020, which ordered that depositions were to be completed on or before January 30, 2020 (*see* NYSCEF Doc. #90). Motion sequence four was filed on February 7, 2019, while motion sequence five was filed on June 4, 2019. The note of issue is to be filed on or before February 28, 2020.

Discussion

Summary Judgment

"[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" (*Stonehill Capital Mgmt., LLC v. Bank of the W.,* 28 N.Y.3d 439, 68 N.E.3d 683 [2016], citing *Alvarez v. Prospect Hospital*, 68 N.Y.2d 320, 501 N.E.2d 572 [1986]). Failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers (*see Chiara v. Town of New Castle*, 126 A.D.3d 111, 2 N.Y.S.3d 132 [2 Dept., 2015], citing *Vega v. Restani Const. Corp.,* 18 N.Y.3d 499, 965 N.E.2d 240 [2012]; *see also Lee v. Nassau Health Care Corp.*, 162 A.D.3d 628, 78 N.Y.S.3d 239 [2 Dept., 2018]). Once a moving party has made a prima facie showing of its entitlement to summary judgment, the burden shifts to the opposing party 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 Fairlane Fin. Corp. v. Longspaugh,* 144 A.D.3d 858, 41 N.Y.S.3d 284 [2 Dept., 2016], citing *Alvarez v. Prospect Hospital*, 68 N.Y.2d 320, *supra; see also Hoover v. New Holland N. Am., Inc.,* 23 N.Y.3d 41, 11 N.E.3d 693 [2014]).

"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" (*Nsiah–Ababio v. Hunter*, 78 A.D.3d 672, 672, 913 N.Y.S.2d 659; *see* Vehicle and Traffic Law § 1129[a]; *Niyazov v. Hunter EMS, Inc.*, 154 A.D.3d 954, 63 N.Y.S.3d 457)." (*Batashvili v. Veliz-Palacios*, 170 A.D.3d 791, 96 N.Y.S.3d 146 [2 Dept., 2019]).

> 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, thereby requiring that operator to rebut the inference of negligence by providing a nonnegligent explanation for the collision. A nonnegligent explanation may include evidence of a mechanical failure, a sudden stop of the vehicle ahead, an unavoidable skidding on wet pavement, or any other reasonable cause.

(*Clements v. Giatas*, 178 A.D.3d 894, 112 N.Y.S.3d 539 [2 Dept., 2019] [internal citations omitted]; *see Xin Fang Xia v. Saft*, 177 A.D.3d 823, 113 N.Y.S.3d 249 [2 Dept., 2019]; *see also Ordonez v. Lee*, 177 A.D.3d 756, 110 N.Y.S.3d 339 [2 Dept., 2019]).

"The right of an innocent passenger to summary judgment on the issue of whether he or she was at fault in the happening of an accident is not restricted by potential issues of comparative negligence as between two defendant drivers" (*Romain v. City of New York*, 177 A.D.3d 590, 112 N.Y.S.3d 162 [2 Dept., 2019] [internal citations omitted]).

Defendant Charles' Motion

"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" (*Matias v. Bello*, 165 A.D.3d 642, 643, 84 N.Y.S.3d 551; *see Ardanuy v. RB Juice, LLC*, 164 A.D.3d 1296, 1297, 83 N.Y.S.3d 634; *Martinez v. Allen*, 163 A.D.3d

951, 951, 82 N.Y.S.3d 130)." (*Pilgrim v. Campoverde-Bravo*, 175 A.D.3d 1333, 105 N.Y.S.3d 900 [2 Dept., 2019]). Defendant, Charles established her prima facie entitlement to summary judgment as a matter of law, dismissing the complaint and the cross claims against her through the submission of her affidavit and plaintiff's affidavit (*see* NYSCEF Doc. #80, Exhibit A, Affidavit in Support; *see also* NYSCEF Doc. #69, Exhibit C, Plaintiff Affidavit). Defendant Charles established that Ungureanu was negligent when his vehicle struck the rear of the Charles's stopped vehicle. Charles established that she was not at fault for the happening of the accident (*see generally Poon v. Nisanov*, 162 A.D.3d 804, 79 N.Y.S.3d 227 [2 Dept., 2018]).

In opposition, defendants Ungureanu and Graham Laundry failed to raise a triable issue of fact as to Ungureanu's negligence in the happening of the accident. The operator of their vehicle, Ungureanu, fails to submit an affidavit. "Contrary to the defendants' contentions, the [] motion was not premature. The defendants failed to establish that additional discovery might lead to relevant evidence, or that facts essential to oppose the motion were in the exclusive knowledge and control of the [] [plaintiff and defendant Charles] (*see* CPLR 3212[f]; *Kerolle v. Nicholson*, 172 A.D.3d 1187, 101 N.Y.S.3d 387)." (*Romain v. City of New York,* 177 A.D.3d 590, 112 N.Y.S.3d 162, [2 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 the plaintiffs' motion (*see Fenko v. Mealing*, 43 A.D.3d 856, 841 N.Y.S.2d 378)" (*Batashvili v. Veliz-Palacios*, 170 A.D.3d 791, *supra*). Furthermore, this Court notes that there have been three Court orders scheduling deadlines for depositions

of the parties. It is unclear to this Court why the parties failed to adhere to the deadlines established in those orders. Accordingly, defendant Charles' motion for summary judgment is granted.

Plaintiff McFarlane's Motion

Plaintiff moves for summary judgment on the issue of liability on the ground that she was an innocent passenger and was not at fault in the happening of the accident. Here, in support of the motion, plaintiff submitted evidence sufficient to establish, prima facie, that the defendant Ungureanu was negligent. It is undisputed that plaintiff was a passenger in the Charles vehicle. Charles was at complete stop from several to at least 30 seconds when the vehicle was struck in the rear by the vehicle operated by Ungureanu.

With respect to the issue of comparative negligence, the plaintiff demonstrated, prima facie, that she was an innocent passenger who did not contribute to the happening of the accident (*see Balladares v. City of New York*, 177 A.D.3d 942, 114 N.Y.S.3d 448 [2 Dept., 2019]). Charles did not suggest that the injured plaintiff bore any fault in the happening of the accident. In opposition, Ungureanu and Graham Laundry failed to raise a triable issue of fact. Ungureanu again failed to provide an affidavit to raise a triable issue of fact. Accordingly, summary judgment on the issue of liability is granted.

Conclusion

Plaintiff McFarlane's motion for summary judgment on the issue of liability, motion sequence four, is granted as to defendants Ungureanu and Graham Laundry.

Defendants Charles motion for summary judgment on liability, motion sequence five, dismissing the complaint and all cross claims against him is granted.

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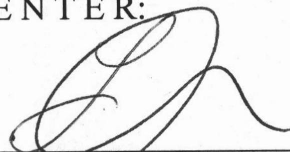

Hon. Lara J. Genovesi
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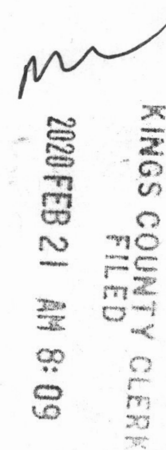
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