

**Stewart v Yuvraj Transp. Inc.**

2020 NY Slip Op 35740(U)

July 27, 2020

Supreme Court, Kings County

Docket Number: Index No. 502477/2019

Judge: Dawn Jimenez-Salta

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At an IAS Term, Part 88 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 27<sup>th</sup> day of July, 2020.

PRESENT:

HON. DAWN JIMENEZ-SALTA,  
Justice.

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NIKITA A. STEWART,  
Plaintiff,

- against -

Index No. 502477/2019  
Motion Seq. No. 1

YUVRAJ TRANSPORTATION INC. AND AMIN OMAR YAHYA,  
Defendant.

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

- 1) Plaintiff Nikita A. Stewart's (Plaintiff) motion for summary judgment on liability, dated August 20, 2019;
- 2) Defendants Yuvraj Transportation Inc. and Amin Omar Yahya's (Defendants) affirmation in opposition to Plaintiff's motion for summary judgment on liability, dated December 2, 2019;
- 3) Plaintiff's reply affirmation to Defendants' affirmation in opposition, dated February 11, 2020, all of which submitted on July 23, 2020.

Papers Considered:

Papers Numbered:

Notice of Motion/Order to Show Cause/ Petition/Cross Motion and Affidavits (Affirmations) Annexed .....	Plaintiff 1 [Exh. A-C];
Opposing Affidavits (Affirmations) .....	Defendant 2 [Exh. A];
Reply Affidavits (Affirmations) .....	Plaintiff 3 [Exh. 1-3].
Other (Memoranda of Law) .....	

Upon the foregoing cited papers, the decision/order is as follows: Plaintiff's motion for summary judgment on liability pursuant to CPLR 3212(e) is denied.

**BACKGROUND**

This is an action for personal injuries allegedly sustained by plaintiff Nikita A. Stewart (Plaintiff) as a result of a rear-end motor vehicle accident which occurred on July 21, 2017, on the eastbound Brooklyn-Queens Expressway in Brooklyn, New York. Plaintiff alleges that she was

struck in the rear while stopped in traffic by a vehicle owned by defendant Yuvraj Transportation Inc. (Yuvraj) and operated by defendant Amin Omar Yahya (Yahya) (Plaintiff 1 [Exh. A-C]; Defendants 2 [Exh. A]; Plaintiff 3 [Exh. 1-3]).

Plaintiff commenced this action by filing of the summons and complaint on January 12, 2019. Issue was joined by service of Defendants' verified answer on April 2, 2019. Plaintiff now moves for an order pursuant to CPLR 3212(e) granting partial summary judgment in her favor on the issue of liability. Plaintiff asserts that she was stopped in traffic for approximately five seconds when her vehicle was struck from behind by Yahya's vehicle. She alleges that Defendants were negligent and wholly responsible for the accident (Plaintiff 1 [Exh. A-C]; Defendants 2 [Exh. A]; Plaintiff 3 [Exh. 1-3]).

Plaintiff contends that a rear-end collision with a stationary vehicle creates a prima case of negligence on the part of the operator of the moving vehicle and imposes a duty on the operator of the moving vehicle to provide a non-negligent explanation for the accident. Furthermore, Plaintiff argues that a failure to leave sufficient space between the stopped or stopping vehicle and the following vehicle is negligence per se (Plaintiff 1 [Exh. A-C]; Defendants 2 [Exh. A]; Plaintiff 3 [Exh. 1-3]).

In Defendants' affirmation in opposition, counsel argues that there are material issues of fact regarding the happening of the accident and negligence on the part of Plaintiff. In his affidavit attached to Defendants' affirmation in opposition, Yahya avers that he saw the vehicle in front of his vehicle suddenly change into his lane and then collide with a third vehicle in front of it. Yahya claims that he did not have time to apply the brakes or avoid the accident. He states that the vehicle did not have its hazard lights on (Plaintiff 1 [Exh. A-C]; Defendants 2 [Exh. A]; Plaintiff 3 [Exh. 1-3]).

Defendants further argue that Plaintiff's motion for summary judgment should be denied as premature. Defendants assert that discovery is incomplete as neither Plaintiff nor Yahya have been deposed yet (Plaintiff 1 [Exh. A-C]; Defendants 2 [Exh. A]; Plaintiff 3 [Exh. 1-3]).

In her reply affirmation, Plaintiff argues that Defendants failed to demonstrate that further discovery may lead to relevant evidence or that facts essential to opposing Plaintiff's motion are exclusively within the knowledge and control of Plaintiff. Plaintiff also cites the police accident report and photographs, which are annexed to the reply affirmation, as evidence that Yahya's version of events in his affidavit is not credible. Plaintiff notes that the police accident report does not contain any statements regarding Plaintiff's alleged lane change. Consequently, Plaintiff argues that the motion for summary judgment should be granted as a preceding vehicle stopping short is insufficient to rebut the presumption of negligence on the part of the following vehicle (*see Ramirez v Konstanzer*, 61 A3d 837 [2d Dept 2009] (Plaintiff 1 [Exh. A-C]; Defendants 2 [Exh. A]; Plaintiff 3 [Exh. 1-3])).

## DISCUSSION

### *Standard of Review*

Summary judgment is a “drastic remedy” that should only be granted when the moving party meets its evidentiary burden of removing material issues of fact (*Vega v Restani Const. Corp.*, 18 NY3d 499, 503 [2012], citing *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). This is a heavy burden and the “facts must be viewed in the light most favorable to the non-moving party” (*William J. Jenack Estate Appraisers and Auctioneers, Inc., v Rabizadeh*, 22 NY2d 470, 475 [2013], citing *Vega v Restani Const. Corp.*, at 503).

The proponent of a motion for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law by the submission of sufficient evidence to eliminate any material issues of fact (*see Alvarez v Prospect Hosp.*, at 324; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). If the moving party fails to make a prima facie showing, the motion must be denied regardless of the sufficiency of the opposition papers (*see In re Imperato*, 149 AD3d 1072, 1073 [2d Dept 2017], citing *Winegrad v New York Univ. Med. Ctr.*, at 853).

### *Plaintiff's Motion for Summary Judgment*

“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 the operator to rebut the inference of negligence by providing a non-negligent explanation for the collision” (*Mulhern v Gregory*, 161 AD3d 881, 883 [2d Dept 2018]; *Comas-Bourne v City of New York*, 146 AD3d 855, 856 [2d Dept 2017]; *Whelan v Sutherland*, 128 AD3d 1055, 1056 [2d Dept 2015]).

The claim that the lead vehicle made a sudden stop, standing alone, is insufficient to rebut the presumption of negligence on the part of the following vehicle (*see Zdenek v Safety Consultants, Inc.*, 63 AD3d 918, 918 [2d Dept 2009]; *Kastritsios v Marcello*, 84 AD3d 1174 [2d Dept 2011]; *Franco v Breceus*, 70 AD3d 767, 768 [2d Dept 2010]; *Xian Hong Pan v Buglione*, 101 AD3d 706, 707 [2d Dept 2012]). “[I]f the operator cannot come forward with any evidence to rebut the inference of negligence, the plaintiff may properly be awarded judgment as a matter of law” (*D'Agostino v YRC, Inc.*, 120 AD3d 1291, 1292 [2d Dept 2014], quoting *Barile v Lazzarini*, 222 AD2d 635, 636 [2d Dept 1995] [internal citations and quotation marks omitted]).

In this case, there are various factual disputes between Plaintiff and Defendants regarding the happening of the accident. Plaintiff met her prima facie burden by the submission of her affidavit in which she avers that she was rear-ended while temporarily stopped due to traffic while driving on the Brooklyn-Queens Expressway. She avers that she was at a complete stop due to traffic when the accident occurred and that the happening of the accident was due to the negligence of Defendants (Plaintiff 1 [Exh. A-C]; Defendants 2 [Exh. A]; Plaintiff 3 [Exh. 1-3]).

With Plaintiff having made the requisite prima facie showing of entitlement to summary judgment, the burden shifts to Defendants to raise a triable issue of fact as to whether Plaintiff was negligent, and if so, whether that negligence contributed to the happening of the accident (*see Zuleta v Oujjada*, 94 AD3d 876, 878 [2d Dept 2012]; *Goemans v County of Suffolk*, 57 AD3d 478

[2d Dept 2008]). The court finds that Defendants raised a triable issue of fact as to the existence of a non-negligent explanation for the accident by submission of the affidavit of Yahya. In the affidavit, Yahya avers that Plaintiff's vehicle suddenly changed lanes and that she was then involved in a rear-end collision with a third vehicle. He further stated that he did not have time to apply the brakes or avoid the Plaintiff's vehicle (Plaintiff 1 [Exh. A-C]; Defendants 2 [Exh. A]; Plaintiff 3 [Exh. 1-3]).

In light of the conflicting affidavits, Plaintiff's summary judgment is denied. Even assuming that it was proper for the court to consider the photographs submitted for the first time as exhibits to Plaintiff's reply, the photographs do not utterly refute Defendant's asserted non-negligent explanation for the collision arising out of Plaintiff's alleged lane change and collision with the third vehicle (Plaintiff 1 [Exh. A-C]; Defendants 2 [Exh. A]; Plaintiff 3 [Exh. 1-3]).

Here, Defendants have offered more than "mere hope and speculation" in support of the contention that the application is premature and "that further discovery might lead to relevant evidence sufficient to defeat" the summary judgment motion (*Torres v Beth Israel Medical Center*, 134 AD3d 1097, 1097 [2d Dept 2015]). Both Plaintiff and Yahya should be deposed in order to clear up the factual questions outstanding as to the happening of the accident and any comparative negligence on the part of Plaintiff (Plaintiff 1 [Exh. A-C]; Defendants 2 [Exh. A]; Plaintiff 3 [Exh. 1-3]).


Accordingly, it is

**ORDERED**, that Plaintiff Nikita A. Stewart's motion for summary judgment on liability pursuant to CPLR 3212(e) is denied.

This constitutes the decision and order of the court.

Dated: July 27, 2020  
Brooklyn, NY

*Nikita A. Stewart v. Yuvraj Transportation Inc. et al*  
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ENTER  
  
Dawn Jimenez-Salta, J.S.C.  
Hon. Dawn Jimenez-Salta  
Justice of the Supreme Court

2020 AUG -4 AM 11:05  
KINGS COUNTY CLERK  
FILED