

<b>Blaszczyk v Ranfort</b>
2021 NY Slip Op 33431(U)
February 5, 2021
Supreme Court, Suffolk County
Docket Number: Index No. 600180/2019
Judge: Martha L. Luft
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Short Form Order

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SUPREME COURT - STATE OF NEW YORK  
I.A.S. PART 50 - COUNTY OF SUFFOLK

PRESENT:

Hon. Martha L. Luft  
Acting Justice Supreme Court

DECISION AND ORDER

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x  
JOHN M. BLASZCZYK,

Plaintiff,

-against-

FRANTZ RANFORT and BLRG CORP.,  
LLC,Defendants.  

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xMot. Seq. No.: 001 - MG  
Orig. Return Date: 08/27/2020  
Mot. Submit Date: 10/19/2020**PLAINTIFF'S ATTORNEY**Cary M. Greenberg, Esq.  
Davis & Ferber LLP  
1345 Motor Parkway  
Islandia, NY 11749**DEFENDANTS' ATTORNEY**Robert E. Giovinazzi, Esq.  
Roe & Associates  
1055 Franklin Avenue, Suite 204  
Garden City, NY 11530

Upon the e-filed documents numbered 8 through 15; and 17 through 22, it is

**ORDERED** that the motion by plaintiff John M. Blaszczyk pursuant to CPLR 3212 for partial summary judgment on the issue of liability is granted.

Plaintiff commenced this action to recover damages for alleged personal injuries sustained as a result of a motor vehicle accident involving three vehicles that occurred on July 28, 2018 at approximately 6:53 p.m. on Sunrise Highway eastbound at or near its intersection with Wantagh Avenue, in the Hamlet of Wantagh, Town of Hempstead, Suffolk County, New York. At the time of the accident plaintiff John M. Blaszczyk was operating a vehicle owned by non-party MGP Landscape. It is alleged that the vehicle operated by defendant Frantz Ranfort and owned by defendant BLRG Corp, LLC (collectively "defendants"), struck the rear of the vehicle owned and operated by non-party Lous A. Dileonardo, and then struck the rear of the vehicle operated by plaintiff.

Plaintiff now moves for partial summary judgment on the issue of defendants' liability. In support of the motion plaintiff submits, *inter alia*, the pleadings, the affirmation of counsel, a transcript of his deposition, and a certified copy of the police accident report. Plaintiff testified that on July 28, 2018 he was driving a white Ford van owned by his employer, MGP Landscape.

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Plaintiff was in the middle lane traveling eastbound on Sunrise Highway when he brought his vehicle to a stop at a red light at the intersection of Sunrise Highway and Wantagh Avenue. Plaintiff states there was a vehicle in the lane to his right (identified in the police report as non-party Dileonardo's Nissan) which was also stopped at the light. While stopped at the light plaintiff felt a rough impact from behind and heard a bang and a crunch of the truck hitting the back of his vehicle on the rear passenger side. Plaintiff stated he had his foot on the brake while stopped at the light and as a result of the impact his vehicle was pushed about three feet. After the impact plaintiff exited his vehicle and saw the vehicle that hit him and described it as a 1-800-Junk truck. Plaintiff also noticed that the Nissan which had been stopped in the lane next to him at the red light, had also been struck in the rear by the same truck. The police accident report corroborates plaintiff's deposition testimony that defendants' vehicle struck the rear left of the Nissan and struck the rear of plaintiff's vehicle, the white van.

The 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 eliminate any material issues of fact from the case. To grant summary judgment it must clearly appear that no material and triable issue of fact is presented (*see Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 165 NYS2d 498 [1957]). The movant has the initial burden of proving entitlement to summary judgment, failure to make such a showing requires denial of the motion regardless of the sufficiency of the opposing papers (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 487 NYS2d 316 [1985]). Once such proof has been offered, the burden then shifts to the opposing party, who, in order to defeat the motion for summary judgment, must proffer evidence in admissible form to establish a factual issue sufficient to require a trial (CPLR 3212 [b]; *see Zuckerman v City of New York*, 49 NY2d 557, 427 NYS2d 595 [1980]). The court's function on such a motion is to determine whether issues of fact exist, not to resolve issues of fact or to determine matters of credibility (*Vega v Restani Corp.*, 18 NY3d 499, 942 NYS2d 13 [2012]).

In opposition defendants submit their attorney's affirmation and the affidavit of defendant Frantz Ranfort. By his affidavit Ranfort states that while traveling eastbound on Sunrise Highway approaching the intersection with Wantagh Avenue he observed an SUV (the Nissan) traveling 3 car lengths ahead of him, the traffic light turned yellow and the SUV increased its speed and defendant thought it was going to proceed into the intersection but it came to a "sudden and unexpected stop" at the light and defendant's vehicle struck the rear left side of the SUV. Ranfort further states he saw plaintiff's van stopped at the intersection of Sunrise Highway and Wantagh Avenue, and after coming in contact with the SUV his vehicle continued to the left coming in contact with the rear, right of plaintiff's vehicle.

Defendants' submissions fail to rebut the inference of his negligence established by plaintiff's submissions by failing to provide a non-negligent explanation for the collision. A driver, as a matter of law, is charged with seeing what there is to be seen on the road, that is, what should have been seen, or what is capable of being seen at the time, and must exercise reasonable care under the circumstances to avoid an accident (*see Wilson v Rosedom*, 82 AD3d

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970, 919 NYS2d 59 [2d Dept 2011]; *Lu Yuan Yang v Howsal Cab Corp.*, 106 AD3d 1055, 966 NYS2d 167 [2d Dept 2013]). When approaching another vehicle from behind a driver is required to maintain a reasonably safe rate of speed, maintain control of his or her vehicle, and use reasonable care to avoid colliding with the other vehicle (*Schmertzler v Lease Plan U.S.A., Inc.*, 137 AD3d 1101, 27 NYS3d 648 [2d Dept 2016]). Here Ranfort's allegation that the SUV in front of him stopped suddenly is insufficient to raise a triable issue of fact as to defendants' negligence in following too closely, and is insufficient to defeat plaintiff's motion for summary judgment as to defendants' liability for the happening of the accident (*Cortes v Whelan*, 83 AD3d 763, 922 NYS2d 419 [2d Dept 2011]; see *Macauley v ELRAC, Inc.*, 6 AD3d 584 [2d Dept 2004]). While a non-negligent explanation for a rear-end collision may include evidence of a sudden stop of the lead vehicle, vehicle stops which are foreseeable under the prevailing traffic conditions, even if sudden and frequent, must be anticipated by the driver who follows, since he or she is under a duty to maintain a safe distance between his or her car and the car ahead (see *De Castillo v Sormeley*, 140 AD3d 918 [2d Dept 2016]).

Defendants' argument that plaintiff's deposition transcript is a nullity because it is unsigned, is misplaced since an unsigned deposition transcript is admissible where, as here, it is certified by the reporter and its accuracy is not challenged (*Ciraldo v Cnty. of Westchester*, 147 AD3d 813 [2d Dept 2017]). Moreover CPLR 2001 permits a court, at any stage of an action, to disregard a party's omission if a substantial right of a party is not prejudiced. Here plaintiff acknowledges the mistake and submits a fully executed signature page in reply. As no substantial right of defendants was prejudiced, the court exercises its discretion under CPLR 2001 to disregard plaintiff's omission.

Contrary to defendants' assertion, the motion is not premature as defendants failed to show that additional discovery might lead to relevant evidence, or that facts essential to justify opposition to the motion is exclusively within the knowledge and control of the other parties (see CPLR 3212 [f]; *Orellana v Maggies Paratransit Corp.*, 138 AD3d 941, 30 NYS3d 224 [2d Dept 2016]; *Boorstein v 1261 48th St. Condominium*, 96 AD3d 703, 946 NYS2d 200 [2d Dept 2012]). In view of the fact that Ranfort has personal knowledge of the relevant facts underlying the accident but failed to offer an evidentiary basis to suggest that discovery may lead to relevant evidence, defendants' purported need to conduct discovery does not warrant denial of the motion. "The mere hope or speculation that evidence sufficient to defeat a motion for summary judgment may be uncovered during the discovery process is insufficient to deny the motion" (*Bentick v Gatchalian*, 147 AD3d 890, 48 NYS3d 171 [2d Dept 2017]; quoting *Lopez v WS Distrib., Inc.*, 34 AD3d 759, 842 NYS2d 516 [2d Dept 2006]).

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Accordingly, plaintiff's motion for partial summary judgment on the issue of liability is granted.

ENTER

Date: February 5, 2021  
Riverhead, New York

  
HON. MARTHA L. LUFT, A.J.S.C.

Final Disposition

Non-Final Disposition