

Justin v County of Suffolk
2021 NY Slip Op 33477(U)
August 24, 2021
Supreme Court, Suffolk County
Docket Number: Index No. 607919/18
Judge: Carmen Victoria St. George
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**SUPREME COURT – STATE OF NEW YORK
TRIAL TERM, PART 56 SUFFOLK COUNTY**

PRESENT:

Hon. Carmen Victoria St. George
Justice of the Supreme Court

x

CHRISTOPHER JUSTIN,

**Index No.
607919/18**

Plaintiff,

**Motion Seq:
001 MG**

-against-

Decision/Order

THE COUNTY OF SUFFOLK and JOHN P. KEANE,

Defendants.

x

The following electronically-filed papers were read upon this motion:

Notice of Motion/Order to Show Cause.....	15-22
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Briefs: Plaintiff’s/Petitioner’s.....	
Defendant’s/Respondent’s.....	

The rear-end motor vehicle accident giving rise to this action occurred on Sunrise Highway in Suffolk County, on October 24, 2017, at approximately 4:00 p.m. The accident involved three vehicles. Plaintiff’s vehicle was the middle vehicle that was impacted in the rear by defendants’ vehicle operated by defendant Keane. As a result of that impact, plaintiff’s vehicle was apparently propelled into the car in front of it.

Plaintiff moves this Court for an Order granting summary judgment in his favor on the issue of liability, and setting this matter down for an immediate trial on the issue of damages.

It is well recognized that summary judgment is a drastic remedy and as such should only be granted in the limited circumstances where there are no triable issues of fact (*Andre v. Pomeroy*, 35 NY2d 361[1974]). Summary judgment should only be granted where the court finds as a matter of law that there is no genuine issue as to any material fact (*Cauthers v. Brite Ideas, LLC*, 41 AD3d 755 [2d Dept 2007]). The Court’s analysis of the evidence must be viewed in the light most favorable to the non-moving party, herein the defendants (*Makaj v. Metropolitan Transportation Authority*, 18 AD3d 625 [2d Dept 2005]).

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 of the moving vehicle to rebut the inference of negligence by providing a non-negligent explanation for the collision (*McCoy v. Zaman*, 67 AD3d 653 [2d Dept 2009]; *Velasquez v. Denton Limo., Inc.*, 7 AD3d 787 [2d Dept 2004]).

“[V]ehicle 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” (*Shamah v. Richmond County Ambulance Service, Inc.*, 279 AD2d 564 [2d Dept 2001]; *see also; Robayo v. Aghaabdul*, 109 AD3d 892 [2d Dept 2013]).

Vehicle and Traffic Law § 1129 (a) also imposes upon the driver of a motor vehicle a duty to “not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon and the condition of the highway” (*see also McCarthy v. Miller*, 139 AD2d 500 [2d Dept 1988]).

Also, “where a stopping vehicle is rear-ended and propelled into the vehicle in front of it, such facts provide a non-negligent explanation sufficient to relieve the operator of the stopping vehicle from liability” (*Katz v. Masada II Car & Limo Service, Inc.*, 43 AD3d 876, 877 [2d Dept 2007]; *Harris v. Ryder*, 292 AD2d 499 [2d Dept 2002]; *Campanella v. Moore*, 266 AD2d 423 [2d Dept 1999]; *Escobar v. Rodriguez*, 243 AD2d 676 [2d Dept 1997]).

In support of his motion, the plaintiff submits, *inter alia*, a certified police accident report, his affidavit, his General Municipal Law § 50-h hearing testimony, and the deposition testimony of defendant Keane.

The submitted evidence establishes without question that it had been raining for some time prior to the accident, and that the roadway where the accident occurred was wet. Moreover, plaintiff has also established that both the plaintiff and defendant Keane were aware of the rain and wet roadway prior to the accident. The submitted testimony further demonstrates that the plaintiff was stopped in traffic for approximately ten to twenty seconds before the accident, or as the defendant testified, that the plaintiff’s vehicle was “stopped for a while” prior to the accident.

When defendant Keane saw that “[t]he traffic had suddenly stopped [that] made me apply the brake.” According to Keane, when he applied his brakes, the pickup truck he was driving began to skid. When asked what caused his vehicle to skid, Keane answered, “[t]he road conditions;” “the roads were wet.” Keane also acknowledged that the force of his vehicle’s impact with plaintiff’s vehicle caused plaintiff’s vehicle to be “pushed [in]to the car ahead of it.”

Inasmuch as defendant Keane was approaching the plaintiff’s vehicle from the rear, he was bound to maintain a reasonably safe rate of speed and control over his vehicle, taking into account road and traffic conditions, and to exercise reasonable care to avoid colliding with the vehicle in front of him (*Williams v. Spencer-Hall*, 113 AD3d 759 [2d Dept 2014]; *Taing v. Drewery*, 100 AD3d 740 [2d Dept 2012]; *McCarthy, supra*), which defendant Keane apparently did not do.

Based upon the totality of the evidence submitted by the plaintiff, he has demonstrated his *prima facie* entitlement to summary judgment as a matter of law on the issue of liability.

In opposition, the defendants offer only the affirmation of counsel which is not evidence. Contrary to defense counsel's argument, Mr. Keane's testimony does not raise an issue of fact as to whether there is a non-negligent explanation for the rear-end collision. Defendants assert that, "[o]stensibly, the only real issue in dispute is whether the weather conditions and/or the wet roadway conditions, which Mr. Keane alleges caused his vehicle to skid, creates an issue of fact which precludes granting summary judgment to plaintiff."

A conclusory defense alleging only that a defendant saw the plaintiff's vehicle ahead, that the brakes were applied, but the defendant's vehicle nevertheless slid or skidded into the plaintiff's vehicle has been held insufficient to rebut the inference of negligence created by the unexplained rear-end collision (*Grimm v. Bailey*, 105 AD3d 703 [2d Dept 2013]; *Guinan v. Suhak Lee*, 279 AD2d 507 [2d Dept 2001]; *Schmidt v. Edelman*, 263 AD2d 502 [2d Dept 1999]; *Pincus v. Cohen*, 198 AD2d 405 [2d Dept 1993]). "[A]n operator of a vehicle must compensate for any known adverse road conditions" (*Young v. City of New York*, 113 AD2d 833, 834 [2d Dept 1985]; see also *Sayyed v. Murray*, 109 AD3d 464, 465 [2d Dept 2013]; *Pincus, supra* at 406).

Defendants do not offer any evidence controverting that submitted by the plaintiff, nor could defendants reasonably do so in light of Mr. Keane's deposition testimony which, in sum and substance, demonstrates that he saw the plaintiff's vehicle stopped in front of his vehicle "for a while," applied his brakes, skidded on the wet roadway of which he was aware because it had been raining since 2:30-3:00 p.m. that day, and impacted plaintiff's vehicle in the rear.

Defendants' reliance upon *Phillip v. D & D Carting* (136 AD3d 18 [2d Dept 2015]) is entirely misplaced. In that case, the Court stated that, "the presence of oil or fuel on the roadway surface has specifically been held to potentially rebut the presumption that the driver of the rear vehicle operated his or her vehicle in a negligent fashion" (*Id.* at 24).

Here, there is no evidence whatsoever that there was any oil, fuel, or any other substance on the roadway aside from the rain that had been falling for more than one hour prior to the occurrence of the subject accident. In fact, the police report that defendants attempt to argue supports their argument about roadway conditions serves only to establish that the roadway was slick because of rain: "rain slick road." Defendant himself testified that he was aware that the roads were wet because it had been raining since 2:30 to 3:00 p.m. Consequently, his conclusory claim that his vehicle skidded and was unable to stop because of wet road conditions caused by falling rain is insufficient to rebut plaintiff's *prima facie* entitlement to summary judgment.

Equally unavailing is defendants' claim that the plaintiff's vehicle suddenly stopped in traffic. That claim is unsupported by the submitted evidence. Nowhere in his deposition testimony did Mr. Keane state that the plaintiff's vehicle made a sudden stop. Even if that was the case, a sudden stop does not provide a non-negligent explanation for a rear-end collision (*Kastritsios v. Marcello*, 84 AD3d 1174 [2d Dept 2011]; *Jumandeo v. Franks*, 56 AD3d 614 [2d Dept 2008]; *Russ v. Investech Securities, Inc.*, 6 AD3d 602 [2d Dept 2004]).

Accordingly, the defendant has failed to raise any question of fact sufficient to defeat plaintiff's motion; therefore, plaintiff's summary motion is granted on the issue of liability.

As to plaintiff's request for an immediate trial on damages, that request is denied. The Court notes that the plaintiff filed his Note of Issue on July 15, 2021; thus, this matter will appear on the CCP calendar as juries become available, and in accord with current coronavirus protocol.

The foregoing constitutes the Decision and Order of this Court.

Dated: August 24, 2021
Riverhead, NY


CARMEN VICTORIA ST. GEORGE, J.S.C.

FINAL DISPOSITION [] NON-FINAL DISPOSITION [X]