

Batista v Kiger

2021 NY Slip Op 33592(U)

September 30, 2021

Supreme Court, Westchester County

Docket Number: Index No. 68125/2019

Judge: James W. Hubert

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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KENIA BATISTA,

Plaintiff,

Index No: 68125/2019

-against-

DECISION & ORDER

NICHOLAS S. KIGER, BROOKE JOHNSON, AND
VW CREDIT LEASING, LTD.,

Motion Seq. # 1

Defendants.
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Hubert, J.S.C.

This is an action to recover damages for personal injuries allegedly sustained by Plaintiff Kenia Batista as a result of a motor vehicle accident that occurred in the evening of August 7, 2019, near the intersection of Executive Boulevard and North Broadway in Yonkers, New York. It is not disputed that Plaintiff's vehicle was struck in the rear by a vehicle driven by Defendant Nicholas S. Kiger, and owned by Defendant Brooke Johnson, while Plaintiff was stopped or stopping at a red light on Executive Boulevard. This action has been discontinued against Defendant VW Credit Leasing, Ltd.

On this motion, Plaintiff seeks an Order pursuant to CPLR § 3212 granting summary judgment on the issue of liability against Defendants and striking Defendants' affirmative defenses alleging culpable conduct and assumption of risk.

In order to make a prima facie showing of entitlement to judgment as a matter of law, the moving party must tender sufficient evidence to demonstrate the absence of any material issues of fact. *Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324, 508 N.Y.S.2d 923 (1986). The parties' competing contentions must be viewed in a light most favorable to the non-moving party. *De Lourdes Torres v. Jones*, 26 N.Y.3d 742, 763, 27 N.Y.S.3d 468 (2016). If the moving party meets

its burden, the burden shifts to the non-moving party to establish, through admissible evidence, the existence of disputed issues of material fact for trial. CPLR § 3212 (b); *Zuckerman v. New York*, 49 N.Y.2d 557, 560, 427 N.Y.S.2d 595 (1980). The non-moving party must produce evidence in the record and may not rely on conclusory statements or contentions. *Id.* Instead, the opponent of a motion must lay bare affirmative proof sufficient to establish that real defenses exist warranting a trial. Summary judgment is a drastic remedy that should not be granted where there is any doubt as to the existence of a triable issue of fact, but “only the existence of a bona fide issue raised by evidentiary facts and not one based on conclusory or irrelevant allegations will suffice to defeat summary judgment.” *Rotuba Extruders, Inc. v. Ceppos*, 46 N.Y.2d 223, 231, 413 N.Y.S.2d 141 (1978).

“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, 913 N.Y.S.2d 659, 672 (2d Dep’t 2010); *see* VTL § 1129 (a)(“[t]he driver of a motor vehicle shall 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* *see* PJI 2:82 (a motorist is required to drive his or her car at a sufficient distance behind the car ahead so as to be able to stop without striking the car ahead when the car in front is stopped with due care).

Evidence of a rear-end collision with a stopped or stopping vehicle therefore constitutes a prima facie case of negligence on the part of the operator of the rear vehicle, requiring that operator to rebut the inference of negligence by providing a non-negligent explanation for the collision. *Tutrani v. County of Suffolk*, 10 N.Y.3d 906, 861 N.Y.S.2d 610 (2008). A plaintiff is no longer required to show freedom from comparative fault to establish her or his prima facie

entitlement to judgment as a matter of law on the issue of liability. *Rodriguez v. City of New York*, 31 N.Y.3d 312, 76 N.Y.S.3d 898 (2018).

In support of her motion, Plaintiff has submitted, *inter alia*, a sworn affidavit stating, in relevant part, that:

On August 7, 2019, I was involved in a motor vehicle accident. At the time of the accident, I was stopped at a red traffic light on Executive Boulevard near Broadway in the City of Yonkers, County of Westchester and State of New York, when a vehicle owned by NICHOLAS S. KIGER and operated by defendant BROOKE JOHNSON, struck my vehicle in the rear. As a result, I sustained serious injuries and I continue to experience pain and discomfort from the injuries that I sustained as a result of the accident.

As noted above, the failure to maintain a safe distance between two vehicles, in the absence of an adequate non-negligent explanation, is negligence as a matter of law. Here, it is undisputed that Plaintiff's vehicle was struck in the rear while stopped or stopping on the roadway, thereby raising an inference of Defendant Nicholas S. Kiger's negligence.

A defendant can overcome the presumption of negligence by providing a non-negligent explanation for the collision. Non-negligent explanations include "a mechanical failure, a sudden stop of the vehicle ahead, an unavoidable skidding on a wet pavement, or any other reasonable cause." *Power v. Hupart*, 260 A.D.2d 458, 688 N.Y.S.2d 194 (2d Dep't 1999). However, a claim of a sudden and unexpected stop by the leading car, standing alone, is insufficient to create a triable issue of fact. *See, e.g., Catanzaro v. Ederly*, 172 A.D.3d 995, 101 N.Y.S.3d 170 (2d Dep't 2019). Likewise, a conclusory allegation of a sudden and unexpected stop is insufficient to rebut the inference of negligence created by an unexplained rear-end collision. "[V]ehicle stops which are foreseeable under the prevailing traffic conditions 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 vehicle and the vehicle ahead.” *Waide v. ARI Fleet, LT*, 143 A.D.3d 975, 39 N.Y.S.3d 512 (2d Dep’t 2016); see *Tumminello v. City of New York*, 148 A.D.3d 1084, 49 N.Y.S.3d 739 (2d Dep’t 2017).

In an affidavit in opposition, Defendant Kiger states that “[a]s reported to the police, Plaintiff Batista was stopping in traffic when my vehicle rear-ended plaintiff; I indicated that Plaintiff stopping abruptly caus[ed] me to quickly apply the brakes and due to wet conditions I hydroplaned into Plaintiff’s vehicle.”

This statement is not sufficient to rebut the presumption of negligence created by the rear-end collision. *Guinan v. Lee*, 279 A.D.2d 507, 719 N.Y.S.2d 117 (2d Dep’t 2001)(“[a] defense which alleges only that the defendant saw the plaintiffs’ vehicle stopped at a red light but, upon application of his brakes, his vehicle nevertheless skidded into the plaintiffs due to the wet condition of the roadway, is not a sufficient defense to rebut the presumption of negligence”); *Crociata v. Vasquez*, 168 A.D.2d 410, 562 N.Y.S.2d 536 (2d Dep’t 1990)(defendant’s statement that he slid into plaintiff’s car on the wet roading insufficient to rebut the inference of negligence). “Wet, slippery roadway conditions do not, alone, constitute an adequate non-negligent explanation, absent proof that the condition was unanticipated.” *Stringari v. Peerless Imps., Inc.*, 304 A.D.2d 413, 757 N.Y.S.2d 554 (1st Dep’t 2003), citing *Smith v. Perfectaire Co.*, 270 A.D.2d 410, 704 N.Y.S.2d 640 (2d Dep’t 2000). Defendant Kiger’s affidavit lacks sufficient detail necessary to rebut the presumption of negligence. *Guinan v. Lee*, *supra*.

In addition to the motion for partial summary judgment on liability, Plaintiff also moves to dismiss the Defendants’ affirmative defenses alleging Plaintiff’s culpable conduct and/or assumption of risk. As discussed above, Plaintiff alleges that she was stopped at a red traffic

light when her vehicle was hit from behind by the vehicle driven by the Defendant. Inasmuch as the Defendant has not made any evidentiary submission in opposition to Plaintiff's prima facie showing, he has failed to raise a triable issue of fact with respect to Plaintiff's alleged comparative fault. *See Poon v. Nisanov*, 162 A.D.3d 804, 807, 79 N.Y.S.3d 227 (2d Dep't 2018).

Finally, contrary to Defendants' argument, Plaintiff's motion is not premature. CPLR § 3212 (f) provides that "[s]hould it appear from affidavits submitted in opposition to the motion that facts essential to justify opposition may exist but cannot then be stated, the court may deny the motion or may order a continuance to permit affidavits to be obtained or disclosure to be had and may make such other order as may be just." A party opposing summary judgment on this ground must demonstrate that discovery might lead to relevant evidence, or that facts essential to justify opposition to the motion are exclusively within the knowledge and control of the movant. *Dietrich v. Grandsire*, 83 A.D.3d 994, 921 N.Y.S.2d 555 (2d Dep't 2011). "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." *Sterling Natl. Bank v. Alan B. Brill, P.C.*, 186 A.D.3d 515, 129 N.Y.S.3d 151 (2d Dep't 2020)(citation and quotation marks omitted).

Here, Defendants have not shown how discovery may lead to relevant evidence, or that facts essential to opposing the motion were exclusively within the Plaintiff's knowledge or control. *See Cajas-Romero v. Ward*, 106 A.D.3d 850, 852, 965 N.Y.S.2d 559, 562 (2d Dep't 2013)(contention that plaintiffs' summary judgment motion in rear-end collision was premature because plaintiffs "had not yet been deposed" failed to establish what information the defendant hoped to discover at depositions that "would relieve him of liability"). Additionally, when the opponent of a motion for summary judgment has personal knowledge of how and why an

accident occurred, the need to conduct discovery is generally not warranted. *See Park v. Sanchez*, 155 A.D.3d 970, 64 N.Y.S.3d 118 (2d Dep't 2017). Accordingly, for the foregoing reasons, it is hereby:

ORDERED, that Plaintiff's motion for partial summary judgment on the issue of liability is granted; and it is further

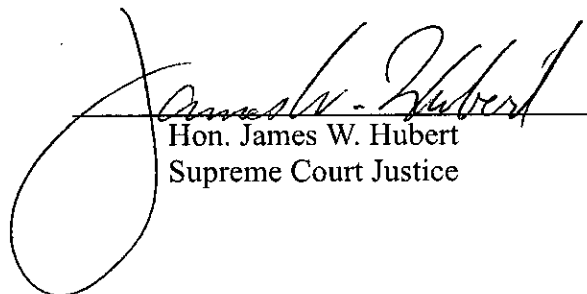
ORDERED, that Plaintiff's motion to dismiss Defendants' affirmative defense alleging culpable conduct and/or assumption of risk is granted; and it is further

ORDERED, that this matter shall be set down for trial for an assessment of damages, as directed by the Court, in view of the ongoing public health emergency; and it is further

ORDERED, that Plaintiff shall serve a copy of this Order with notice of entry within ten days of the date of this Decision & Order.

The foregoing constitutes the Decision & Order of the Court.

Dated: White Plains, New York
September 30, 2021


Hon. James W. Hubert
Supreme Court Justice