

Cortez v Burns

2021 NY Slip Op 33713(U)

March 2, 2021

Supreme Court, Orange County

Docket Number: Index No. EF000394-2020

Judge: Robert A. Onofry

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT-STATE OF NEW YORK
IAS PART-ORANGE COUNTY

Present: HON. ROBERT A. ONOFRY, J.S.C.

SUPREME COURT : ORANGE COUNTY

JILLIAN CORTEZ,

Plaintiff,

- against -

WILLIAM A. BURNS,

Defendant.

To commence the statutory time period for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

Index No. EF000394-2020

DECISION AND ORDER

Motion Date: December 16, 2020

The following papers numbered 1 to 4 were read and considered on a motion by the Plaintiff, pursuant to CPLR § 3212, for summary judgment on the issue of liability.

Notice of Motion- Bernsley Affirmation- Exhibits A-D 1-3
Affirmation in Opposition- McCoy Evans 4

Upon the foregoing papers, it is hereby,

ORDERED, that the motion is granted.

Factual/Procedural Background

The Plaintiff Gilbert Gonzalez commenced this action to recover damages arising from a motor vehicle accident.

According to a police report of the accident, a vehicle being driven by the Plaintiff Jillian Cortez was struck from the rear by a vehicle being driven by the Defendant William A. Burns while both vehicles were in stop-and-go traffic.

Disclosure is complete.

The Plaintiff moves for summary judgment on the issue of liability.

The motion is granted.

Discussion/Legal Analysis

A party seeking summary judgment bears the initial burden of establishing a *prima facie* entitlement to judgment as a matter of law by tendering competent evidence in admissible form sufficient to eliminate any triable, material issues of fact from the case. If the moving party fails to meet this burden, the papers submitted in opposition need not be considered. If the moving party makes such a *prima facie* showing, the burden shifts to the opposing party to demonstrate the existence of an issue of fact requiring a trial. *Phillip v. D & D Carting Co., Inc.*, 136 A.D.3d 18 [2nd Dept. 2015]; *Dempster v. Liotti*, 86 A.D.3d 169 [2nd Dept. 2011].

Relevant to the case at bar, 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, requiring that operator to come forward with evidence of a non-negligent explanation for the collision in order to rebut the inference of negligence. *Nikolic v. City-Wide Sewer & Drain Service Corp.*, 150 A.D.3d 754 [2nd Dept. 2017]; *Tumminello v. City of New York*, 148 A.D.3d 1084 [2nd Dept. 2017]. A non-negligent explanation may include a mechanical failure, a sudden, unexplained stop of the vehicle ahead, an unavoidable skidding on wet pavement, or any other reasonable cause. *Tumminello v. City of New York*, 148 A.D.3d 1084 [2nd Dept. 2017].

However, 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.

Tumminello v. City of New York, 148 A.D.3d 1084 [2nd Dept. 2017].

To prevail on a motion for summary judgment on the issue of liability in a negligence case, the movant need no longer demonstrate that he or she was free from comparative fault.

Davis v. Commack Hotel, LLC, 174 A.D.3d 501 [2nd Dept. 2019].

Here, the Plaintiff submitted competent evidence in admissible form sufficient to demonstrate, *prima facie*, that the Defendant was negligent in the happening of the accident.

In opposition, the Defendant failed to raise a triable issue of fact.

Thus, the Plaintiff is granted summary judgment on the issue of liability.

Accordingly, and for the reasons cited herein, it is hereby,

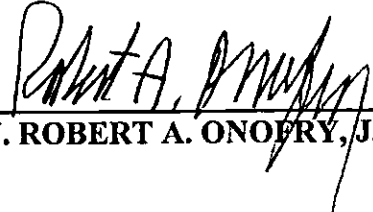
ORDERED, that the motion is granted; and it is further,

ORDERED that the parties are directed to appear for a status conference on Tuesday, May 11, 2021, at 1:30 p.m., at the Orange County Supreme Court, Court room #3, 285 Main Street, Goshen, New York, to determine how the matter shall proceed on the issue of damages. If the Courts are not open to the public at that time, the conference will be held virtually at a time to be designated by the Court.

The foregoing constitutes the decision and order of the court.

Dated: March 2, 2021
Goshen, New York

ENTER



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