

Morton v Damoon Han
2021 NY Slip Op 33755(U)
October 22, 2021
Supreme Court, Westchester County
Docket Number: Index No. 52080/2020
Judge: James W. Hubert
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----x
VANESSA MORTON,

Plaintiff,

Index No. 52080/2020

-against-

DECISION & ORDER

DAMOON HAN,

Motion Seq. #1.

Defendant.

-----x
Hubert, J.S.C.

This is an action to recover damages for personal injuries allegedly sustained by Plaintiff Vanessa Morton as a result of a motor vehicle accident that occurred on August 9, 2019, on the Saw Mill River Parkway near the intersection of Farragut Parkway, in Hastings-On-Hudson, New York. Plaintiff alleges that she was at a complete stop at a red light when a vehicle driven by Damoon Han struck her vehicle from the rear.

On this motion, Plaintiff moves for partial summary judgment pursuant to CPLR § 3212 on the issue of liability against Defendants, and for an Order striking Defendant's first affirmative defense alleging, *inter alia*, culpable conduct of the Plaintiff, pursuant to CPLR § 3211(b).

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 copy of the relevant pleadings, a certified copy of the police accident report, and deposition transcripts from the Plaintiff and Defendant. Through the submission of this evidence, Plaintiff has met her initial burden of showing entitlement to partial summary judgment.

A defendant can overcome the presumption of negligence by providing a non-negligent explanation for the collision. As noted above, however, “vehicle 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).

Defendant has not set forth any issues of fact in opposition to Plaintiff’s prima facie showing. Similarly, Defendant has not made an evidentiary submission in opposition to Plaintiff’s prima facie showing that she was not at fault in the happening of the accident. *See Poon v. Nisanov*, 162 A.D.3d 804, 807, 79 N.Y.S.3d 227 (2d Dep’t 2018).

Accordingly, it is hereby:

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

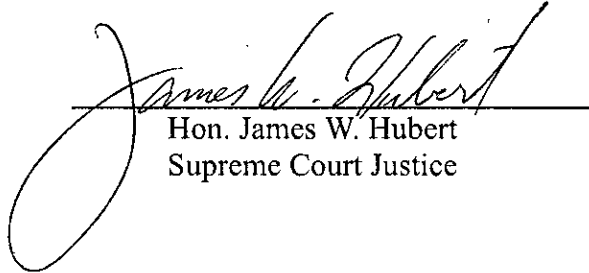
ORDERED, that Plaintiff’s motion to dismiss Defendant’s first affirmative defense is granted; and it is further

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
October 22, 2021



Hon. James W. Hubert
Supreme Court Justice