

Vingoe v Vinoya

2021 NY Slip Op 33816(U)

March 25, 2021

Supreme Court, Orange County

Docket Number: Index No. EF005146-2020

Judge: Robert A. Onofry

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

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

-----X

LERONIE H. VINGOE,

Plaintiff,

-against-

NOEL JASON GUERRERO VINOYA and
NOEL C. VINOYA,

Defendants.

-----X

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. EF005146-2020

DECISION and ORDER

Motion Date: February 16, 2021

The following papers numbered 1 to 5 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- Thonus Affirmation- Exhibits 1-4 1-3
Affirmation in Opposition- McCoy-Evans 4
Affirmation in Reply- Horowitz 5

Upon the foregoing papers, it is hereby,

ORDERED, that the motion is granted.

Introduction

The Plaintiff commenced this action to recover damages arising from a motor vehicle
accident. The Plaintiff moves for summary judgment on the issue of liability. The motion is
granted.

Factual/Procedural Background

According to the police report of the accident, a vehicle owned by the Plaintiff Leronie
Vingoe was struck from the rear by a vehicle being driven by the Defendant Noel Jason Guerrero

Vinoya and owned by the Defendant Noel Vinoya while it was stopped. Noel Jason Guerrero Vinoya told the responding officer that he was looking down, changing the radio station when the collision occurred.

The Plaintiff moves for summary judgment.

In support of the motion, the Plaintiff submits an affidavit Russell Vingoe, the driver of her vehicle at the time of the accident.

Vingoe avers that, on October 22, 2019, he was driving on State Route 9W, near the intersection of Dubois Street, in the Town of Marlborough, County of Ulster, State of New York. The Plaintiff was a passenger in the vehicle.

As traffic conditions slowed, he brought his motor vehicle to a gradual and complete stop. After he was stopped for approximately 30 to 45 seconds, during which his foot never came off of the brake pedal, his vehicle was rear-ended by a 2014 Honda motor vehicle operated by the Defendant Noel Jason Guerrero Vinoya.

In opposition to the motion, the Defendants argues that there are questions of fact that should be decided by a jury.

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].

Pursuant to CPLR 3212(f), a motion for summary judgment may be denied as premature when it appears that facts essential to justify opposition may exist but cannot then be stated. *Aurora Loan Services, LLC v. LaMattina & Associates, Inc.*, 59 A.D.3d 578 [2nd Dept. 2009]. This is especially so where the opposing party has not had a reasonable opportunity for disclosure prior to the making of the motion. *Aurora Loan Services, LLC v. LaMattina & Associates, Inc.*,

59 A.D.3d 578 [2nd Dept. 2009]. However, the proponent must offer an evidentiary basis for a determination that disclosure might reveal or lead to relevant evidence, or that facts essential to oppose the motion were exclusively within the knowledge and control of the plaintiff. *Yiming Zhou v. 828 Hamilton, Inc.*, 173 A.D.3d 943 [2nd Dept. 2019]. The mere hope or speculation that evidence sufficient to defeat a motion for summary judgment may be uncovered during the disclosure process is insufficient to deny the motion. *Cortes v. Whelan*, 83 A.D.3d 763, 922 N.Y.S.2d 419 [2nd Dept. 2011].

Here, the Plaintiff submitted competent evidence in admissible form sufficient to demonstrate, *prima facie*, that Noel Jason Guerrero Vinoya was negligent in the happening of the accident. In opposition, the Defendants 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,

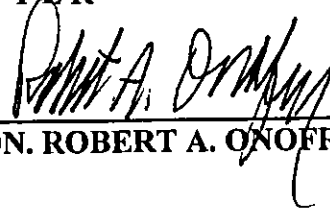
ORDERED, that the motion is granted; and it is further,

ORDERED that the parties are directed to appear for a status conference on Tuesday, April 27, 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 Courts are in session and open to the public. If the Courts are not open to the public at that time, the conference will be held virtually on that date, at a time to be designated by the Court.

The foregoing constitutes the decision and order of the court.

Dated: March 25, 2021
Goshen, New York

E N T E R


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

TO: SOBO & SOBO, LLP
Attorneys for Plaintiff
Office & P.O. Address
One Dolson Avenue
Middletown, New York 19940

Law Office of Bryan M. Kulak
Attorney for the Defendants
90 Crystal Run Road, Suite 409
Middletown New York 10941