

Quinones v Grace Indus. LLC
2021 NY Slip Op 34332(U)
November 10, 2021
Supreme Court, Suffolk County
Docket Number: Index No. 609079/2021
Judge: Paul J. Baisley, Jr.
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SHORT FORM ORDER

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SUPREME COURT - STATE OF NEW YORK
DCM-J - SUFFOLK COUNTY**PRESENT:****Hon. Paul J. Baisley, Jr., J.S.C.**

CHRISTINE QUINONES and MARCOS
QUINONES,

Plaintiffs,

-against-

GRACE INDUSTRIES LLC,

Defendant.

ORIG. RETURN DATE: July 7, 2021**FINAL RETURN DATE:** July 28, 2021**MOT. SEQ. #:** 001 MotD**PLTFS' ATTORNEY:**GRUENBERG KELLY DELLA
700 KOEHLER AVENUE
RONKONOKOMA, NY 11779**DEFT'S ATTORNEY:**LASALLE, LASALLE & DWYER, P.C.
309 SEA CLIFF AVENUE
SEA CLIFF, NY 11579

Upon the following papers read on this e-filed motion for summary judgment: Notice of Motion/ Order to Show Cause and supporting papers filed by plaintiffs, on June 21, 2021; Notice of Cross Motion and supporting papers _____; Answering Affidavits and supporting papers filed by defendant, on July 20, 2021; Replying Affidavits and supporting papers filed by plaintiffs, on July 23, 2021; Other _____; it is

ORDERED that the motion by plaintiffs for summary judgment in thier favor on the issue of defendant's liability, and to dismiss its first, fourth, fourteenth, and twenty-second affirmative defenses is granted in part and denied in part.

This action arises of out of a motor vehicle accident, which allegedly occurred on October 8, 2020, on the Sagtikos Parkway (the Parkway), near exist S3, in Deer Park, New York. The accident allegedly occurred when the vehicle operated by plaintiff Christine Quinones was struck in the rear by a vehicle operated by nonparty Dominic Dinonno, and owned by defendant Grace Industries LLC. Plaintiff's spouse, Marcos Quinones, also sues derivatively for loss of services.

Plaintiffs now move for summary judgment in their favor on the issue of defendant's liability, and to dismiss its first and fourth affirmative defenses alleging culpable conduct on the part of Mrs. Quinones and its fourteenth and twenty-second affirmative defenses based upon the emergency doctrine. They contend, among other things, that the Dinonno was negligent in the operation of defendant's vehicle, that he was not confronted with an emergency situation, and that Mrs. Quinones was free from comparative fault. In support of their motion, plaintiffs submit, among other things, an affidavit of Mrs. Quinones. In opposition, defendant argues, in part, that triable issues of fact remain as to whether Mrs. Quinones was free from comparative fault, and that Dinonno was faced with a sudden, unexpected

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situation not of his own making. In support of its opposition, defendant submits, inter alia, an affidavit of Dinonno.

While a plaintiff is no longer required to show the absence of his or her comparative fault to establish his or her prima facie entitlement to summary judgment on the issue of liability, the issue of a plaintiff's comparative negligence may be decided in the context of a summary judgment motion when the plaintiff moves for summary judgment dismissing a defendant's affirmative defense alleging comparative negligence and culpable conduct on the part of the plaintiff (*see Kwok King Ng v West*, 195 AD3d 1006, 146 NYS3d 811 [2d Dept 2021]; *Sapienza v Harrison*, 191 AD3d 1028, 142 NYS3d 584 [2d Dept 2021]). The driver of a vehicle approaching another vehicle from the rear must maintain a reasonably safe distance and rate of speed under the prevailing conditions to avoid colliding with the other vehicle (*see Atkins v City of New York*, ___ AD3d ___, 2021 NY Slip Op 04475 [2d Dept 2021]; *Grier-Key v Lyons*, 195 AD3d 798, 145 NYS3d 819 [2d Dept 2021]; *Martin v County of Westchester*, 194 AD3d 1036, 144 NYS3d 394 [2d Dept 2021]; *see also* Vehicle and Traffic Law § 1129 [a]). 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, and thereby requires that operator to rebut the inference of negligence by providing a nonnegligent explanation for the collision (*see Atkins v City of New York*, *supra*; *Grier-Key v Lyons*, *supra*; *Martin v County of Westchester*, *supra*). A nonnegligent explanation may include evidence of a mechanical failure, a sudden stop of the leading vehicle, an unavoidable skidding on wet pavement, or any other reasonable cause (*see Clements v Giatas*, 178 AD3d 894, 112 NYS3d 539 [2d Dept 2019]; *Grant v Carrasco*, 165 AD3d 631, 84 NYS3d 235 [2d Dept 2018]; *Tumminello v City of New York*, 148 AD3d 1084, 49 NYS3d 739 [2d Dept 2017]). However, a driver who follows another vehicle must anticipate vehicle stops which are foreseeable based on prevailing traffic conditions (*see Newman v Apollo Tech Iron Work Corp.*, 188 AD3d 902, 135 NYS3d 133 [2d Dept 2020]; *Perez v Persad*, 183 AD3d 771, 123 NYS3d 683 [2d Dept 2020]; *Fang Xia v Saft*, 177 AD3d 823, 113 NYS3d 249 [2d Dept 2019]).

Through the submission of, inter alia, Mrs. Quinones' affidavit, plaintiffs established, prima facie, that Dinonno was negligent in striking the rear of Mrs. Quinones' vehicle, and that such negligence was a proximate cause of the subject accident (*see Newman v Apollo Tech Iron Work Corp.*, *supra*; *Ordenez v Lee*, *supra*; *Lopez v Dobbins*, 164 AD3d 776, 79 NYS3d 566 [2d Dept 2018]). By Mrs. Quinones' affidavit, she avers that prior to the accident, she was operating her vehicle in the left southbound lane on the Parkway, near Exit S3, and the vehicles in front of her vehicle began to gradually stop. She further avers that her vehicle was slowing down for the traffic in front of it when it was struck in the rear by the vehicle operated by Dinonno. By its verified answer to the amended complaint, defendant admits that it owned the vehicle operated by Dinonno, and that he operated its vehicle with its knowledge, permission, and consent (*see CPLR 3018 [a]*). As Vehicle and Traffic Law § 388 (1) provides that the owner of a motor vehicle is liable for damages resulting from the negligence of one who uses or operates that vehicle with the permission, express or implied, of such owner (*see Matter of Allstate Ins. Co. v Jae Kan Shim*, 185 AD3d 919, 128 NYS3d 49 [2d Dept 2020]; *Kelly v Starr*, 181 AD3d 799, 120 NYS3d 373 [2d Dept 2020]), Dinonno's negligence is imputed to defendant (*see* Vehicle and Traffic Law § 388; *Abtey v Trivigno*, 188 AD3d 629, 134 NYS3d 401 [2d Dept 2020]; *Edwards v J&D Express Serv. Corp.*, 180 AD3d 871, 116 NYS3d 597 [2d Dept 2020]).

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In opposition, defendant raised a triable issue of fact as whether there was a nonnegligent explanation for striking the rear of plaintiff's vehicle (*see Matzen v Armstrong*, 190 AD3d 848, 136 NYS3d 788 [2d Dept 2021]; *Flood v Fillas*, 190 AD3d 828, 136 NYS3d 767 [2d Dept 2021]; *see also Niedzwiecki v Yeates*, 175 AD3d 903, 107 NYS3d 537 [4d Dept 2019]). Dinonno's affidavit indicates that the collision occurred when plaintiff's vehicle stopped abruptly in front of his vehicle after a nonparty vehicle suddenly changed lanes directly in front of plaintiff's vehicle (*see Niedzwiecki v Yeates, supra*). Accordingly, the branch of plaintiffs' motion for summary judgment in their favor on the issue of defendant's liability is denied.

With regard to branches of plaintiff's motion seeking to dismiss defendant's affirmative defenses, when moving to dismiss an affirmative defense, "the plaintiff bears the burden of demonstrating that the affirmative defenses 'are without merit as a matter of law because they either do not apply under the factual circumstances of [the] case, or fail to state a defense'" (*Lewis v US Bank N.A.*, 186 AD3d 694, 697, 130 NYS3d 22 [2d Dept 2020], quoting *Shah v Mitra*, 171 AD3d 971, 974, 98 NYS3d 197 [2d Dept 2019]; *see Wells Fargo Bank, N.A. v Rios*, 160 AD3d 912, 74 NYS3d 321 [2d Dept 2018]). In the context of a motion to dismiss an affirmative defense, "the court must liberally construe the pleadings in favor of the party asserting the defense and give that party the benefit of every reasonable inference" (*LG Funding, LLC v United Senior Props. of Olathe, LLC*, 181 AD3d 664, 665, 122 NYS3d 309 [2d Dept 2020], quoting *Bank of N.Y. v Penalver*, 125 AD3d 796, 797, 1 NYS3d 82 [2d Dept 2015]; *see Gonzalez v Wingate at Beacon*, 137 AD3d 747, 26 NYS3d 562 [2d Dept 2016]). Where there is any doubt regarding the availability of a defense, it should not be dismissed (*see Lewis v US Bank N.A., supra*; *LG Funding, LLC v United Senior Props. of Olathe, LLC, supra*; *Shah v Mitra, supra*).

As to defendant's first and fourth affirmative defenses, plaintiffs established, *prima facie*, that Mrs. Quinones was not comparatively at fault in the happening of the subject accident (*see Diamond v Comins*, 194 AD3d 784, 148 NYS3d 492 [2d Dept 2021]; *Poon v Nisanov*, 162 AD3d 804, 79 NYS3d 227 [2d Dept 2018]; *Lopez v Dobbins, supra*). In opposition, defendant failed to raise a triable issue of fact as to Mrs. Quinones' comparative fault (*see Niedzwiecki v Yeates, supra*; *see generally Alvarez v Prospect Hosp.*, 68 NY2d 320, 508 NYS2d 923 [1986]). While the parties present differing versions of how the accident occurred, the Court finds the discrepancies between their accounts insufficient to raise a triable issue of fact with regard to her comparative fault. As set forth previously, Dinonno's affidavit indicates that Mrs. Quinones was required to stop short in front of his vehicle to avoid colliding with a nonparty vehicle that suddenly pulled in front of her vehicle (*see Niedzwiecki v Yeates, supra*). As such, the branch of plaintiffs' motion to dismiss defendant's first and fourth affirmative defenses is granted.

With respect to defendant's fourteenth and twenty-second affirmative defenses, under the emergency doctrine, "when an actor is faced with a sudden and unexpected circumstance which leaves little or no time for thought, deliberation or consideration, or causes the actor to be reasonably so disturbed that the actor must make a speedy decision without weighing alternative courses of conduct, the actor may not be negligent if the actions taken are reasonable and prudent in the emergency context" (*Rivera v New York City Tr. Auth.*, 77 NY2d 322, 327, 567 NYS2d 629 [1991]; *see Ortiz v Zurita*, 195 AD3d 734, 145 NYS3d 359 [2d Dept 2021]; *Penaranda v Tesoriero*, 195 AD3d 633, 144 NYS3d 645 [2d Dept 2021]). The emergency doctrine generally is inapplicable to typical rear-end collisions, since

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the tailing driver must leave a reasonable distance between his or her vehicle and vehicles ahead (*see Capuozzo v Miller*, 188 AD3d 1137, 136 NYS3d 416 [2d Dept 2020]; *Ordonez v Lee, supra*; *Shehab v Powers*, 150 AD3d 918, 54 NYS3d 104 [2d Dept 2017]). “A trailing driver’s conduct in failing to leave reasonable distance creates the possibility that a sudden stop will be necessary” (*Shehab v Powers, supra* at 920; *see Cajas-Romero v Ward*, 106 AD3d 850, 965 NYS2d 559 [2d Dept 2013]; *Lowhar-Lewis v Metropolitan Transp. Auth.*, 97 AD3d 728, 948 NYS2d 667 [2d Dept 2012]).

Plaintiffs’ submissions are also sufficient to demonstrate, *prima facie*, that the emergency doctrine is not applicable to the facts of this case (*see Niedzwiecki v Yeates, supra*). In opposition, defendant failed to raise a triable issue of fact (*see id., supra*; *see generally Alvarez v Prospect Hosp., supra*).

Contrary to defendant’s contention, plaintiffs’ motion was not premature (*see Diamond v Comins, supra*; *Martin v County of Westchester, supra*; *Resnick v Wainwright*, 192 AD3d 1054, 141 NYS3d 322 [2d Dept 2021]). Defendant failed to offer an evidentiary basis to suggest that discovery might lead to relevant evidence, or that facts essential to opposing the motion were exclusively within the knowledge and control of plaintiffs (*see CPLR 3212 [f]*; *Martin v County of Westchester, supra*; *Maliakel v Morio*, 185 AD3d 1018, 129 NYS3d 99 [2d Dept 2020]; *Ordonez v Lee, supra*). The mere hope or speculation that evidence sufficient to defeat a motion for summary judgment may be uncovered by further discovery is an insufficient basis for denying the motion (*see Sapienza v Harrison, supra*; *Gaston v Vertsberger*, 176 AD3d 919, 111 NYS3d 314 [2d Dept 2019]; *Figueroa v MTLR Corp.*, 157 AD3d 861, 69 NYS3d 359 [2d Dept 2018]).

Accordingly, plaintiffs’ motion is granted in part and denied in part.

Dated:

11/10/21


HON. PAUL J. BAISLEY, JR., J.S.C.