

Alexander v Abramov
2022 NY Slip Op 32334(U)
January 3, 2022
Supreme Court, Bronx County
Docket Number: Index No. 33461/2020E
Judge: Veronica G. Hummel
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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX, IAS PART 31**

DEBORAH ALEXANDER,

Plaintiff,

-against-

NICOLE ABRAMOV and ALEKSEY ABRAMOV,

Defendants.

Index No. 33461/2020E

HON. VERONICA G. HUMMEL, A.J.S.C.

Mot. Seq. No. 2

In accordance with CPLR 2219(a), the decision herein is made upon consideration of all papers filed by the parties in NYSCEF in support of and in opposition to plaintiff DEBORAH ALEXANDER's ("Plaintiff") motion (Seq. No. 2) seeking (a) an order, pursuant to CPLR 3212, granting her summary judgment as to liability against defendants NICOLE ABRAMOV and ALEKSEY ABRAMOV ("Defendants") and dismissing Defendants' affirmative defense alleging Plaintiff's culpable conduct, as well as an order setting this matter down for an assessment of damages.

This is a personal-injury action arising out of a two-car rear-end accident that occurred on October 3, 2019, in Mount Vernon, New York (the "Accident").

In support of the motion, Plaintiff submits an attorney affirmation, an affidavit, a statement of undisputed facts, copies of the pleadings, and a certified copy of the police accident report (the "Police Report").

In opposition to the motion, Defendants submit only an attorney affirmation. Notably, Defendants did not include in their opposition papers a counterstatement of undisputed facts corresponding to Plaintiff's statement of undisputed facts, as required by Uniform Trial Court Rule 202.8-g(b). 22 NYCRR 202.8-g (eff. Feb. 1, 2021). Consequently, under Rule 202.8-g(c), each fact stated in Plaintiff's statement of undisputed facts is deemed admitted.

The relevant, admitted—and thus undisputed—facts are as follows: The Accident occurred on October 3, 2019. On that date, Plaintiff was driving her vehicle on the westbound Cross County Parkway at or near its intersection with Westchester Avenue Bridge in Mount Vernon, New York, when she was rear-ended by another vehicle. At the time of the impact, Plaintiff was gradually slowing her motor vehicle due to traffic. The driver of the vehicle that rear-ended Plaintiff's vehicle was defendant NICOLE ABRAMOV.

“The proponent of a summary judgment motion must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering evidence sufficient to eliminate any material issues of fact from the case.” *Winegrad v. N.Y. Univ. Med. Ctr.*, 64 N.Y.2d 851, 853 (1985). Upon such a showing, the burden then shifts to the nonmovant to “present evidentiary facts in admissible form sufficient to raise a genuine, triable issue of fact.” *Mazurek v. Metro. Museum of Art*, 27 A.D.3d 227, 228 (1st Dep’t 2006). A plaintiff in a negligence action moving for summary judgment on the issue of liability must, therefore, establish, *prima facie*, that the defendant breached a duty owed to the plaintiff and that the defendant’s negligence was a proximate cause of the alleged injuries. *Fernandez v. Ortiz*, 183 A.D.3d 443 (1st Dept 2020). A plaintiff is not required to demonstrate his or her freedom from comparative fault in order to establish a *prima facie* entitlement to summary judgment on the issue of liability. *Rodriguez v. City of N.Y.*, 31 N.Y.3d 312, 324-25 (2018).

It is well settled that “[a] rear-end collision with a stopped or stopping vehicle establishes a *prima facie* case of negligence on the part of the driver of the rear vehicle, and imposes a duty on the part of the operator of the moving vehicle to come forward with an adequate, nonnegligent explanation for the accident.” *Urena v. GVC Ltd.*, 160 A.D.3d 467, 467 (1st Dep’t 2018) (quoting *Matos v. Sanchez*, 147 A.D.3d 585, 586 (1st Dep’t 2017)); *Santos v. Booth*, 126 A.D.3d 506, 506 (1st Dep’t 2015); *Woodley v. Ramirez*, 25 A.D.3d 451, 452 (1st Dep’t 2006). Under New York Vehicle and Traffic Law (“VTL”) § 1129(a), “a 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 vehicle and traffic upon the condition of the highway.” In other words, a driver must maintain a safe distance between his vehicle and the one in front of her.

A violation of VTL § 1129(a) is *prima facie* evidence of negligence, and “[t]his rule has been applied when the front vehicle stops suddenly in slow-moving traffic.” *Rodriguez v. Budget Rent-A-Car Sys., Inc.*, 44 A.D.3d 216, 223-24 (1st Dep’t 2007) (quoting *Johnson v. Phillips*, 261 A.D.2d 269, 271 (1st Dep’t 1999)); *Mascitti v. Greene*, 250 A.D.2d 821, 822 (2d Dep’t 1998). In a rear-end collision, there is a presumption of non-negligence of the driver of the lead vehicle. *See Soto-Marroquin v. Mellet*, 63 A.D.3d 449, 450 (1st Dep’t 2009).

Plaintiff has established *prima facie* entitlement to judgment as a matter of law by submitting evidence that she was gradually slowing her vehicle due to traffic when she was struck in the rear by the vehicle driven by defendant NICOLE ABRAMOV.

Defendants, in turn, failed to come forward with an adequate non-negligent explanation for the accident.¹ Initially, Defendants have conceded, by their failure to submit a counterstatement of undisputed facts, that Plaintiff was slowing gradually prior to Defendants rear-ending Plaintiff's vehicle.

Even without this concession, however, Defendants still failed to satisfy their burden on the motion. Defendants' attorney's affirmation contends that there are numerous material questions of fact concerning the circumstances of the Accident, including whether Plaintiff came to a sudden stop in reaction to an uninvolved vehicle. All such purported questions of fact, however, are purely speculative, without any support in admissible evidence, and thus are insufficient to raise a question of fact. *See Cabrera v. Rodriguez*, 72 A.D.3d 553, 554 (1st Dep't 2010) (citing *Alvord & Swift v. Muller Constr. Co.*, 46 N.Y.2d 276, 281-82 (1978)); *Garcia v. Verizon N.Y., Inc.*, 10 A.D.3d 339, 340 (1st Dep't 2004).

Further, Defendants' reliance on the Police Report is misplaced and, in fact, cuts against them. Although the Police Report is certified, the so-called "overlay" indicating that a contributing factor to the Accident was Plaintiff's reaction to an uninvolved vehicle is hearsay that does not fall within any hearsay exception, and thus cannot be considered by the Court in deciding the motion. *See Yassin v. Blackman*, 188 A.D.3d 62, 65-67 (2d Dep't 2020). The source of that conclusion is not apparent from the face of the document, and Defendants have not even attempted to argue that its source was Plaintiff, rather than responding officers who did not witness the Accident.

In contrast, the statement contained in the Police Report from defendant Abramov that "[w]hile slowing for traffic, she struck the rear of [Plaintiff's vehicle]" can be considered by the Court because it constitutes a party admission against interest. *Green v. Fofana*, 2021 N.Y. Slip Op. 30934(U), at *4 (Sup. Ct. N.Y. Cty. Mar. 26, 2021) (citing *Cruz v. Skeritt*, 140 A.D.3d 554, 554 (1st Dep't 2016)); *Asaduzzaman v. Savitsky*, 47 Misc. 3d 1222(A), at *4 (N.Y. Sup. Ct. Queens Cty. 2015). That statement, rather than contributing to the satisfaction Defendants' burden, is supportive of Plaintiff's *prima facie* case.

¹ Defendants' contention that Plaintiff's motion is premature because depositions have yet to be taken lacks merit. "Depositions are unnecessary [before the court determines the liability motion], since defendants have personal knowledge of the facts, yet failed to meet their obligation of laying bare their proof and presenting evidence sufficient to raise a triable issue of fact." *Thompson v Pizzaro*, 155 A.D.3d 423 (1st Dep't 2017). Here, despite having every opportunity to do so, Defendants did not submit any admissible evidence in opposition to the motion, including, even, an affidavit from either defendant presenting their own, contrary rendition of the circumstances surrounding the Accident.

In any event, First Department caselaw is clear that a claim by the rear driver that the lead vehicle made a sudden stop, standing alone, is insufficient to rebut the presumption of negligence on the part of the rear driver. *Ly Giap v. Hathi Son Pham*, 159 A.D.3d 484, 485 (1st Dep't 2018); *Bajrami v. Twinkle Cab Corp.*, 147 A.D.3d 649 (1st Dep't 2017); *Santos*, 126 A.D.3d at 506; *Soto-Marquin*, 63 A.D.3d at 450; *Woodley*, 25 A.D.3d at 452; *see also Earl v. Hill*, 2021 N.Y. Slip Op. 06948 (1st Dep't Dec. 14, 2021). Thus, the claim that Plaintiff stopped suddenly in reaction to an uninvolved vehicle, is insufficient to rebut the presumption that defendant's actions, in failing to maintain a safe distance between her vehicle and Plaintiff's vehicle, were the cause of the Accident. Accordingly, the motion is appropriately granted insofar as it seeks an order granting partial summary judgment as to Defendants' liability for the Accident.

Additionally, Plaintiff made a *prima facie* showing that she did not negligently contribute to the cause of the Accident, and Defendants, in turn, have failed to generate a triable issue of material fact. Accordingly, the motion is also appropriately granted insofar as it seeks an order granting summary judgment dismissing Defendants' affirmative defense alleging Plaintiff's comparative negligence.

The Court has considered the additional contentions of the parties not specifically addressed herein. To the extent that any relief requested by the movant was not addressed by the Court, it is hereby denied.

Accordingly, it is hereby:

ORDERED that that part of plaintiff DEBORAH ALEXANDER's motion (Seq. No. 2) seeking an order, pursuant to CPLR 3212, granting her summary judgment against defendants NICOLE ABRAMOV and ALEKSEY ABRAMOV on the issue of liability is **GRANTED**; and it is further

ORDERED that that part of plaintiff ALEXANDER's motion (Seq. No. 2) seeking an order dismissing defendants ABRAMOV's and ABRAMOV's First Affirmative Defense asserted in their Verified Answer alleging plaintiff ALEXANDER's comparative negligence is **GRANTED**; and it is further

ORDERED that the Clerk shall mark the motion (Seq. No. 2) disposed in all court records.

This constitutes the decision and order of the Court.

Dated: January 3, 2022

Hon. s/Hon. Veronica G. Hummel/signed 01/03/2022

VERONICA G. HUMMEL, A.J.S.C.

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- 1. CHECK ONE..... CASE DISPOSED IN ITS ENTIRETY CASE STILL ACTIVE
 - 2. MOTION IS..... GRANTED DENIED GRANTED IN PART OTHER
 - 3. CHECK IF APPROPRIATE..... SETTLE ORDER SUBMIT ORDER SCHEDULE APPEARANCE
 FIDUCIARY APPOINTMENT REFEREE APPOINTMENT