

Atwell-Abreu v American United Transp., Inc.

2023 NY Slip Op 32652(U)

July 21, 2023

Supreme Court, Kings County

Docket Number: Index No. 511946/2021

Judge: Francois A. Rivera

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This opinion is uncorrected and not selected for official publication.

HONORABLE FRANCOIS A. RIVERA

AMANDA ATWELL-ABREU,

Plaintiff,

- against -

AMERICAN UNITED TRANSPORTATION, INC.
and ELREFAEY F. MOUSA,

Defendants.

At an IAS Term, Part 52 of
the Supreme Court of the
State of New York, held in
and for the County of Kings,
at the Courthouse, at Civic
Center, Brooklyn, New York,
on the 21st day of July 2023

Summary Judgment against
the defendant,

DECISION & ORDER

Index No.: 511946/2021

Oral Argument: 6/15/2023

Cal. No.: 7, Ms. No.: 1

Recitation in accordance with CPLR 2219 (a) of the papers considered on the
notice of motion filed by plaintiff Amanda Atwell-Abreu (hereinafter the plaintiff) on
September 17, 2022, under motion sequence number one for an order pursuant to CPLR
3212 granting summary judgment in the plaintiff's favor on the issue of liability against
defendants American United Transportation, Inc. and Elrefaey F. Mousa (hereinafter the
defendants). The motion is opposed.

- Notice of Motion
- Affirmation in Support
Exhibits A-G
- Statement of Material Facts
- Affirmation in Opposition
Exhibit A
- Affirmation in Reply

BACKGROUND

On May 19, 2021, Plaintiff commenced this action by filing a summons and
complaint with the Kings County Clerk's office (KCCO). On July 13, 2021, the defendant

joined issue by interposing and filing a joint verified answer with the KCCO.

The complaint alleges the following salient facts. On March 14, 2021, plaintiff was operating a motor vehicle bearing license plate number JFJ6239 on Interstate 278 Brooklyn Queens Expressway at or near its intersection with Congress Street, County of Kings, City and State of New York. On the same date, time and place, Elrefaey F. Mousa was operating a motor vehicle bearing license plate number T666586C with the permission of its owner American United Transportation Inc. Due to Mousa's negligent operation of his vehicle the front of his vehicle collided with the rear of the plaintiff's vehicle (hereinafter the subject accident). The subject accident caused the plaintiff to sustain serious physical injury.

LAW AND APPLICATION

A plaintiff moving for summary judgment on the issue of liability in a negligence action must establish, prima facie showing that the defendant breached a duty owed to the plaintiff and the defendant's negligent actions were a proximate cause of the alleged injuries (*Hall v. Powell*, 183 AD3d 576 [2nd Dept 2020]). A rear-end collision establishes a prima facie case of negligence on the part of the operator of the rear vehicle, thereby requiring that operator to rebut the inference of negligence by providing a non-negligent explanation for the collision (*Witonsky v. New York City Transit Authority*, 145 AD3d 938 [2nd Dept 2016]; *Hall v. Powell*, 183 AD3d 576 [2nd Dept 2020]; *Tsyganash v. Auto Mall Fleet Mgt., Inc.*, 163 AD3d 1033 [2nd Dept 2018]).

A motion for summary judgment shall be supported by an affidavit, by a copy of the pleadings and by other available proof, such as, depositions and written admissions

(CPLR 3212 (b); *Poon v. Nisanov*, 162 AD3d 804 [2nd Dept 2018]; *Marriot v. Jackson*, 67 Misc 3d 1211(A) [Kings Supreme Court 2020]).

In support of their motion, the plaintiff submitted her own and defendant Mousa's deposition transcript as well as a certified police accident report. The police accident report contained defendant Mousa's admission that he was driving straight when he rear-ended plaintiff's vehicle. Uncertified police reports are inadmissible, even those which contain admissions against interest by a party (see CPLR 4518[a]; *Yassin v Blackman*, 188 AD3d 62 [2d Dept 2020]). Conversely, a certified police report is admissible, and to the extent it contains admissions against interest by parties, which constitute an exception to the hearsay rule, those statements are admissible (*Grimes v. Latimer*, 75 Misc. 3d 1227(A), 171 N.Y.S.3d 355 (N.Y. Sup. Ct. 2022)).

The plaintiff has established prima facie entitlement to judgment as a matter of law through her deposition testimony and Mousa's admission contained in the certified police report. Plaintiff testified that she was stopped behind a few cars for a few seconds waiting to enter the BQE when she was struck in the rear by the vehicle operated by Mousa.

In opposition to the motion the defendants offered the deposition transcript of Mousa, who contended that the plaintiff was contributorily negligent by making a sudden stop. A plaintiff is no longer required to show freedom from comparative fault to establish his or her prima facie entitlement to judgment as a matter of law on the issue of liability (see *Rodriguez v. City of New York*, 31 N.Y.3d 312, 314 [218]; *Merino v. Tessel*,

166 A.D.3d 760, 760 [2nd Dept 2018]). 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 (*Witonsky v. New York City Tr. Auth.*, 145 A.D.3d 938, 939 [2nd 2018], quoting *Nsiah–Ababio v. Hunter*, 78 A.D.3d 672, 672 [2nd 2010]; see 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, thereby requiring that operator to rebut the inference of negligence by providing a nonnegligent explanation for the collision (*Arslan v. Costello*, 164 A.D.3d 1408, 1409 [2nd 2018]; see *Edgerton v. City of New York*, 160 A.D.3d 809, 810 [2nd 2018]). Although a sudden stop of the lead vehicle may constitute a nonnegligent explanation for a rear-end collision, 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 vehicle and the vehicle ahead (*Arslan v. Costello*, 164 A.D.3d at 1409–1410; see *Waide v. ARI Fleet, LT*, 143 A.D.3d 975, 976 [2nd 2016]).

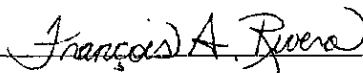
Here, in support of her motion for summary judgment on the issue of liability, the plaintiff submitted, inter alia, a transcript of her deposition testimony, in which she testified that she had brought her vehicle to a complete stop behind vehicle in front of her waiting to enter the Brooklyn Queens Expressway, when she was struck in the rear by the defendant Mousa's vehicle. Thus, the plaintiff established, prima facie, that the defendant

driver's negligence was a proximate cause of the accident (see *Arslan v. Costello*, 164 A.D.3d at 1409).

In opposition, the defendants submitted the deposition transcript of Mousa, which failed to provide a nonnegligent explanation for striking the rear of the plaintiff's vehicle. Mousa averred that as he was approaching on the BQE entrance ramp that plaintiff's vehicle came to a sudden stop, after which his vehicle made contact with the rear of plaintiff's vehicle.

The defendant driver's assertion that the plaintiff's vehicle came to a sudden stop, standing alone, was insufficient to raise a triable issue of fact as to whether there was a nonnegligent explanation for the collision between the plaintiff's vehicle and the defendants' vehicle (see *Edgerton v. City of New York*, 160 A.D.3d at 811, 74 N.Y.S.3d 617; *Robayo v. Aghaabdul*, 109 A.D.3d 892, 893, 971 N.Y.S.2d 317). Even if, as the defendant driver asserted, the plaintiff had come to a sudden stop, the defendant driver should have anticipated that the plaintiff's vehicle might come to a stop at the entrance ramp (see *Tumminello v. City of New York*, 148 A.D.3d 1084, 1085 [2 n Dept 2017]). The defendant driver was under a duty to maintain a safe distance between his vehicle and the plaintiff's vehicle. Therefore, in opposition to the plaintiff's prima facie showing, the defendants failed to raise a triable issue of fact.

ENTER:



J.S.C.

5 of 5 HON. FRANCOIS A. RIVERA
J.S.C.