

Mamanov v Cohen
2023 NY Slip Op 35119(U)
December 22, 2023
Supreme Court, Queens County
Docket Number: Index No. 712323/2023
Judge: Timothy J. Dufficy
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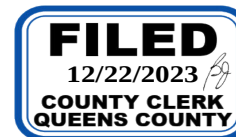
Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

PRESENT: HON. TIMOTHY J. DUFFICY

PART 35

Justice

-----X
YAKUB MAMANOV and MAZOL NIYAZOVA

Plaintiffs,

-against-

Index No. 712323/23

Mot. Date: 12/5/23

FARHAD COHEN

Mot. Seq.: 1

Defendant.
-----X

The following papers were read on this motion by plaintiffs for an order, *inter alia*, pursuant to CPLR 3212, granting summary judgment in their favor against defendants on the issue of liability; dismissing the affirmative defenses of failure to use seatbelts and comparative negligence; and, granting summary judgment in favor of the plaintiffs on the issue of comparative negligence.

PAPERS
NUMBERED

Notice of Motion-Affidavits-Exhibits.....	EF 12-20
Answering Affidavit-.....	EF 21-24
Replying Affidavit.....	EF 25

Upon the foregoing papers, the motion by plaintiffs is granted, in part, and denied, in part.

This action arises from a motor vehicle accident, that occurred on March 1, 2023, at approximately 4:15 a.m., on the Long Island Expressway, between Kissena Boulevard and Utopia Parkway, in Queens, New York.

Plaintiffs move for an order, *inter alia*, pursuant to CPLR 3212, granting summary judgment in their favor against defendants on the issue of liability; dismissing the affirmative defenses of failure to use seatbelts and comparative negligence; and, granting summary judgment in favor of the plaintiffs on the issue of comparative negligence.

In support of their motion, the plaintiffs submit the affidavit of plaintiff Yakub Mamanov, who affirms that at the time of the accident, he was operating a 2004 Toyota with co-plaintiff Mazol Niyazova as a passenger. He further affirms that as he was

slowing for traffic, his vehicle was struck from the rear by a vehicle operated by the defendant. Co-plaintiff Mazol Niyazova, the wife of Yakub Mamanov, submits a similar affidavit corroborating her husband's version of the accident.

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 the operator to come forward with evidence of a non-negligent explanation for the collision in order to rebut the inference of negligence (*see Tutrani v County of Suffolk*, 10 NY3d 906, 908 [2008]; *Mazen v Armstrong*, 190 AD3d 848, 849 [2d Dept 2019]).

Here, the plaintiffs have established a *prima facie* entitlement to summary judgment in this rear-end collision case, thus shifting the burden to the defendant. In opposition, the defendant fails to raise a triable issue of fact. "[A] conclusory assertion by the operator of the following vehicle that the sudden stop of the vehicle ahead caused the accident is insufficient, in and of itself, to provide a non-negligent explanation" (*Brothers v Bartling*, 130 AD3d 554, 556 [2d Dept 2015]). The mere allegation of a sudden or short stop is insufficient to raise a triable issue of fact and cannot serve to defeat a motion for summary judgment (*See Bene v Dalessio*, 135 AD3d 679 [2d Dept 2016]). "[V]ehicle stops which are foreseeable under the prevailing traffic conditions, even if sudden and frequent, must be anticipated by the driver who follows" (*Munoz v Agenus, Inc.*, 207 AD3d 643, 645 [2d Dept 2022]).

Furthermore, a motion for summary judgment is not premature when, as here, the opponent already has personal knowledge of the relevant facts (*see Lidell v Morrison*, 204 AD3d 987 [2d Dept 2019]; *Deleg v Vinca*, 82 AD3d 1146 [2d Dept 2011]). The mere hope and speculation that evidence sufficient to defeat the motion might be uncovered during discovery is an insufficient basis to deny a summary judgment motion (*see Hanover Ins. Co. v Prakin*, 81 AD3d 778 [2d Dept. 2011]; *Kimyagarov v Nixon Taxi Corp.*, 45 AD2d 736 [2d Dept 2007]).

Since the plaintiffs have established a *prima facie* case of negligence and the defendant has failed to offer a non-negligent explanation sufficient to raise a triable issue of fact, the plaintiffs are entitled to summary judgment on the issue of liability against the defendant. Thus, the branch of the plaintiffs' motion seeking summary judgment on the issue of liability against the defendant is granted.

Plaintiffs also move to dismiss the affirmative defense of failure to use seatbelts. When moving to dismiss an affirmative defense, the plaintiff bears the burden of establishing that the affirmative defense is without merit as a matter of law (*see Gonzalez v Wingate at Beacon*, 137 AD3d 747 [2d Dept 2016]). Here, neither plaintiff affirms that they were wearing a seatbelt at the time of the accident. Thus, as the plaintiffs have not met their burden of proving that the affirmative defense of failure to use seatbelts is without merit as a matter of law, the branch of the motion to dismiss that affirmative defense is denied.

However, for the reasons stated above, the plaintiffs have established that they were free from comparative negligence for the happening of this rear end accident and that the affirmative defense of comparative negligence for the happening of the accident is without merit. Thus, the branch of the motion to strike the affirmative defense of comparative negligence for the happening of the accident is granted.

Finally, for the reasons stated above, the plaintiffs have established that they were free from fault for the happening of this rear end accident, and, therefore, the branch of plaintiffs' motion for summary judgment on the issue of comparative fault is granted to the extent that the plaintiffs are deemed free of comparative fault for the happening of the accident.

Accordingly, it is

ORDERED that the motion by plaintiffs is granted, in part, and denied, in part, in that: it is .

ORDERED that the branch of the motion for summary judgment on the issue of liability against the defendant is granted; and it is further

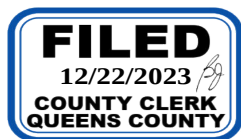
ORDERED that the branch of the motion to dismiss the affirmative defense of failure to use seatbelts is denied; and it is further

ORDERED that the branch of the motion to dismiss the affirmative defense of comparative negligence for the happening of the accident is granted; and it is further

ORDERED that the branch of the motion for summary judgment on the issue of comparative fault is granted to the extent that the plaintiffs are deemed free of comparative fault for the happening of the accident; and it is further

ORDERED that any and all applications not specifically addressed herein have been considered by the Court and are denied.

Dated: December 22, 2023



A handwritten signature in black ink, appearing to read "T. Dufficy".

TIMOTHY J. DUFFICY, J.S.C.