

Higgins v Padula
2023 NY Slip Op 35311(U)
January 9, 2023
Supreme Court, Nassau County
Docket Number: Index No. 612107/2020
Judge: Randy Sue Marber
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SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAUPresent: **HON. RANDY SUE MARBER****JUSTICE**

TRIAL/IAS PART 2

SUSAN HIGGINS, X

Plaintiff,

-against-

Index No.: 612107/20

Motion Sequence...01, 03

Motion Date...08/19/22

MARIA PADULA, WILLIAM M. PADULA,
STEFANI BRAN, BLANCA BRAN, AMAURI
C. DASILVA, JB COMMERCIAL CORP.,
CARLOS A. MORA and STEVEN C. MORA,

Defendants.

X

Papers Submitted:

Notice of Motion (Seq. 01).....X

Notice of Motion (Seq.03).....X

Affirmation in Opposition.....X

Affirmation in Opposition.....X

Affirmation in Opposition.....X

Reply Affirmation.....X

Reply Affirmation.....X

Upon the foregoing papers, the motion (Seq. 01) by the Defendants, CARLOS A. MORA and STEVEN C. MORA (hereinafter the “Mora Defendants”), seeking an Order, pursuant to CPLR §3212, granting summary judgment in their favor, dismissing the complaint and all cross-claims asserted against them; and the cross-motion (Seq. 03) by the Defendants, MARIA PADULA and WILLIAM M. PADULA (hereinafter the “Padula Defendants”), seeking an Order, pursuant to CPLR 3212, granting summary

judgment in their favor, dismissing the complaint and all cross-claims as asserted against them, are decided as hereinafter provided.

This action arises out of a five-vehicle accident that occurred on August 10, 2020 at approximately 1:45 p.m., on Sunrise Highway (eastbound) at or near its intersection with Park Boulevard, in the Town of Oyster Bay. All five vehicles were traveling eastbound on Sunrise Highway. The vehicle owned and operated by the Bran Defendants, a 2010 Toyota Corolla, was the first vehicle stopped for a red light, while in the right lane of travel. The vehicle owned and operated by the Padula Defendants, a 2018 BMW, came to a stop for the same red light in the right lane directly behind the Bran vehicle. The Plaintiff was operating a white 2017 Kia and was also in the right lane for the same red light. The vehicle operated by the Defendant, DaSilva, and owned by the Defendant, JB Commercial, was an 18-wheeler that was holding approximately 78,000 pounds of dirt. Lastly, the vehicle owned and operated by the Mora Defendants, a 2005 Ford pickup truck was also in the right lane.

According to the police accident report, this 5-car motor vehicle accident occurred as follows: the Plaintiff's vehicle collided into Padula's vehicle which caused the Padula vehicle to impact the Bran vehicle. Thereafter, Plaintiff's vehicle collided into the DaSilva/JB Commercial 18-wheeler which then caused debris from Plaintiff's vehicle to impact the Mora vehicle. (*See* Police Accident Report, NYSCEF Doc. No. 47). Notwithstanding the foregoing, there are certain allegations in the Plaintiff's complaint and

deposition testimony which aver that the DaSilva/JB Commercial vehicle first made contact with the Plaintiff's vehicle which then caused the other impacts. While an issue of fact may remain as to which impact occurred first between the Plaintiff's vehicle and the DaSilva/JB Commercial vehicle, such issue does not bear on the Court's determination herein regarding the summary judgment motions filed by the Mora Defendants and the Padula Defendants.

The Mora Defendants filed a motion (Seq. 01) for summary judgment as well as the Padula Defendants (Seq. 03). The Defendants, STEFANI BRAN and BLANCA BRAN (the "Bran Defendants"), originally also filed a motion (Seq. 02) for summary judgment on the grounds that they are not responsible for the happening of this accident. However, the Bran Defendants were subsequently discontinued from the action. As such, the Court shall restrict its analysis to Motion Sequences 01 and 03.

Based on the deposition testimony of the parties and the police accident report, it is undisputed that the Mora vehicle and the Padula vehicle were completely stopped for a red light at the time of this chain collision. More specifically, the Padula vehicle was struck in the rear by the Plaintiff's vehicle while stopped for the red light; and debris from the Plaintiff's vehicle caused damage to the Mora vehicle. There is no evidence that the Mora Defendants caused an impact to any vehicle.

Summary judgment is a drastic remedy and should only be granted when there are no triable issues of fact (*See Andre v. Pomeroy*, 35 N.Y.2d 361 [1974]). The

goal of summary judgment is to issue find, rather than issue determine (*See Hantz v. Fleischman*, 155 A.D.2d 415 [2d Dept. 1989]).

A rear-end collision with a stopped or stopping vehicle creates a *prima facie* case of liability with respect to the operator of the rearmost vehicle, imposing a duty of explanation on that operator to excuse the collision either through a mechanical failure, a sudden stop of the vehicle ahead, an unavoidable skidding on a wet pavement, or any other reasonable cause (*See Filippazzo v. Santiago*, 277 A.D.2d 419 [2d Dept. 2000]; *see also, Crisano v. Comp Tools Corp.*, 295 A.D.2d 393 [2d Dept. 2002]).

When a driver of an automobile approaches another automobile from the rear, he or she is bound to maintain a reasonably safe rate of speed and control over his or her vehicle, and to exercise reasonable care to avoid colliding with the other vehicle (*Id.*; Vehicle and Traffic Law § 1129 [a]). This rule imposes upon drivers the duty to be aware of traffic conditions, including vehicle stoppages (*See Johnson v. Phillips*, 261 A.D.2d 269 [1st Dept. 1999]). It has also been applied even when the front vehicle stops suddenly (*See Mascitti v. Greene*, 250 A.D.2d 821 [2d Dept. 1998]; *Barba v. Best Sec. Corp.*, 235 A.D.2d 381 [2d Dept. 1997]). Further, “drivers have a duty to see what should be seen and to exercise reasonable care under the circumstances to avoid an accident” (*See Johnson v. Phillips*, 261 A.D.2d 269 [1st Dept. 1996]).

Here, the Court finds that the Mora Defendants and the Padula Defendants have established their *prima facie* entitlement to judgment as a matter of law and dismissal

of all claims and cross-claims as asserted against them. The Padula Defendants' vehicle was struck in the rear while completely stopped for a red traffic light and the Mora Defendants' vehicle was only impacted by debris. There is no evidence tending to show that these moving Defendants were in any way at fault for the happening of this motor vehicle accident.

The Court has reviewed the co-Defendants' opposition papers and find them to be insufficient to raise an issue of fact.

Accordingly, it is hereby

ORDERED, that the motion (Seq. 01) by the Defendants, CARLOS A. MORA and STEVEN C. MORA, seeking an Order, pursuant to CPLR §3212, granting summary judgment in their favor, is **GRANTED**; and it is further

ORDERED, that the cross-motion (Seq. 03) by the Defendants, MARIA PADULA and WILLIAM M. PADULA, seeking an Order, pursuant to CPLR 3212, granting summary judgment in their favor, is **GRANTED**; and it is further

ORDERED, that the caption of this matter shall be amended to remove the dismissed Defendants therefrom, and the Clerk of the Court shall amend the caption accordingly as follows:

SUSAN HIGGINS, X

Plaintiff,
-against-

Index No.: 612107/20

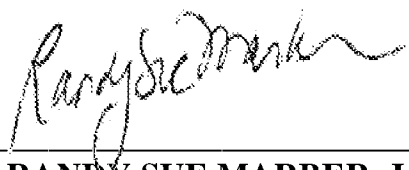
AMAURI C. DASILVA and JB COMMERCIAL CORP.,

Defendants.

X

The foregoing constitutes the decision and order of this Court.

DATED: Mineola, New York
January 9, 2023



HON. RANDY SUE MARBER, J.S.C.

ENTERED

Jan 10 2023

NASSAU COUNTY
COUNTY CLERK'S OFFICE