Dunstatter v Barker
2024 NY Slip Op 34916(U)
September 23, 2024
Supreme Court, Suffolk County
Docket Number: Index No. 612109/2024
Judge: Joseph A. Santorelli
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SHORT FORM ORDER

INDEX No. 612109/2024
CAL No. ____________

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 10 - SUFFOLK COUNTY

PRESENT:
Hon. JOSEPH A. SANTORELLI
Justice of the Supreme Court

MOTION DATE 08/22/2024
SUBMIT DATE 09/19/2024
Mot. Seq. # 01 - MD

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ADAM G. DUNSTATTER,

Plaintiff,

- against -

CALLIE J. BARKER,

Defendant.

---X

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Upon the following papers read on this motion for summary judgment; e-filed on the NYSCEF system as documents 19 - 31; it is,

The plaintiff, Adam Dunstatter, seeks an order pursuant to CPLR 3212 granting summary judgment on liability against defendant Callie J. Barker, and to dismiss all the defendant's third affirmative defense of comparative negligence and sixth affirmative defense of the emergency doctrine. The defendant opposes this application.

CPLR §3212(b) states that a motion for summary judgment "shall be supported by affidavit, by a copy of the pleadings and by other available proof, such as depositions and written admission." If an attorney lacks personal knowledge of the events giving rise to the cause of action or defense, his ancillary affidavit, repeating the allegations or the pleadings, without setting forth evidentiary facts, cannot support or defeat a motion by summary judgment (***Olan v. Farrell Lines, Inc.***, 105 AD 2d 653, 481 NYS 2d 370 (1st Dept., 1984; aff'd 64 NY 2d 1092, 489 NYS 2d 884 (1985); ***Spearman v. Times Square Stores Corp.***, 96 AD 2d 552, 465 NYS 2d 230 (2nd Dept., 1983); Weinstein-Korn-Miller, ***New York Civil Practice*** Sec. 3212.09)).

The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material

issues of fact from the case (***Friends of Animals v Associated Fur Mfrs.***, 46 NY2d 1065, 416 NYS2d 790 [1979]). To grant summary judgment it must clearly appear that no material and triable issue of fact is presented (***Sillman v Twentieth Century-Fox Film Corporation***, 3 NY2d 395, 165 NYS2d 498 [1957]). Once such proof has been offered, the burden then shifts to the opposing party, who, in order to defeat the motion for summary judgment, must proffer evidence in admissible form . . . and must "show facts sufficient to require a trial of any issue of fact" CPLR3212 [b]; ***Gilbert Frank Corp. v Federal Insurance Co.,*** 70 NY2d 966, 525 NYS2d 793, 520 NE2d 512 [1988]; ***Zuckerman v City of New York***, 49 NY2d 557, 427 NYS2d 595 [1980]). The opposing party must assemble, lay bare and reveal his proof in order to establish that the matters set forth in his pleadings are real and capable of being established (***Castro v Liberty Bus Co.,*** 79 AD2d 1014, 435 NYS2d 340 [2d Dept 1981]). Furthermore, the evidence submitted in connection with a motion for summary judgment should be viewed in the light most favorable to the party opposing the motion (***Robinson v Strong Memorial Hospital,*** 98 AD2d 976, 470 NYS2d 239 [4th Dept 1983]).

On a motion for summary judgment the court is not to determine credibility, but whether there exists a factual issue (*see* ***S.J. Capelin Associates v Globe Mfg. Corp.,*** 34 NY2d 338, 357 NYS2d 478, 313 NE2d 776 [1974]). However, the court must also determine whether the factual issues presented are genuine or unsubstantiated (***Prunty v Keltie's Bum Steer,*** 163 AD2d 595, 559 NYS2d 354 [2d Dept 1990]). If the issue claimed to exist is not genuine but is feigned and there is nothing to be tried, then summary judgment should be granted (***Prunty v Keltie's Bum Steer,*** *supra*, citing ***Glick & Dolleck v Tri-Pac Export Corp.,*** 22 NY2d 439, 293 NYS2d 93, 239 NE2d 725 [1968]; ***Columbus Trust Co. v Campolo,*** 110 AD2d 616, 487 NYS2d 105 [2d Dept 1985], *affd*, 66 NY2d 701, 496 NYS2d 425, 487 NE2d 282).

The plaintiff commenced this action to recover damages for personal injuries sustained as a result of a motor vehicle accident that occurred on April 24, 2023 on Nesconset Highway, East Setauket, New York. The plaintiff alleges that he was stopped at a red traffic light for at least 30 seconds when defendant struck the rear of his vehicle. In opposition, defendant states that plaintiff was stopped at the red traffic light and then observed the traffic light turn green for the adjacent turning lane and began to proceed forward with defendant following. Defendant further states that upon realizing that his own governing traffic light had not in fact turned green and was still red, plaintiff abruptly slammed on his brakes after traveling three to five feet forward, causing defendant to impact him since she could not stop her vehicle in time to avoid a rear-end impact. Defendant claims she rear ended the plaintiff's vehicle within one second of the moment plaintiff abruptly stopped.

A rear-end collision with a stopped or stopping vehicle creates a *prima facie* case of negligence against the operator of the moving vehicle, thereby requiring that operator to rebut the inference of negligence by providing a non-negligent explanation for the collision (*see* ***Xian Hong Pan v Buglione,*** 101 AD3d 706, 955 NYS2d 375 [2d Dept 2012]; *see also* ***Kimyagarov v Nixon Taxi Corp.,*** 45 AD3d 736, 846 NYS2d 309 [2d Dept 2007], citing ***Carhuayano v J & R Hacking,***

28 AD3d 413, 414, 813 NYS2d 162; ***Milskiy v Solanky,*** 8 AD3d 353, 777 NYS2d 734; ***Gaeta v Carter,*** 6 AD3d 576, 775 NYS2d 86). Drivers must maintain safe distances between their cars and cars in front of them (Vehicle and Traffic Law § 1129 [a]) and this rule imposes on them a duty to be aware of traffic conditions, including vehicle stoppages, to see what should be seen and to exercise reasonable care under the circumstances to avoid an accident (*see* ***Johnson v Phillips,*** 261 AD2d 269, 271, 690 NYS2d 545 [1st Dept 1999]).

In ***Chepel v Meyers***, 306 AD2d 235, 236-237 [2d Dept 2003], the Court noted that,

> It is well established that when the 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 (see ***Power v Hupart***, 260 A.D.2d 458, 688 N.Y.S.2d 194 [1999]; Vehicle and Traffic Law § 1129 [a]). However, a driver also has the duty "not to stop suddenly or slow down without proper signaling so as to avoid a collision" ***(Purcell v Axelsen***, 286 A.D.2d 379, 380, 729 N.Y.S.2d 495 [2001] [internal quotation marks omitted];***Colonna v Suarez***, 278 A.D.2d 355, 718 N.Y.S.2d 618 [2000]; see ***Niemiec v Jones***, 237 A.D.2d 267, 268, 654 N.Y.S.2d 163 [1997]; Vehicle and Traffic Law § 1163). 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, thereby requiring that operator to rebut the inference of negligence by providing a nonnegligent explanation for the collision (see ***Purcell v Axelsen***, *supra* at 380; ***Colonna v Suarez***, *supra*; ***Argiro v Norfolk Contr. Carrier***, 275 A.D.2d 384, 385, 712 N.Y.S.2d 599 [2000]; ***Santarpia v First Fid. Leasing Group***, 275 A.D.2d 315, 712 N.Y.S.2d 57 [2000]; ***Maschka v Newman***, 262 A.D.2d 615, 692 N.Y.S.2d 472 [1999]). One of several nonnegligent explanations for a rear-end collision is a sudden stop of the lead vehicle (see ***Power v Hupart***, *supra*; ***Filippazzo v Santiago***, 277 A.D.2d 419, 716 N.Y.S.2d 710 [2000]; 8B NY Jur 2d, Automobiles and Other Vehicles § 952).

Here, the plaintiff established prima facie entitlement to judgment as a matter of law. The defendant was then required to proffer evidence in admissible form to show facts sufficient to require a trial of any issue of fact. In opposition to the motion, the defendant has rebutted the prima facie showing of the plaintiff through her affidavit indicating that the plaintiff slammed on his brakes and came to a sudden stop with no way for her to avoid the accident. Therefore the trier of fact could determine that the defendant was not negligent in striking the plaintiff's vehicle in the rear.

The Court concludes that there are material and triable issues of fact presented as to the defendant's liability for the accident and therefore the motion for summary judgment must be denied.

The foregoing constitutes the decision and Order of this Court.

Dated: September 23, 2024

HON. JOSEPH A. SANTORELLI
J.S.C.

_____ **FINAL DISPOSITION** __X__ **NON-FINAL DISPOSITION**