Anderson v Walsh
2024 NY Slip Op 35080(U)
September 11, 2024
Supreme Court, Westchester County
Docket Number: Index No. 59771/2024
Judge: Charles D. Wood
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To commence the statutory time period for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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VONMARIE ANDERSON,

Plaintiff,

-against-

DECISION & ORDER
Index No. 59771/2024
Sequence No. 1

LINDSAY N. WALSH and MICHAEL J. WALSH,

Defendants.

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WOOD, J.

In this action for serious personal injuries arising out of a rear end motor vehicle accident, New York State Courts Electronic Filing ("NYSCEF") Documents Numbers 5-26 were read in connection with plaintiff's partial motion for summary judgment against defendant Lindsay N. Walsh[1], pursuant to CPLR 3212, on the issue of liability, and as to plaintiff's affirmative defenses alleging comparative negligence and culpable conduct on part of plaintiff.

According to plaintiff's affidavit, on November 3, 2021, plaintiff was driving on the Sprain Brook Parkway approaching the exit for Jackson Avenue, in the Town of Greenburgh, and was traveling in the left lane, within the speed limit of 55 miles per hour. Plaintiff observed traffic congestion ahead, slowed vehicle down by removing her foot from the accelerator and pressing on the brake with moderate pressure. After approximately 5 seconds, she suddenly felt a hard impact to the rear of her vehicle that she later found out was caused by defendants' motor vehicle (NYSCEF#10), operated by Lindsay N. Walsh ("defendant"), and owned by Michael J. Walsh.

[1] This action was discontinued as against Defendant Michael J. Walsh (NYSCEF#17).

In divergence, defendant affirms the following that on the day of the accident, she was traveling on the Spain Brook Parkway for approximately 15 minutes:

"6. I had been traveling in the middle lane the entire time I was on the Sprain Brook Parkway. 7. Just prior to the accident there were cars traveling in the right and left lane. Plaintiff's vehicle was a red Buick SUV that was traveling slightly ahead of me in the left lane. I observed a small black sedan weaving in and out of traffic. That sedan went from the middle lane to the left lane ahead of me and cut the plaintiff's vehicle off. The red Buick SUV slammed on its brakes and suddenly and without warning swerved into my lane of travel. 8. I had a split second to hit my brakes and was not able to avoid coming into contact with the red Buick SUV" (NYSCEF#22).

A 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 demonstrate the absence of any material issues of fact" (*Alvarez v Prospect Hospital*, 68 NY2d 320, 324 [1986]). Failure to make such a prima facie showing requires a denial of the motion, regardless of the sufficiency of the motion papers *(Winegrad v New York University Medical Center*, 64 NY2d 851, 853 [1986]). Once the movant has met this threshold burden, the opposing party must present the existence of triable issues of fact in admissible form "sufficient to require a trial of material questions of fact on which he rests his claim or must demonstrate acceptable excuse for his failure to meet the requirement of tender in admissible form; mere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient" (*Zuckerman v New York,* 49 NY2d 557, 562 [1980]). In deciding a motion for summary judgment, the court is "required to view the evidence presented in the light most favorable to the party opposing the motion and to draw every reasonable inference from the pleadings and the proof submitted by the parties in favor of the opponent to the motion" (*Yelder v Walters*, 64 AD3d 762, 767 [2d Dept 2009]). Summary judgment is a drastic remedy and should not be granted where there is any doubt as to existence of a triable issue *(Alvarez v Prospect Hospital*, 68 NY2d 320, 324 [1986]).

Generally, Vehicle and Traffic Law §1129(a) imposes a duty on all drivers to drive at a safe speed and maintain a safe distance between vehicles, always compensating for any known adverse road conditions *(Ortega v City of New York*, 721 NYS2d 790 [2d Dept 2000]). "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" (*Guralenko v New York City Transit Auth.*, 220 AD3d 847, 848 [2d Dept 2023]). "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" (*Fernandez v Babylon Mun. Solid Waste,* 117 AD3d 678 [2d Dept 2014]).

The sudden stop of a lead car is one of the non-negligent explanations of a rear-end collision, because the operator of that car has a duty to avoid stopping suddenly without properly signaling to avoid a collision "when there is opportunity to give such signal" (Vehicle and Traffic Law §1163; *see id.; Colonna v Suarez,* 278 AD2d 355 [2d Dept 2000]). "A conclusory assertion by the operator of the following vehicle that the sudden stop of the vehicle caused the accident is insufficient, in and of itself, to provide a nonnegligent explanation" (*Gutierrez v Trillium USA, LLC*, 111 AD3d 669, 670 [2d Dept 2013]). But, "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 car and the car ahead" (*Gutierrez v Trillium USA, LLC*, 111 AD3d at 671). However, the frontmost driver also has the duty to avoid stopping suddenly or slowing down without signaling to avoid a collision (*Martinez v Allen,* 163 AD3d 951, 952 [2d Dept 2018]).

To make a prima facie showing, the motion must be supported "by affidavit, by a copy of the pleadings and by other available proof, such as depositions and written admissions" (CPLR 3212[b]). Here, plaintiff's affidavit is sufficient to demonstrate prima facie entitlement to summary judgment, that defendant's negligence was a proximate cause of the accident, (*Thompson v New York City Transit Auth.,* 208 AD3d 815, 818 [2d Dept 2022]). In opposition to plaintiff's prima facie showing, defendant raise a triable issue of fact as to whether there was a nonnegligent explanation for the collision through the submission of an affirmation from defendant that plaintiff's vehicle made a sudden lane change in front of defendant's vehicle, forcing defendant to stop suddenly (*Yearwood v New York City Transit Auth.,* 227 AD3d 843, 845 [2d Dept 2024]).

Further, as to the branch of plaintiff's motion to dismiss defendant's affirmative defenses, "to be entitled to partial summary judgment a plaintiff does not bear the ... burden of establishing ... the absence of his or her own comparative fault" (*Kutsankou v Brink's Inc.*, 222 A.D.3d 855, 856 [2d Dept 2023]) *citing* (*Rodriguez v City of New York,* 31 N.Y.3d at 324–325). However, while "a plaintiff is not required to establish his or her freedom from comparative negligence to be entitled to summary judgment on the issue of liability, the issue of a plaintiff's comparative negligence may be decided in the context of a summary judgment motion where the plaintiff moves for summary judgment dismissing a defendant's affirmative defense alleging comparative negligence and culpable conduct on the part of the plaintiff" (*Tenezaca v State,* 220 AD3d 959, 960 [2d Dept 2023]).

Taking into consideration these principles of law, plaintiff fails to establish her prima facie entitlement to judgment as a matter of law dismissing defendant's affirmative defenses alleging comparative negligence and culpable conduct on plaintiff's part by not demonstrating

that plaintiff was not at fault in the happening of the accident (*Tenezaca v State,* 220 AD3d at 961).

Lastly, contrary to defendant's contention, the instant motion is not premature. Defendant fails to offer an evidentiary basis to suggest that discovery may lead to relevant evidence, or that facts essential to opposing the motion were exclusively within the knowledge and control of the plaintiff. While it appears that all depositions and other discovery may not have been completed, this alone does not provide a basis pursuant to CPLR 3212(f) for postponing judgment (*Morrisaint v Raemar Corp.,* 271 AD2d 586 [2d Dept 2000]). Defendant's mere hope or speculation that evidence might be uncovered is insufficient to deny the motion (*Guralenko v New York City Transit Auth.,* 220 AD3d 847, 848–49 [2d Dept 2023]).

The court has considered the remainder of the factual and legal contentions of the parties and to the extent not specifically addressed herein, finds them to be either without merit or rendered moot by other aspects of this decision. Therefore, it is hereby

ORDERED, that plaintiff's motion for partial summary judgment on the issue of liability and defendant's affirmative defense alleging comparative negligence and culpable conduct is denied; and it is further

ORDERED, that within twenty days after this decision and order is uploaded to NYSCEF, counsel for plaintiff shall serve a copy of this decision and order with notice of entry upon all parties, and file proof of service on NYSCEF within five days of service; and it is further

ORDERED, that the matter is hereby referred to the Central Pre-Trial Alternative Dispute Resolution Part for a settlement conference. That Part Clerk shall notify the parties of the date, time, and method of the settlement conference.

Dated: White Plains, New York
September 11, 2024

HON. CHARLES D. WOOD
Justice of the Supreme Court

TO: All Parties by NYSCEF