

Radosta v Caronia

2024 NY Slip Op 35139(U)

November 25, 2024

Supreme Court, Suffolk County

Docket Number: Index No. 622341/2023

Judge: Christopher Modelewski

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SHORT FORM ORDER

Index No. 622341/2023

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 17 - SUFFOLK COUNTY

P R E S E N T :

MOTION DATE 10/21/2024 (001)
Mot. Seq. # 001-MOTD

HON. CHRISTOPHER MODELEWSKI
Justice of the Supreme Court

-----X
DEBORAH RADOSTA,

Plaintiff,

- against -

DARLENE CARONIA and LOUIS CARONIA,

Defendants.
-----X

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Upon the E-file document list numbered 19 to 32 read and considered on the motion by plaintiff for an order pursuant to CPLR 3212 granting the plaintiff summary judgment on her complaint and dismissing the defendants' affirmative defenses of comparative negligence and culpable conduct; it is

ORDERED that plaintiff's motion for an order pursuant to CPLR 3212 granting the plaintiff summary judgment on her complaint is granted, for the reasons set forth herein; and it is further

ORDERED that the branch of plaintiff's motion for an order dismissing defendants' affirmative defenses of comparative negligence and culpable conduct is denied.

This is an action to recover damages for personal injuries alleged to have been sustained by plaintiff when her westbound traveling vehicle was rear-ended by a vehicle operated by defendant Darlene Caronia ("defendant"). The accident occurred on February 24, 2021 at approximately 1:00 p.m. at the intersection of Route 347 and Nicolls Road located in the Town of Brookhaven, County of Suffolk (the "subject intersection").

Plaintiff now moves for summary judgment in her favor on the issue of liability on the ground that the subject accident was solely the result of defendant's failure to control her vehicle. Plaintiff also moves for summary judgment dismissing defendants' affirmative defenses of comparative negligence and culpable conduct. In support of her motion, plaintiff submits, inter alia, a statement of material

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facts, an attorney affirmation, the pleadings, the uncertified police accident report¹, and the deposition transcripts of plaintiff and defendant. In opposition, defendant submits a response to the statement of material facts, an attorney affirmation, and the certified weather records for the date of the accident. Defendant contends that there are triable issues of fact with respect to the negligence of both parties. As to plaintiff, defendant asserts that plaintiff made an unsafe and abrupt stop in response to seeing an emergency vehicle “causing a box truck directly behind plaintiff and in front of defendant to improperly flee the road,” that there was “residual sand and gravel on the roadway,” which caused defendant’s vehicle to “skid as she tried to stop her vehicle,” and that defendant was faced with an emergency situation not of her own making. Plaintiff replies.

It is well settled that a party moving for summary judgment must make a prima facie showing of entitlement to judgment as matter of law, offering sufficient evidence in admissible form to demonstrate the absence of any material issues of fact (*see Alvarez v Prospect Hospital*, 68NY2d 320, 508 NYS2d 923 [1989]; *Zuckerman v City of New York*, 49 NY2d 557, 427 NYS2d 595 [1980]). The failure to make such a prima facie showing requires the denial of the motion regardless of the sufficiency of the opposing papers (*Winegrad v New York University Medical Center*, 64 NY2d 851, 487 NYS2d 316 [1985]). Upon the movant establishing a prima facie showing of entitlement to summary judgment, the burden then shifts to the opponent to offer evidence in admissible form sufficient to establish a material issue of fact requiring a trial of the action (*Alvarez v Prospect Hospital*, 68NY2d 320, 508 NYS2d 923 [1989]; *Zuckerman v City of New York*, 49 NY2d 557, 427 NYS2d 595 [1980]). In deciding the motion, the Court must view all evidence in the light most favorable to the nonmoving party (*see Ortiz v. Varsity Holdings, LLC*, 18 NY3d 335, 339, 937 NYS2d 157 [2011]). A motion for summary judgment should be denied where the facts are in dispute, where conflicting inferences may be drawn from the evidence, or where there are issues of credibility (*see Chimbo v Bolivar*, 142 AD3d 944, 37 NYS3d 339 [2d Dept 2016]; *Benetatos v Comerford*, 78 AD3d 730, 911 NYS2d 155 [2d Dept 2010]).

When the driver of a vehicle approaches another vehicle from the rear, she is bound to maintain a reasonably safe distance and rate of speed over her vehicle under the prevailing conditions and to exercise reasonable care to avoid colliding with the other vehicle (Vehicle and Traffic Law §1129 [a]; *Grecco v Altice USA, Inc.*, 230 AD3d 655, 216 NYS3d 694 [2d Dept 2024]; *Gil v Manhattan Beer Distributors, LLC*, 207 AD3d 525, 169 NYS3d 822 [2d Dept 2022]; *Martin v County of Westchester*, 194 AD3d 1036, 144 NYS3d 394 [2d Dept 2021]; *Capuozzo v Miller*, 188 AD3d 1137, 136 NYS3d 416 [2d Dept 2020]). The occurrence of a rear-end collision with a stopped or stopping vehicle creates a prima facie case of negligence on the part of the operator of the rear vehicle and imposes a duty on that operator to come forward with a non-negligent explanation for the collision (*see Gil v Manhattan Beer Distributors, LLC, supra*; *Lopez v Suggs*, 186 AD3d 589, 126 NYS3d 676 [2d Dept 2020]; *Clements v Giatas*, 178 AD3d 894, 895, 112 NYS3d 539 [2d Dept 2019]). Although “a plaintiff is no longer required to show freedom from comparative fault to establish her or his prima facie entitlement to judgment as a matter of law on the issue of liability, the issue of 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” (*Grecco v Altice USA, Inc.*, 230 AD3d at 656, 216 NYS3d 696

¹The uncertified police report is not admissible and has not been considered by the Court (*see Yassin v Blackman*, 188 AD3d 62, 131 NYS3d 53 [2d Dept 2020]).

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[internal citations and quotations omitted]; *see also Rodriguez v City of New York*, 31 NY3d 312, 76 NYS3d 898 [2018]; *Poon v Nisanov*, 162 AD3d 804, 79 NYS3d 227 [2d Dept 2018]; *Edgerton v City of New York*, 160 AD3d 809, 74 NYS3d 617 [2d Dept 2018)].²

Here, plaintiff testified that as she approached the subject intersection, she was traveling at approximately thirty-five to forty miles per hour and the traffic light was green for westbound traffic on Route 347. Plaintiff further testified that prior to arriving at the intersection, she applied her brakes and slowed her vehicle down as there was an ambulance traveling north on Nicolls Road at the subject intersection. Plaintiff further testified that when her vehicle was at or near the “white [stop] line” just prior to entering the intersection, she stopped her vehicle to yield to a second emergency vehicle traveling north on Nicolls Road displaying emergency lights and with sirens activated. Plaintiff testified that had she proceeded through the intersection while the second emergency vehicle was traveling north on Nicolls Road, “that would have not been safe.” Plaintiff testified that her vehicle was at a complete stop when defendant’s vehicle rear-ended her vehicle and although she was uncertain as to exactly how long her vehicle was stopped, she estimated that it was between five and seven seconds. Based upon her testimony, plaintiff established her prima facie entitlement to summary judgment on her complaint by demonstrating that her stopped vehicle was struck in the rear by defendant’s vehicle (*see Grecco v Altice USA, Inc.*, 230 AD3d 655, 216 NYS3d 694 [2d Dept 2024]; *Gavrilova v Stark*, 129 AD3d 907, 11 NYS3d 656 [2d Dept 2015]; *DiPaola v Scherpich*, 239 AD2d 459, 657 NYS2d 883 [2d Dept 1997]; *see also Rodriguez v City of New York*, 31 NY3d 312, 76 NYS3d 898 [2018]). Having made the requisite prima facie showing of entitlement to summary judgment, the burden shifts to the defendant to rebut the inference of negligence by offering a non-negligent explanation for the accident (*see Pollet v Charyn*, 200 AD3d 728, 159 NYS3d 92 [2d Dept 2021]).

In opposition, defendant failed to raise a triable issue of fact as to whether there was a non-negligent explanation for the accident or whether the emergency doctrine applied. Defendant contends that the sudden stop of plaintiff’s vehicle suffices as a non-negligent explanation for this accident. The settled law, however, informs that “a sudden stop, standing alone, is insufficient to rebut the presumption of negligence” (*Quinones v Grace Industries, LLC*, 219 AD3d 765, 766, 194 NYS3d 314 [2d Dept 2023]; *see also Ramos v Baig*, 145 AD3d 696, 697, 43 NYS3d 110 [2d Dept 2016]; *Bene v Dalessio*, 135 AD3d 679, 680, 22 NYS3d 237 [2d Dept 2016]; *Brothers v Bartling*, 130 AD3d 554, 556, 13 NYS3d 202 [2d Dept 2015]; VTL §1144). “Vehicle stops which are foreseeable under the prevailing traffic conditions, even if sudden and frequent, must be anticipated by the driver who follows” (*Quinones v Grace Industries, LLC*, 219 AD3d at 766, 194 NYS3d at 316). Two emergency vehicles, three to four car lengths apart, were traveling north on Nicolls Road and passed through the subject intersection, the second with lights and sirens activated. Plaintiff had applied her brakes for the ambulance that proceeded through the intersection and then applied her brakes more firmly to stop her vehicle for the second emergency vehicle rather than proceed through the intersection when it was not safe to do so. Defendant’s failure to see the plaintiff’s vehicle with its brakes applied, the ambulance and other emergency vehicle, and to hear the sirens of the second emergency vehicle, do not provide defendant with non-negligent explanations for the accident. On the contrary, defendant should have been aware of the prevailing traffic conditions and operated her vehicle accordingly (*see Grecco v Altice*

²In this regard, plaintiff and defendant misapprehend the applicable law on the issue of plaintiff’s comparative fault and culpable conduct.

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USA, Inc., 230 AD3d 655, 216 NYS3d 694 [2d Dept 2024][failure to notice ambulance not a non-negligent explanation for accident]; *Gavrilova v Stark*, 129 AD3d 907, 11 NYS3d 656 [2d Dept 2015]; *DiPaola v Scherpich*, 239 AD2d 459, 657 NYS2d 883 [2d Dept 1997]; *see also* VTL §1144 [vehicles are to yield the right-of-way to emergency vehicles]).

The emergency doctrine provides that “a driver faced with a sudden and unexpected circumstance, not of the driver’s own making, that leaves little or not time for reflection or causes that driver to be reasonably so disturbed as to compel a quick decision without weighing alternative courses of conduct, may not be negligent if the actions taken are reasonable and prudent in the context of the emergency” *Blake v New York City Tr. Auth.*, 217 AD3d 914, 914-915, 192 NYS3d 231 [2d Dept 2023] quoting *Welch v Suffolk Coach, Inc.*, 162 AD3d 1097, 80 NYS3d 114 [2d Dept 2018]). However, “the emergency doctrine does not apply where the actor encounters a known, foreseeable hazard which he in fact observed enter his path prior to the accident or where he or she fails to be aware of the potential hazards presented by traffic conditions” (*Shin v New York City Tr. Auth.*, 210 AD3d 717, 718, 178 NYS3d 100 [2d Dept 2022][internal quotations and citations omitted]). “The emergency doctrine does not apply to typical accidents involving rear-end collisions because trailing drivers are required to leave a reasonable distance between their vehicles and vehicles ahead” (*Capuozzo v Miller*, 188 AD3d 1138, 136 NYS3d 416, 417 [internal quotations omitted]; *see also Ordonez v Lee*, 177 AD3d 756, 110 NYS3d 339 [2d Dept 2019]; *Shehab v Powers*, 150 AD3d 918, 54 NYS3d 104 [2d Dept 2017]).

The emergency doctrine is inapplicable to the alleged box truck traveling ahead of defendant’s vehicle that, according to defendant, “spontaneously, abruptly” made a hard right and changed lanes at or near the far right turning lane for vehicles to proceed north on Nicolls Road. Defendant testified she was aware of the far right turning lane and thus, defendant should have anticipated that a vehicle traveling ahead of her might change lanes or move toward the right turning lane to head north on Nicolls Road. Moreover, the actions of driver of the box truck in either changing lanes or moving over toward the far right turning lane presumably would have provided defendant with more distance between her vehicle and plaintiff’s, such that her vehicle, traveling at twenty-two miles an hour as defendant testified, would have had additional time to stop in order to avoid the accident had defendant been mindful of the existing traffic conditions. Indeed, defendant testified that she began to brake for “three to four seconds” beginning when the “box truck abruptly turned off” to the right. The fact that the box truck allegedly changed lanes or moved to the right “abruptly” also should have alerted defendant to take all necessary measures to avoid an accident with any vehicles traveling ahead of the box truck. Similarly, the presence of “residual” sand and gravel on the road from a snow storm that occurred a week earlier does not amount to an emergency or non-negligent explanation for the accident. Indeed, accepting defendant’s version of the accident as true, her testimony demonstrates that she failed to observe the existing traffic conditions and maintain a reasonably safe distance between her vehicle and plaintiff’s vehicle.

Plaintiff, however, did not establish, prima facie, that she was not comparatively at fault or did not engage in any culpable conduct that contributed to the accident, as plaintiff failed to adequately address this issue, instead relying upon the principle that she was not required to prove that she was free from comparative negligence to establish, prima facie, her entitlement to summary judgment on her complaint (*see Grecco v Altice USA, Inc.*, 230 AD3d 655, 216 NYS3d 694 [2d Dept 2024]). Plaintiff

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still was required to but did not address these issues on that branch of her motion seeking to dismiss defendants' affirmative defenses (*id.*).

Accordingly, plaintiff's motion for summary judgment on her complaint as against defendants is granted and denied as to the branch of the motion seeking to dismiss defendants' affirmative defenses of comparative negligence and culpable conduct.

The foregoing constitutes the decision and Order of the Court.

Dated: November 25, 2024



HON. CHRISTOPHER MODELEWSKI, J.S.C.

FINAL DISPOSITION NON-FINAL DISPOSITION