

Swift v Rogers
2024 NY Slip Op 35174(U)
August 29, 2024
Supreme Court, Suffolk County
Docket Number: Index No. 623177/2023
Judge: Alison J. Napolitano
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ORIGINAL

SHORT FORM ORDER

INDEX No. 623177/2023

CAL No. _____

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 74 - SUFFOLK COUNTY

PRESENT:

Hon. ALISON J. NAPOLITANO
Justice of the Supreme Court

MOTION DATE 6-11-2024
SUBMIT DATE 8-26-2024
Mot. Seq. # 01 - MG

-----X

CHARLES SWIFT,

Plaintiff,

- against -

CRAIG ROGERS,

Defendants.

-----X

THE BONGIORNO LAW FIRM, PLLC
Attys for Plaintiff
1415 Kellum Place, Suite 205
Garden City, New York 11530

MUSCARELLA & DI RAIMO, LLP
Attys for Defendants
229 Main Street, Suite 200
Huntington, New York 11743

Upon the following papers read on this motion for summary judgment; e-filed on the NYSCEF system as documents 14 - 21, 22 - 26 & 27; it is,

The plaintiff seeks an order pursuant to CPLR §3212 granting summary judgment on liability and additionally, striking the defendant’s first affirmative defense of comparative negligence. 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

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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” CPLR §3212 [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 rear-end collision that occurred on September 8, 2021 at approximately 7:45am. The plaintiff alleges that he was operating a motor vehicle westbound in the right-hand lane on Route 347 at the intersection with Middle Country Road, Smithtown, Suffolk County, New York. As evidenced by his deposition taken on May 3, 2024, the plaintiff contends that it was rush hour and the traffic conditions were heavy at that time. He explains that the road and weather conditions were dry and clear, and that he was wearing his seatbelt. The plaintiff claims that, as he approached the intersection, the light was red and he gradually brought his vehicle to a stop. He states that when he came to a stop at the intersection there were three or four cars ahead of him stopped at the red light and that he was stopped for about two minutes prior to the accident. The plaintiff testified in reference to the defendant's vehicle, that he “noticed in my rearview mirror that the -- he stopped at least 20 feet behind me”. The plaintiff further explains that the accident occurred as the light changed to green and the traffic hadn't begun to move yet when the defendant's car accelerated into the back of the plaintiff's vehicle. In opposition, the defendant claims that he was stopped behind two other vehicles for the red traffic light at the intersection. He alleges that when the light turned green the plaintiff proceeded forward and, in turn, the defendant also proceeded forward when plaintiff's vehicle suddenly stopped short causing the accident.

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

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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]). “A nonnegligent explanation may include evidence of a mechanical failure, a sudden, unexplained stop of the vehicle ahead, an unavoidable skidding on wet pavement, or any other reasonable cause (*see Binkowitz v Kolb*, 135 AD3d 884, 885 [2d Dept 2016]; citing *Etingof v Metropolitan Laundry Mach. Sales, Inc.*, 134 AD3d 667, 20 NYS3d 589, 2015 NY Slip Op 08803 [2d Dept 2015]; *D’Agostino v YRC, Inc.*, 120 AD3d 1291, 1292, 992 NYS2d 358 [2014]; *Ramos v TC Paratransit*, 96 AD3d 924, 925, 946 NYS2d 644 [2012]; *Fajardo v City of New York*, 95 AD3d 820, 821, 943 NYS2d 587 [2012]).

The Second Department in *Martin v. Copado-Esquivel*, 226 A.D.3d 668, 209 N.Y.S.3d 83 (App. Div. 2nd Dept. 2024) held that

“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” (*An v Abbate*, 213 AD3d 891, 892, 184 N.Y.S.3d 811 [2023], quoting *Nsiah-Ababio v Hunter*, 78 AD3d 672, 672, 913 N.Y.S.2d 659 [2010]). As such, “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 non negligent explanation for the collision” (*Genao v Cassetta*, 214 AD3d 626, 627, 182 N.Y.S.3d 904 [2023][internal quotation marks omitted]; *see Montalvo v Cedeno*, 170 AD3d 1166, 1167, 96 N.Y.S.3d 638 [2019]). “[A]n assertion that the lead vehicle came to a sudden stop, standing alone, is insufficient to rebut the presumption of negligence on the part of the operator of the rear vehicle” (*Perez v Persad*, 183 AD3d 771, 772, 123 N.Y.S.3d 683 [2020]; *see Buchanan v Keller*, 169 AD3d 989, [***2] 992, 95 N.Y.S.3d 252 [2019]). A plaintiff is not 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 (*see Rodriguez v City of New York*, 31 NY3d 312, 76 N.Y.S.3d 898, 101 N.E.3d 366 [2018]; *An v Abbate*, 213 AD3d at 892).

Here, the plaintiff established a 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, Craig Rogers, attempts to

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argue that both vehicles were stopped at a red traffic light and only after the light turned green and the plaintiff's vehicle proceeded forward, the plaintiff then stopped short causing the accident. The defendant offered no additional evidence or testimony to support this claim.

Even accepting Rogers' version of the events as true, the defendant's "claim that the driver of the lead vehicle made a sudden stop, standing alone, is insufficient to rebut the presumption of negligence" (*Zdenek v. Safety Consultants, Inc.*, 63 A.D.3d 918, 883 N.Y.S.2d 57 (App. Div. 2nd Dept. 2009)). Thus, the defendant has failed to rebut the prima facie showing and raise an issue of fact with regard to his liability for the happening of the accident (see *Umbreit v Fuentes*, 63 Misc3d 1206 [A], 2019 NY Slip Op 50399 [U] [Sup Ct Suffolk County 2019]).

Therefore, the motion by the plaintiff for an order awarding summary judgment in his favor on the issue of liability is granted in all respects; and it is further

ORDERED that plaintiff's motion for an order striking the defendant's first affirmative defense is granted; and it is further

ORDERED that the attorneys for the parties shall proceed to discovery on the issue of damages; and it is further

ORDERED that upon the completion of discovery and the filing of a Note of Issue, this action shall proceed to trial on the issue of damages.

The foregoing constitutes the decision and Order of this Court.

Dated: August 29, 2024



HON. ALISON J. NAPOLITANO
J.S.C.

 FINAL DISPOSITION X NON-FINAL DISPOSITION