

Santiago v Irizarry
2024 NY Slip Op 35259(U)
May 9, 2024
Supreme Court, Suffolk County
Docket Number: Index No. 605823/2019
Judge: Vincent J. Martorana
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SHORT FORM ORDER

INDEX No. 605823/2019CAL. No. 202301144MVSUPREME COURT - STATE OF NEW YORK
I.A.S. PART 23 - SUFFOLK COUNTY**PRESENT:**Hon. VINCENT J. MARTORANA
Justice of the Supreme CourtMOTION DATE 1/4/24
ADJ. DATE 2/8/24
Mot. Seq. # 001 MotD-----X
STACY A. SANTIAGO,

Plaintiff,

- against -

OCTAVIO IRIZARRY, JR. and ELAINE C.
TERRANA,Defendants.
-----XROSENBERG & GLUCK, L.L.P.
Attorney for Plaintiff
1176 Portion Road
Holtsville, New York 11742LAW OFFICE OF ANDREA G. SAWYERS
Attorney for Defendant Octavio Irizarry, Jr.
P.O. Box 2903
Hartford, Connecticut 06104JAMES F. BUTLER & ASSOCIATES
Attorney for Defendant Elaine C. Terrana
300 Jericho Quadrangle, Suite 260
Jericho, New York 11753

Upon the following papers read on this e-filed motion for summary judgment: Notice of Motion/Order to Show Cause and supporting papers by plaintiff, filed November 22, 2023; Notice of Cross-Motion and supporting papers ; Answering Affidavits and supporting papers by defendant Elaine C. Terrana, filed December 20, 2023 and by defendant Octavio Irizarry, Jr., filed January 24, 2024; Replying Affidavits and supporting papers by plaintiff, filed December 21, 2023, and on February 7, 2024; Other ; it is

ORDERED that plaintiff's motion for summary judgment in her favor on the issue of defendants' liability and for dismissal of the defendants' affirmative defenses is granted to the extent set forth herein, and is otherwise denied.

Plaintiff commenced this action to recover damages for injuries she allegedly sustained as a result of two separate motor vehicle accidents. The first accident allegedly occurred on June 11, 2018, when a vehicle driven by defendant Elaine C. Terrana rear-ended a vehicle driven by plaintiff. The second collision allegedly occurred on June 27, 2018, when a vehicle driven by defendant Octavio Irizarry, Jr. struck plaintiff's vehicle on its passenger side. Both defendants interposed answers containing affirmative defenses.

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Plaintiff now moves for summary judgment on the issue of defendants' liability, as well as for the dismissal of defendants' affirmative defenses sounding in comparative negligence, culpable conduct, assumption of the risk, failure to mitigate damages, and failure to wear a seatbelt. Plaintiff argues that the collisions were proximately caused by the individual defendants involved therein, and that neither defendant can offer a non-negligent explanation for the collisions. In support of the motion plaintiff submits, among other things, deposition transcripts of the parties. Defendants Terrana and Irizarry oppose the motion, both arguing that summary judgment should not be granted because there are triable issues of fact.

As to the collision between plaintiff and defendant Terrana, which allegedly occurred on June 11, 2018, plaintiff testified that immediately prior to the accident she was driving eastbound on Nesconset Highway in the left lane, and that the vehicle driven by defendant Terrana was traveling directly behind her. Plaintiff testified that she braked "lightly" and was slowing gradually in response to heavy traffic conditions when defendant Terrana's vehicle collided with the rear-end of her vehicle, and heard no tires screeching and otherwise had no warning that an accident was about to occur. Plaintiff testified that she was wearing her seatbelt at the time of the collision. Defendant Terrana testified that she was traveling in the leftmost lane of Nesconset Highway going east, and that traffic at the time was "medium to heavy." She testified that two seconds prior to the collision, she was changing her vehicle's radio station. Although plaintiff's vehicle was traveling in front of defendant Terrana's vehicle, defendant Terrana testified that she "[did not] believe" she saw plaintiff's vehicle prior to the collision, and that the front of her vehicle impacted the rear end of plaintiff's vehicle.

As to the collision between plaintiff and defendant Irizarry, which allegedly occurred on June 27, 2018, plaintiff testified that she was driving southbound on Stony Brook Road. In front of her, the road split from one lane into three lanes. She testified that she observed a stationary white van approximately fifty yards in front of her vehicle, which was stopped and sitting perpendicular to the roadway. The van was blocking the rightmost lane, and also partially blocking the middle of the three lanes. Plaintiff testified that the van was facing directly east on the southbound road, and it had a left turn signal activated. Plaintiff drove in the leftmost lane when the lanes split, as she intended to make a lefthand turn onto Route 347. There were several other cars in front of her at this time, and they all traveled in the left lane past the stationary van. At no point did the plaintiff witness the van move prior to the impact. Plaintiff testified that she was traveling at approximately 10 to 15 miles per hour as she passed the van, with the van on her right, and at this time the van was still stationary. As plaintiff passed the van she felt an impact to the rear portion of the passenger side of her vehicle. After the impact, she observed that the van had changed position and was facing "a little bit to the northbound," and it was "on a little bit of an angle." After the collision, both drivers exited their vehicles. Plaintiff testified that defendant Irizarry told plaintiff that "he didn't see" her.

Defendant Irizarry testified that on June 27, 2018, he was the driver of a vehicle and that vehicle was parked along the curb of Stony Brook Road outside of a strip mall near the intersection of Stony Brook Road and Nesconset Highway. His vehicle was facing south as it was parked. He testified that he pulled away from the curb and out onto the portion of Stony Brook Road where the roadway was still one lane wide, with the roadway splitting into three lanes further down the road, though he could not recall how far. He had pulled into the road about "three feet" to his left from the curb, and at this time it

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was his intention to travel down Stony Brook Road and make a left onto Nesconset Highway. He testified that prior to pulling away from the curb, he had checked his mirrors but did not see any oncoming cars. As he pulled away from the curb, he came into contact with another vehicle; he testified that he did not see this vehicle prior to impact. He was traveling approximately 5 miles per hour, and his left-front bumper impacted the rear-passenger side of plaintiff's car.

On a motion for summary judgment, the movant has the burden to show that it is entitled to judgment as a matter of law and that there are no disputed issues of material fact (CPLR 3212; *Matter of New York City Asbestos Litig.*, 33 NY3d 20, 99 NYS3d 734 [2019]). If the movant meets its burden, then the non-movant must show that there is a material issue of fact to be resolved at trial (*Matter of Eighth Jud. Dist. Asbestos Litig.*, 33 NY3d 488, 105 NYS3d 353 [2019]). If the movant does not meet its burden, then the motion must be denied without consideration of any opposing papers (*Vega v Restani Constr. Corp.*, 18 NY3d 499, 942 NYS2d 13 [2012]). On summary judgment, the Court must view the evidence in the light most favorable to the non-moving party (*id.*).

A plaintiff is no longer required to show the absence of his or her comparative fault to establish prima facie entitlement to summary judgment on the issue of a defendant's liability (*see Rodriguez v City of New York*, 31 NY3d 312, 76 NYS3d 898 [2018]; *Pollet v Charyn*, 200 AD3d 728, 159 NYS3d 92 [2d Dept 2021]; *Dolores v Grandpa's Bus Co., Inc.*, 189 AD3d 1539, 135 NYS3d 295 [2d Dept 2020]). The issue of a plaintiff's comparative negligence may be decided in the context of a plaintiff's motion for summary judgment on the issue of liability where, as here, the plaintiff also seeks dismissal of the defendant's affirmative defense alleging comparative negligence (*see id.*). "[A] rear-end collision with a stopped or stopping vehicle establishes a prima facie case of negligence on the part of the driver of the rear vehicle, thereby requiring that operator to rebut the inference of negligence by providing a nonnegligent explanation for the collision" (*Quintanilla v Mark*, 210 AD3d 713, 714, 177 NYS3d 687 [2d Dept 2022]). The 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 (*see Vehicle and Traffic Law § 1129 [a]*; *Newkirk v Safe Coach Bus, Inc.*, 218 AD3d 477, 193 NYS3d 103 [2d Dept 2023]).

Plaintiff, through the parties' testimony, has established her prima facie entitlement to summary judgment on the issue of defendant Terrana's liability. Plaintiff testified that her stopping or slowing vehicle was impacted in the rear by the vehicle driven by defendant Terrana suddenly and without warning (*see Newkirk v Safe Coach Bus, Inc.*, 218 AD3d 477, 193 NYS3d 103). In response, defendant failed to offer a non-negligent explanation for the rear-end collision (*see Quintanilla v Mark*, 210 AD3d 713, 177 NYS3d 687). Accordingly, the branch of plaintiff's motion seeking summary judgment on the issue of defendant Terrana's liability is granted.

"[A] violation of the Vehicle and Traffic Law constitutes negligence as a matter of law" (*Higgins v Stelmach*, 208 AD3d 1165, 1166, 175 NYS3d 74 [2d Dept 2022]; *see Orellana v Mendez*, 208 AD3d 888, 174 NYS3d 445 [2d Dept 2022]; *Jaipaulsingh v Umana*, 208 AD3d 765, 174 NYS3d 413 [2d Dept 2022]). Pursuant to Vehicle and Traffic Law § 1162, a stopped, standing, or parked vehicle shall not be moved unless such movement can be made with reasonable safety (*see Gibson v Singh Towing, Inc.*, 155 AD3d 614, 64 NYS3d 233 [2d Dept 2017]). Further, motorists have "an obligation to keep a

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proper lookout and see what can be seen through the reasonable use of his or her senses to avoid colliding with other vehicles” (*Carias v Grove*, 186 AD3d 1484, 1484, 131 NYS3d 99 [2d Dept 2020]; see *Elkholy v Dawkins*, 175 AD3d 1487, 109 NYS3d 392 [2d Dept 2019]).

Plaintiff, through the parties’ testimony, has demonstrated her prima facie entitlement to summary judgment on the issue of defendant Irizarry’s liability. Plaintiff’s submissions establish that defendant Irizarry moved his stopped or parked vehicle from the along the curb on Stony Brook Road without properly ascertaining whether it was safe to do so (see *Gibson v Singh Towing, Inc.*, 155 AD3d 614, 64 NYS3d 233). Further, defendant Irizarry testified that he did not see the plaintiff’s vehicle prior to the accident, and he therefore violated his duty as a motorist to see that which should have been seen through the reasonable use of his senses (see *Carias v Grove*, 186 AD3d 1484, 131 NYS3d 99; *Elkholy v Dawkins*, 175 AD3d 1487, 109 NYS3d 392). In response, defendant failed to raise a triable issue of fact (*Matter of Eighth Jud. Dist. Asbestos Litig.*, 33 NY3d 488, 105 NYS3d 353). Accordingly, the branch of plaintiff’s motion seeking summary judgment on the issue of defendant Irizarry’s liability is granted.

Plaintiff also seeks dismissal of defendants’ affirmative defenses sounding in comparative negligence, culpable conduct, assumption of the risk, failure to mitigate damages, and failure to wear a seatbelt. When seeking dismissal of an affirmative defense, the plaintiff bears the burden of demonstrating that such defense is without merit as a matter of law (see *Edwards v Walsh*, 169 AD3d 865, 94 NYS3d 629 [2d Dept 2019]; *Gonzalez v Wingate at Beacon*, 137 AD3d 747, 26 NYS3d 562 [2d Dept 2016]; *Bank of N.Y. v Penalver*, 125 AD3d 796, 1 NYS3d 825 [2d Dept 2015]). “In reviewing a motion to dismiss an affirmative defense, the court must liberally construe the pleadings in favor of the party asserting the defense and give that party the benefit of every reasonable inference . . . [and] if there is any doubt as to the availability of a defense, it should not be dismissed” (*Fireman’s Fund Ins. Co. v Farrell*, 57 AD3d 721, 723, 869 NYS2d 597 [2d Dept 2008]; see *Greco v Christoffersen*, 70 AD3d 769, 896 NYS2d 363 [2d Dept 2010]).

As to the affirmative defenses of defendant Terrana, plaintiff’s submissions are sufficient to establish, prima facie, her freedom from comparative fault and her entitlement to the dismissal of defendant’s affirmative defense of comparative negligence, and in response defendant has failed to raise a triable issue of fact (see *Orlando v Gonzalez*, 222 AD3d 989, 201 NYS3d 675 [2d Dept 2023]; *Tenezaca v State of New York*, 220 AD3d 959, 198 NYS3d 745 [2d Dept 2023]). Further, plaintiff’s submissions establish, prima facie, that the doctrine of assumption of the risk is inapplicable in this case (see *Mata v Road Masters Leasing Corp.*, 128 AD3d 780, 10 NYS3d 124 [2d Dept 2015]). Plaintiff has also established her prima facie entitlement to dismissal of the affirmative defense of failure to wear a seatbelt, as she testified to having her seatbelt on at the time of the collision with defendant Terrana’s vehicle (see *Desola v Mads, Inc.*, 213 AD2d 445, 623 NYS2d 889 [2d Dept 1995]). Accordingly, plaintiff has established her entitlement to the dismissal of the first and fourth affirmative defenses of defendant Terrana. Plaintiff, however, failed to establish that she mitigated her damages, and thus this affirmative defense remains.

Finally, the court turns to the branches of plaintiff’s motion seeking dismissal of the affirmative defenses of defendant Irizarry. Plaintiff has established her prima facie entitlement to dismissal of the

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affirmative defense of failure to wear a seatbelt, as she testified to having her seatbelt on when her vehicle was struck by defendant Irizarry's vehicle (*see Desola v Mads, Inc.*, 213 AD2d 445, 623 NYS2d 889). Plaintiff's submissions also establish, prima facie, that the doctrine of assumption of the risk is inapplicable in this case (*see Mata v Road Masters Leasing Corp.*, 128 AD3d 780, 10 NYS3d 124). Plaintiff has not, however, established her freedom from comparative fault as a matter of law. "[A] driver with a right-of-way also has a duty to use reasonable care to avoid a collision" (*Rohn v Aly*, 167 AD3d 1054, 1056, 91 NYS3d 256 [2d Dept 2018]). Plaintiff testified that she observed defendant Irizarry's vehicle prior to the impact, and that she observed that the vehicle had its turn signal activated. Even if she did have the right of way prior to the collision, she was still under a duty to use reasonable care to avoid a collision with defendant Irizarry (*see id.*). Therefore a triable issue of fact exists as to plaintiff's comparative negligence (*see id.*). Accordingly, plaintiff has established her entitlement to the dismissal of the second affirmative defense of defendant Irizarry to the extent that it alleges assumption of the risk, but to the extent that it alleges comparative negligence or culpable conduct, it remains. Plaintiff has also established her prima facie entitlement to dismissal of defendant Irizarry's fifth affirmative defense of failure to wear a seatbelt. Plaintiff has not demonstrated her prima facie entitlement to dismissal of defendant Irizarry's third affirmative defense of failure to mitigate damages, and so this defense remains.

Dated: May 9, 2024
Riverhead, New York



VINCENT J. MARTORANA, J.S.C.

____ FINAL DISPOSITION X NON-FINAL DISPOSITION