

Duque v Candelaria
2024 NY Slip Op 35523(U)
March 13, 2024
Supreme Court, Suffolk County
Docket Number: Index No. 619857/2021
Judge: Frank A. Tinari
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SHORT FORM ORDER

INDEX No. 619857/2021
 CAL. No. 202301606MV

SUPREME COURT - STATE OF NEW YORK
 I.A.S. PART 50 - SUFFOLK COUNTY

PRESENT:

Hon. FRANK A. TINARI
 Justice of the Supreme Court

MOTION DATE 12/12/23
 ADJ. DATE _____
 Mot. Seq. # 001 MotD

-----X
 ALEJANDRO DUQUE,

Plaintiff,

- against -

DAVID C. CANDELARIA and EMMA M.
 CANDELARIA,

Defendants.
 -----X

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Upon the following papers read on this e-filed motion for summary judgment, etc.: Notice of Motion for Summary Judgment and supporting papers by plaintiff, filed November 8, 2023; Answering Affidavits, Opposition, and supporting papers by defendants, filed December 5, 2023; Replying Affirmation by plaintiff, filed on December 7, 2023; it is

ORDERED that the motion by plaintiff Alejandro Duque for an order granting summary judgment in his favor on the issue of defendants' liability and dismissing certain affirmative defenses is granted in part, and is otherwise denied.

Plaintiff Alejandro Duque commenced this action to recover damages for personal injuries he allegedly sustained as a result of a motor vehicle collision that occurred on June 3, 2021, on Riverleigh Avenue in the Town of Southampton, when a vehicle operated by defendant Emma Candelaria and owned by David Candelaria struck the rear of plaintiff's vehicle, which was stopped for traffic.

Plaintiff now moves for an order granting summary judgment in his favor on the issue of defendants' liability, arguing defendant's negligence was the sole proximate cause of the accident. He also seeks an order dismissing defendant's first, second, fourth, and seventh affirmative defenses. The first affirmative defense alleges failure to use a seatbelt, the second alleges failure to state a cause of action, the fourth alleges contributory negligence, and the seventh alleges the emergency doctrine. In

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support of his motion, plaintiff submits, inter alia, his own affidavit, a certified copy of the police accident report, the pleadings, and the deposition transcripts of plaintiff and defendant Emma Candelaria. Defendants argue in opposition, inter alia, that summary judgment should be denied, because issues of fact exist as to liability, including how the accident happened, and that the affirmative defense of comparative negligence was properly pled. In support of their opposition, defendants submit an attorney affirmation.

Plaintiff states in his affidavit that on June 3, 2021, he was the seat-belted driver of a 2013 Nissan Sentra traveling on Riverleigh Avenue in Riverhead, New York. He states that while he was driving, he had to bring his vehicle to a stop behind another stopped vehicle, and that the distance between his vehicle and the vehicle in front of him was approximately eight feet. He further states that after he was stopped for approximately three seconds, he was hit in the rear by defendants' vehicle. He states the impact was heavy and pushed his vehicle into the preceding vehicle, and caused the airbags to deploy.

Defendant Emma Candelaria testified at her deposition that she was driving on Riverleigh Avenue in heavy, stop-and-go traffic. She stated that she could not remember whether the car in front of her was moving at the time of impact, and that her foot was hovering over the brake at the time the impact occurred. Defendant Emma Candelaria stated that at the time the impact occurred, her vehicle was reentering the lane from the shoulder, that her vehicle had been on the shoulder of the roadway because there was an uninvolved vehicle with its hazard lights activated, and that traffic was driving around that uninvolved vehicle.

To establish prima facie entitlement to judgment as a matter of law, a movant must come forward with evidentiary proof, in admissible form, demonstrating the absence of any material issues of fact (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 508 NYS2d 923 [1986]; *Sillman v Twentieth Century Fox Film Corp.*, 3 NY2d 395, 165 NYS2d 498 [1957]). The failure to make such a showing requires a denial of the motion, regardless of the sufficiency of the opposing papers (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 487 NYS2d 316 [1985]). If such a showing is made, the burden shifts to the party opposing the motion for summary judgment who must proffer evidence in admissible form sufficient to establish the existence of any material issue of fact which requires a trial (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 508 NYS2d 923; *Zuckerman v City of New York*, 49 NY2d 557, 427 NYS2d 595 [1980]).

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 (*see Lopez v Dobbins*, 164 AD3d 776, 79 NYS3d 566 [2d Dept 2018]; *Russell v J.L. Femia Landscape Servs., Inc.*, 161 AD3d 1119, 77 NYS3d 121 [2d Dept 2018]). "A rear-end collision with a stopped or stopping vehicle creates a prima facie case of negligence against the operator of the rear vehicle, requiring that operator to rebut the inference of negligence by providing a non-negligent explanation" (*Ordonez v Lee*, 177 AD3d 756, 757, 110 NYS3d 339 [2d Dept 2019]; *see Nikolic v City-Wide Sewer & Drain Serv. Corp.*, 150 AD3d 754, 53 NYS3d 684 [2d Dept 2017]). Stops which are foreseeable under prevailing traffic conditions, even if sudden and frequent, must be anticipated by the following driver, who had a duty to maintain a safe distance between his or her vehicle and the preceding

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vehicle (*Quintanilla v Mark*, 210 AD3d 713, 177 NYS3d 687 [2d Dept 2022]; *Mahmud v Ouyang*, 208 AD3d 861, 174 NYS3d 721 [2d Dept 2022]; *Cantanzaro v Ederly*, 172 AD3d 995, 101 NYS3d 170 [2d Dept 2019]). If the driver of the offending vehicle cannot come forward with evidence to rebut the inference of negligence, the driver of the stopped or stopping vehicle is entitled to summary judgment on the issue of liability (see *Tsyganash v Auto Mall Fleet Mgt., Inc.*, 163 AD3d 1033, 83 NYS3d 74 [2d Dept 2018]; *Cortes v Whelan*, 83 AD3d 763, 922 NYS2d 419 [2d Dept 2011]). Moreover, in a chain-reaction collision, the rearmost driver is presumptively responsible for the collision (see *Cabrera v Thomas*, 193 AD3d 406, 145 NYS3d 42 [1st Dept 2021]; *Chang v Rodriguez*, 57 AD3d 295, 869 NYS2d 427 [1st Dept 2008]; *Ferguson v Honda Lease Trust*, 34 AD3d 356, 826 NYS2d 10 [1st Dept 2006]; *De La Cruz v Ock Wee Leong*, 16 AD3d 199, 791 NYS2d 102 [1st Dept 2005]; *Mustafaj v Driscoll*, 5 AD3d 138, 773 NYS2d 26 [1st Dept 2004]). A plaintiff is no longer required to show the absence of his or her comparative fault to establish a prima facie case of entitlement to summary judgment on the issue of a defendant's liability (see *Rodriguez v City of New York*, 31 NYS3d 312, 76 NYS3d 898 [2018]).

Plaintiff's submission establishes a prima facie showing of entitlement to summary judgment on the issue of defendants' liability (see *Ordonez v Lee*, 177 AD3d 756, 110 NYS3d 339; *Lopez v Dobbins*, 164 AD3d 776, 79 NYS3d 566; *Tsyganash v Auto Mall Fleet Mgt., Inc.*, 163 AD3d 1033, 83 NYS3d 74). Plaintiff's affidavit states that he brought his vehicle to a stop while driving on Riverleigh Avenue, and that he was stopped approximately eight feet behind the vehicle preceding him for approximately three seconds, when his vehicle was hit in the rear by defendants' vehicle, causing his vehicle to strike the preceding vehicle. Plaintiff further submits a certified copy of the police accident report (*Bing Kang Chen v S&F Travel, Inc.*, 219 AD3d 1477, 196 NYS3d 510 [2d Dept 2023]; *Delgado v Lachman*, 219 AD3d 580, 194 NYS3d 161 [2d Dept 2023]; *Yassin v Blackman*, 188 AD3d 62, 131 NYS3d 53 [2d Dept 2020]), which reflects that defendant Emma Candelaria was the operator of the second vehicle involved in the accident and that defendant David Candelaria is the owner of said vehicle. The police report also contains an admission by defendant Emma Candelaria that traffic was going around an uninvolved vehicle stopped in the southbound lane of travel, that she looked at the uninvolved vehicle while passing, that when she looked back at traffic, she observed it had suddenly stopped, and that she was unable to stop her vehicle before colliding with the rear of plaintiff's vehicle (see *Jackson v Donien Trust*, 103 AD3d 851, 962 NYS2d 267 [2d Dept 2013]; *Scott v Kass*, 48 AD3d 785, 851 NYS2d 649 [2d Dept 2008]).

Defendants now bear the burden of rebutting the inference of negligence by providing a non-negligent explanation for the collision (see *Ordonez v Lee*, 177 AD3d 756, 110 NYS3d 339 [2d Dept 2019]; see *Nikolic v City-Wide Sewer & Drain Serv. Corp.*, 150 AD3d 754, 53 NYS3d 684 [2d Dept 2017]). Defendants' argument that plaintiff's vehicle stopped quickly, and that defendant did not see the impact between the plaintiff's vehicle and the preceding vehicle, is insufficient to rebut the presumption of defendants' negligence, and does not, standing alone, provide a non-negligent explanation for defendant or raise a triable issue of fact as to whether plaintiff was comparatively at fault (see *Lopez v Dobbins*, 164 AD3d 776, 79 NYS3d 566; *Comas-Bourne v City of New York*, 146 AD3d 855, 45 NYS3d 182 [2d Dept 2017]). Although plaintiff's and defendant Emma Candelaria's statements regarding the circumstances surrounding the accident differ in some respects, defendant Emma Candelaria admitted to looking away from traffic at an uninvolved vehicle on the side of the road, and

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that traffic at that time was “stop-and-go.” Even accepting defendant Emma Candelaria’s version of events surrounding the accident, her statements and testimony establish that her failure to maintain a reasonably safe distance between her vehicle and plaintiff’s vehicle was the sole proximate cause of the accident (*see Lopez v Dobbins*, 164 AD3d 776, 79 NYS3d 566; *Russell v J.L. Femia Landscape Servs., Inc.*, 161 AD3d 1119, 77 NYS3d 121 [2d Dept 2018]). Therefore, plaintiff’s motion for summary judgment in his favor on the issue of liability is granted.

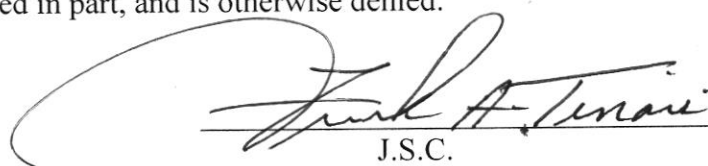
Plaintiff also seeks dismissal of defendants’ affirmative defenses of failure to use a seatbelt, failure to state a cause of action, contributory negligence, and applicability of the emergency doctrine. When seeking dismissal of an affirmative defense, the plaintiff bears the burden of demonstrating such defense is without merit as a matter of law (*see Edwards v Walsh*, 169 AD3d 865, 94 NYS 3d 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]).

Plaintiff established, prima facie, that he did not engage in any culpable conduct that contributed to the accident, and therefore, defendant’s fourth affirmative defense alleging culpable conduct and contributory negligence by plaintiff is inapplicable to the facts of this case and must be dismissed (*see Xia v Zeng*, 219 AD3d 914, 915, 195 NYS3d 707 [2d Dept 2023]). Moreover, plaintiff established, prima facie, that the emergency doctrine is inapplicable to this case (*see Ordonez v Lee*, 177 AD3d 756, 757, 110 NYS3d 339 [2d Dept 2019]; *Shebab v Powers*, 150 AD3d 918, 54 NYS3d 104 [2d Dept 2017]; *Sass v Ambu Trans., Inc.*, 238 AD2d 570, 657 NYS2d 69 [2d Dept 1997]), and that he was wearing his seatbelt at the time of the accident (*see Desola v Mads, Inc.*, 213 AD2d 445, 623 NYS2d 889 [2d Dept 1995]). Accordingly, dismissal of defendants’ first, fourth, and seventh affirmative defenses is warranted.

Finally, plaintiff’s application for a dismissal of defendants’ second affirmative defense alleging failure to state a cause of action is denied, as this amounts to an endeavor by plaintiff to test the sufficiency of his own claim (*see Ochoa v Townsend*, 209 AD3d 867, 177 NYS3d 81 [2d Dept 2022]; *Butler v Catinella*, 58 AD3d 145, 868 NYS2d 101 [2d Dept 2008]).

Accordingly, plaintiff’s motion is granted in part, and is otherwise denied.

Dated: 3/13/24


J.S.C.

HON. FRANK A. TINARI

___ FINAL DISPOSITION X NON-FINAL DISPOSITION