

Boreland v Perez
2024 NY Slip Op 35615(U)
December 16, 2024
Supreme Court, Westchester County
Docket Number: Index No. 58201/2024
Judge: Paul I. Marx
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SUPREME COURT STATE OF NEW YORK
COUNTY OF WESTCHESTER
HON. PAUL I. MARX, J.S.C.

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.

-----X
ANGELIQUE BORELAND,

Plaintiff,

DECISION AND ORDER

-against-

Index No.: 58201/2024

ALFREDO PEREZ and BENJAMIN PEREZ,

Motion Date: Sept. 11, 2024
Motion Seq. No. 1

Defendants.
-----X

The papers filed electronically on NYSCEF as documents numbered 10 through 24 were read on Plaintiff's motion for partial summary judgment on the issue of liability.

Upon the foregoing papers, it is ORDERED that the motion is disposed as follows.

BACKGROUND

This personal injury action arises out of a motor vehicle accident that occurred on the Hutchinson River Parkway in Scarsdale, New York on May 15, 2023. Plaintiff Angelique Boreland alleges that the accident occurred when a vehicle operated by Defendant Alfredo Perez, and owned by Defendant Benjamin Perez, struck her vehicle from behind. At the time of impact, she was gradually slowing down to stop behind the vehicle in front of her while in rush hour traffic. Plaintiff alleges that she suffered serious injuries as a result of the collision.

On March 7, 2024, Plaintiff commenced the action by filing the Summons and Complaint.

On May 9, 2024, Defendants submitted their answer with twelve affirmative defenses.

On June 25, 2024, Plaintiff filed the instant motion for partial summary judgment on the issue of liability.

DISCUSSION

CPLR §3212 provides that a motion for summary judgment "shall be granted if, upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party" such that there

are no triable issues of fact. CPLR §3212(b); *Roos v King Construction*, 179 AD3d 857, 859 [2nd Dept 2020]; *Zuckerman v City of New York, et al.*, 49 NY2d 557 [1980]. The Court is required to view the evidence “in the light most favorable to the nonmoving party, and all reasonable inferences must be resolved in favor of the nonmoving party.” *Santiago v Joyce*, 127 AD3d 954 [2nd Dept 2015] (citing *Green v Quincy Amusements, Inc.*, 108 AD3d 591, 592; *Pearson v Dix McBride, LLC*, 63 AD3d 895).

The burden is on the moving party to establish “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.” *Jacobsen v New York City Health & Hosps. Corp.*, 22 NY3d 824, 833 [2014] (quoting *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324). “If the moving party meets this burden, the burden then shifts to the non-moving party to ‘establish the existence of material issues of fact which require a trial of the action.’” *Id.* (quoting *Vega v Restani Constr. Corp.*, 18 NY3d 499, 503). “The defendant has the burden of proof of affirmative defenses, which in effect assume the truth of the allegations of the complaint and present new matter in avoidance thereof.” *HSBC Bank USA Nat. Ass’n v Roumiantseva*, 39 Misc3d 1239(A) [Kings County Sup. Ct. 2013], *aff’d*, 130 AD3d 983 [2nd Dept 2015] (quoting 57 NY Jur. 2d Evidence and Witnesses 165).

There is a well settled proposition that “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 moving vehicle, requiring the operator of that vehicle to come forward with a non-negligent explanation for the accident.” *Velasquez v Denton Limo Inc.*, 7 AD3d 787, 788 [2nd Dept 2004]; *see also Merino v Tessel*, 166 AD3d 760 [2nd Dept 2018].

In support of Plaintiff’s motion, she submits the pleadings, her attorney’s affirmation, her own affidavit, and a certified copy of the police accident report. In her affirmation, Plaintiff attests to the fact that she was driving below the speed limit in “stop and go” traffic during rush hour, and that she was stopping her vehicle when Defendants’ vehicle hit hers in the rear. This is sufficient to establish Plaintiff’s prima facie entitlement to summary judgment on the issue of liability. Having established her right to summary judgment, the burden shifted to Defendant to show that a triable issue of fact exists. *See Zuckerman, supra*.

Defendants contend that the police accident report submitted by Plaintiff creates a triable issue of fact. Specifically, Defendants assert that the “accident description/officer’s notes” on the

police accident report states “operator of [Defendants’ vehicle] stated [Plaintiff’s vehicle] stopped short and he did not have enough time to avoid the accident”. Defendants argue that this establishes a triable question of fact with respect to whether Defendants have a non-negligent explanation for the accident, *i.e.*, that Plaintiff may have stopped short and caused the collision.

“Conclusory assertions of a sudden and unexpected stop are insufficient to rebut the inference of negligence”; especially in the case of “vehicle stops which are foreseeable under the prevailing traffic conditions”. *Shamah v Richmond County Ambulance Service, Inc.*, 279 AD2d 564, 565 [2nd Dept 2001]; *see also Le Grand v Silberstein*, 123 AD3d 773 [2nd Dept 2014]. Defendants do not submit an affidavit from Defendant Alfredo Perez, who was operating the vehicle at the time of the accident, attesting to the fact that Plaintiff stopped short, or asserting any other facts to propose a non-negligent reason that he rear-ended her vehicle. Therefore, the only “evidence” of Defendants’ alleged lack of negligence is Defendant Alfredo Perez’s account of the accident as recorded by the reporting officer in the police accident report. Defendant’s statements to the police officer are conclusory and therefore insufficient to raise a triable issue of fact as to whether there was a non-negligent reason for the rear-end collision.

Defendants’ contention that the motion must be denied because it is premature, given that discovery is outstanding and the parties’ examinations before trial have not been completed, is without merit. Defendants argue that they have not had an opportunity to depose Plaintiff and they have “not obtained testimony that, upon information and belief, may serve to create triable issues of fact”. NYSCEF Doc. No. 23 ¶ 12. This does not “demonstrate ‘that discovery might lead to relevant evidence or that the facts essential to justify opposition to the motion were exclusively within the knowledge and control of the movant’”, such that the motion must be denied. *Le Grand*, 123 AD3d at 775 (quoting *Williams v Spencer-Hall*, 113 AD3d 759, 760 [2nd Dept 2014]). “The mere hope or speculation that evidence sufficient to defeat a motion for summary judgment may be uncovered during the discovery process is insufficient to deny the motion.” *Lopez v WS Distribution, Inc.*, 34 AD3d 759, 760 [2nd Dept 2006].

Plaintiff requests that the Court strike Defendants’ affirmative defense for culpable conduct. Defendants argue that this request must be denied because they have not had the opportunity to obtain her deposition testimony and determine whether she caused or contributed to the accident. Defendants have the burden of proving their affirmative defenses. *Roumiantseva*,

supra. As with Defendants' contention on liability, they cannot avoid their affirmative defense being stricken based solely on their conclusory statements. Defendants cannot sustain their affirmative defense of comparative negligence.

Accordingly, Plaintiff is entitled to summary judgment on the issue of liability, and Defendants' affirmative defense for culpable conduct/comparative negligence is stricken.

CONCLUSION

It is hereby ORDERED that Plaintiff's motion for partial summary judgment on this issue of liability is granted.

The parties shall appear before the undersigned for a status conference on a date and time to be set by the Part Clerk.

The foregoing constitutes the Decision and Order of the Court.

Dated: December 16, 2024
White Plains, New York

ENTER

A handwritten signature in black ink, appearing to be "Paul I. Marx", is written over a horizontal line.

HON. PAUL I. MARX, J.S.C.