

Liberati v Teitel Bros, Inc.
2024 NY Slip Op 35616(U)
December 17, 2024
Supreme Court, Westchester County
Docket Number: Index No. 58993/2024
Judge: David F. Everett
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To commence the statutory time 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.

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER**

-----X
CHRISTINA L. LIBERATI,

INDEX NO. 58993/2024

Plaintiff,

DECISION/ORDER

Motion Seq. 1

-against-

TEITEL BROS, INC., and RAYMOND J. TRUJILLO,

Defendants.

-----X
EVERETT, J.

Upon consideration of the papers filed in the New York State Courts Filing System (NYSCEF) Doc Nos. 9-26, relative to the motion by plaintiff for partial summary judgment on the issue of liability, to strike defendants' affirmative defense asserting culpable conduct, and an immediate trial on damages, the Court determines as follows:

Background and Arguments

In the affirmation in support (NYSCEF Doc No. 10), plaintiff's attorney sets forth the following as background:

2. This lawsuit arises from a motor-vehicle collision which occurred on December 20, 2023. Specifically, Plaintiff sustained personal injuries when the vehicle operated by her was rear ended by a vehicle owned and operated by Defendants, TEITEL BROS, INC., and RAYMOND J. TRUJILLO (collectively hereinafter "Defendants"). The accident occurred on Interstate 287 at or near 10 feet from MPM 3.1, Town of Greenburgh, County of Westchester, State of New York, while traveling westbound.

3. At the time of the subject collision, Plaintiff was lawfully stopped slowing down for traffic in front when Defendants' vehicle collided with the rear portion of Plaintiff's vehicle. Because of the heavy impact, Plaintiff sustained serious and permanent injuries.

In her affidavit (NYSCEF Doc No. 13), plaintiff avers:

5. At the time of the collision, my seatbelt was engaged and remained engaged after the accident occurred.
6. At the time of the collision: (i) the roads were dry; (ii) the weather was clear; and (iii) visibility was clear.
7. Interstate 287 is a highway with three lanes going eastbound and three lanes going westbound in the area where the subject collision occurred.
8. I was driving westbound.
9. At the time of the accident, I was driving and maintained my vehicle straight, within the lanes, and was not attempting to change lanes.
10. At the time of the collision, I saw traffic in front of me and began to gradually slow down when Defendant RAYMOND J. TRUJILLO rear-ended my vehicle....
12. I began slowing down when I saw the vehicle in front of me slow down.
13. Upon slowing down gradually upon witnessing traffic ahead, Defendant RAYMOND J. TRUJILLO struck my vehicle, it was sudden, unexpected, and without warning. I felt one extreme heavy impact to the rear portion of my vehicle. Due to the force of the violent impact, my vehicle was pushed forward and struck the vehicle in front of me.
14. I later learned that the vehicle that struck the rear portion my vehicle driven by Defendant RAYMOND J. TRUJILLO 's was owned by Defendant TEITEL BROS, INC.
15. Under the aforesaid circumstances, including the fact that Defendant RAYMOND J. TRUJILLO unexpectedly struck my vehicle while I was gradually stopping, there was nothing that I could have done to avoid being struck by the Defendants. Further, I am not responsible for and in no way could have prevented the collision. The collision was completely the fault of the Defendants.

The certified copy of the police report (NYSCEF Doc No. 14) states: “V3 was traveling right lane westbound on I-287, V2 [plaintiff] was also traveling westbound behind V3, V3 slows for traffic ahead. V1 [defendants] fails to slow in time striking V2 [plaintiff] is then pushed into V3. No injuries, no tows.” Accident photos show the damage to the back of plaintiff’s motor vehicle (NYSCEF Doc No. 16).

In the affirmation in opposition (NYSCEF Doc No. 21), defendants’ attorney notes that plaintiff did not file a statement of material facts (NYCRR § 202.8-g); and argues that discovery has not been completed; that defendant driver Raymond J. Trujillo (Trujillo) asserts plaintiff stopped suddenly; that there are no affidavits from the non-party witnesses Christopher Collins

and Omar Calixto; that the responding officer was not present at the time of the accident; that at the time of the accident plaintiff indicated she was not injured and refused medical attention; that plaintiff is at fault for “suddenly slamming on her brakes and colliding with the vehicle in front of her, thereby causing the collision by giving Defendant TRUJILLO insufficient time to apply his own brakes and necessitating the depositions”; that in an MV-104 Report (NYSCEF Doc No. 23), prepared and signed by Trujillo, he stated: “I was traveling west bound on I-287 when the car in front of me suddenly braked and ran into car in front”; and that there is a question of fact regarding plaintiff’s sudden stop.

In his affirmation (NYSCEF Doc No. 22), Trujillo avers:

5. I was traveling in the right lane on westbound Interstate 287 at approximately 40 MPH and was accompanied by my co-worker, OMAR CALIXTO.

6. A 2020 Ford Edge was traveling in front of my vehicle in the right lane, which I later learned was operated by Plaintiff, CHRISTINA L. LIBERATI....

8. As we were traveling around a curve in the roadway, I observed Plaintiff, CHRISTINA L. LIBERATI, strike the rear “of the 2019 Nissan operated by CHRISTOPHER J. COLLINS after suddenly and unexpectedly slamming on her brakes.

9. As a result of Plaintiff, CHRISTINA L LIBERATI’S, sudden and unexpected application of her brakes and her subsequent impact with the 2019 Nissan operated by CHRISTOPHER J. COLLINS, an accident occurred between the 2020 Ford Edge operated by Plaintiff CHRISTINA L. LIBERATI and the 2018 Hino box truck I was operating.

In the affirmation in reply (NYSCEF Doc No. 26), plaintiff’s attorney argues that defendants fail to proffer a non-negligent excuse for crashing into the rear of plaintiff’s car; that Trujillo was cited with violating VTL 1129 (a) by the police who responded to the scene; that the MV104 is inadmissible hearsay; and that the motion is premature because discovery is needed.

Discussion

Summary judgment is appropriate when there are no genuine triable issues of material fact between the parties and the movant is entitled to judgment as a matter of law (CPLR 3212; *Alvarez*

v Prospect Hosp., 68 NY2d 320, 326-327 [1986]). The movant must make 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 (*Alvarez v Prospect Hosp.*, 68 NY2d at 324; *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). A defendant's prima facie showing is governed by the allegations of liability made in the plaintiff's pleadings (*see Beiner v Village of Scarsdale*, 149 AD3d 679, 680 [2d Dept 2017]). To defeat a motion for summary judgment, the opposing party must produce evidentiary proof in admissible form sufficient to require a trial of material questions of fact on which the opposing claim rests (*Zuckerman v City of New York*, 49 NY2d at 562; *Moore v 3 Phase Equestrian Ctr., Inc.*, 83 AD3d 677, 679 [2d Dept 2011]). On the motion for summary judgment, the facts appearing in the movant's papers are deemed to be admitted by an opposing party unless controverted by admissible proof (*see Kuehne & Nagel v Baiden*, 36 NY2d 539, 544 [1975]; *Lambos v Weintraub*, 256 AD2d 446, 447 [2d Dept 1998]).

In *McBride v City of New York* (208 AD3d 578, 579 [2d Dept 2022]), the Court instructed: “ ‘A plaintiff in a negligence action moving for summary judgment on the issue of liability must establish, prima facie, that the defendant breached a duty owed to the plaintiff and that the defendant's negligence was a proximate cause of the alleged injuries’ (*Tsyganash v Auto Mall Fleet Mgt., Inc.*, 163 AD3d 1033, 1033-1034 [2018]; *see Rodriguez v City of New York*, 31 NY3d 312 [2018]).” In *Rodriguez v City of New York* (31 NY3d at 324-325), the Court stated: “To be entitled to partial summary judgment a plaintiff does not bear the double burden of establishing a prima facie case of defendant's liability and the absence of his or her own comparative fault.”

The Court in *Yassin v Blackman* (188 AD3d 62, 68 [2d Dept 2020]), explained:

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 (*see Rodriguez v City of New York*, 31 NY3d 312 [2018]; *Buchanan v Keller*, 169 AD3d 989, 991 [2019]). “ ‘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’ ” (*Witonsky v New York City Tr. Auth.*, 145 AD3d 938, 939 [2016], quoting *Nsiah-Ababio v Hunter*, 78 AD3d 672, 672 [2010]; see Vehicle and Traffic Law § 1129 [a]). 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 nonnegligent explanation for the collision (see *Tutrani v County of Suffolk*, 10 NY3d 906 [2008]; *Buchanan v Keller*, 169 AD3d at 991).

In *Ortiz v Fage USA Corp.* (69 AD3d 914 [2d Dept. 2010]), the Court stated: “ ‘A rear-end collision with a stopped or stopping vehicle creates a prima facie case of negligence with respect to the operator of the moving vehicle, and imposes a duty on the operator of the moving vehicle to come forward with an adequate nonnegligent explanation for the accident’ (*Arias v Rosario*, 52 AD3d 551, 552 [(2d Dept) 2008]).” (*See Genao v Cassetta*, 214 AD3d 626, 627 [2d Dept 2023]; *Balgobin v McKenzie*, 213 AD3d 893, 893-894 [2d Dept 2023]; *Toala v EAN Holdings, LLC*, 191 AD3d 724, 726 [2d Dept 2021]; Vehicle and Traffic Law § 1129 [a].)

In *Hearn v Manzolillo* (103 AD3d 689, 690 [2d Dept 2013]), the Court explained:

‘ ‘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’ ’ (*Fajardo v City of New York*, 95 AD3d 820, 820-821 [(2d Dept) 2012], quoting *Ortiz v Hub Truck Rental Corp.*, 82 AD3d 725, 726 [(2d Dept) 2011]; see *Taing v Drewery*, 100 AD3d 740 [(2d Dept) 2012]), and 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 (see *Ramos v TC Paratransit*, 96 AD3d 924, 925 [(2d Dept) 2012]; *Fajardo v City of New York*, 95 AD3d at 821). If the operator of the rear vehicle cannot come forward with evidence to rebut the inference of negligence, the operator of the lead vehicle is entitled to summary judgment on the issue of liability (see *Cortes v Whelan*, 83 AD3d 763 [2011]; *Staton v Ilic*, 69 AD3d 606 [(2d Dept) 2010]).

Focusing on a sudden stop, the Court in *Ramirez v Konstanzer* (61 AD3d 837, 837-838 [2d Dept 2009]) stated:

“ ‘A claim that the driver of the lead vehicle made a sudden stop, standing alone, is insufficient to rebut the presumption of negligence’ ” (*Jumandeo v Franks*, 56 AD3d at 615, quoting *Russ v Investech Sec.*, 6 AD3d 602 [2004]; see *Arias v*

Rosario, 52 AD3d at 552; *Johnston v Spoto*, 47 AD3d 888 [2008]; *Campbell v City of Yonkers*, 37 AD3d at 751; *Neidereger v Misuraca*, 27 AD3d 537 [2006]; *Ayach v Ghazal*, 25 AD3d 742 [2006]). Thus, the defendant's contention, made in opposition to the plaintiffs' motion, that the plaintiff proceeded once the traffic light turned green but then suddenly stopped, did not rebut the inference of negligence by providing a nonnegligent explanation for the collision (*see Jumandeo v Franks*, 56 AD3d at 614-615; *Lundy v Llatin*, 51 AD3d 877 [2008]; *Russ v Investech Sec.*, 6 AD3d 602 [2004]).

In *Chepel v Meyers* (306 AD2d 235, 237 [2d Dept 2003]), the Court did state that “One of several nonnegligent explanations for a rear-end collision is a sudden stop of the lead vehicle (*see Power v Hupart, supra; Filippazzo v Santiago*, 277 AD2d 419 [2000]; 8B NY Jur 2d, Automobiles and Other Vehicles § 952).” However, the facts in that action were that “the defendant came forward with a valid, nonnegligent explanation for the collision, namely, that Ivasyuk abruptly stopped his vehicle in the middle of a roadway despite the fact that traffic was moving. The defendant attempted to avoid the collision by applying her brakes and veering her vehicle to the left.”

Chepel v Meyers is distinguished in *Le Grand v Silberstein* (123 AD3d 773, 774 [2d Dept 2014]), where the Court stated: “However, ‘vehicle stops which are foreseeable under the prevailing traffic conditions, even if sudden and frequent, must be anticipated by the driver who follows, since he or she is under a duty to maintain a safe distance between his or her car and the car ahead’ (*Shamah v Richmond County Ambulance Serv.*, 279 AD2d 564, 565 [2001]; *see Gutierrez v Trillium USA, LLC*, 111 AD3d at 671; *Robayo v Aghaabdul*, 109 AD3d 892, 893 [2013]).” (*See Grier-Key v Lyons*, 195 AD3d 798, 799 [2d Dept 2021]; *Hasan v City of New York*, 183 AD3d 572, 573 [2d Dept 2020].)

With respect to the affirmative defenses, CPLR 1412 provides: “Culpable conduct claimed in diminution of damages, in accordance with section fourteen hundred eleven, shall be an affirmative defense to be pleaded and proved by the party asserting the defense. CPLR 1411 states

in part: “In any action to recover damages for personal injury ... the culpable conduct attributable to the claimant ..., including contributory negligence ..., shall not bar recovery, but the amount of damages otherwise recoverable shall be diminished in the proportion which the culpable conduct attributable to the claimant or decedent bears to the culpable conduct which caused the damages.”

In *Rodriguez v City of New York* (31 NY3d 312, 319 [2018]), the Court explained that “a plaintiff’s comparative negligence ‘shall not bar recovery’ and should only go to the diminution of damages recoverable by plaintiff.... [C]omparative negligence is not a defense to the cause of action of negligence, because it is not a defense to any element (duty, breach, causation) of plaintiff’s prima facie cause of action for negligence, and as CPLR 1411 plainly states, is not a bar to plaintiff’s recovery, but rather a diminishment of the amount of damages.”

In *Mora v Moore* (227 AD3d 802 [2d Dept 2024]), the Court stated: “In order to be entitled to summary judgment dismissing the defendants’ affirmative defenses alleging culpable conduct and comparative negligence, Lopez was required to establish her own freedom from comparative negligence (*see Crist v Rosenberger*, 219 AD3d 569, 571 [2023]; *Seizeme v Levy*, 208 AD3d 809, 810 [2022]; *Sapienza v Harrison*, 191 AD3d 1028, 1029 [2021]).”

Conclusion

Here, plaintiff shows a prima facie entitlement to summary judgment on liability because defendants’ assertion of a sudden stop under the facts in this action fail to proffer a non-negligent excuse for crashing into the rear of the motor vehicle driven by plaintiff.

With respect to defendants’ second affirmative defense that “any injuries and/or damages sustained by the Plaintiff ... were caused in whole or in part by the contributory negligence and/or culpable conduct of said Plaintiff...,” defendants raise questions of fact in relation to the diminution of damages including whether the manner in which plaintiff suddenly and

unexpectedly slamming on her brakes caused her injuries, and whether there is a causal connection between the accident and plaintiff's injuries as the police report states there were no injuries. While plaintiff's culpable conduct is not a basis for denial of summary judgment, the Court will not strike the affirmative defense and the issue can be litigated in relation to damages.

Accordingly, it is,

ORDERED that plaintiffs' motion, for partial summary judgment on the issues of liability is granted; and it is further

ORDERED that the branch of plaintiff's motion to strike defendants' affirmative defense of culpable conduct is denied; and it is further

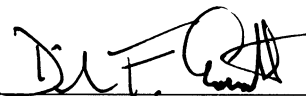
ORDERED that regarding discovery on the issue of damages, the parties shall submit the preliminary conference form in accordance with the Westchester Supreme Court Civil Case Management Rules; and it is further

ORDERED that following discovery, the Trial Assignment Part is directed to assign this matter to an appropriate Part for an assessment of damages upon receipt of a copy of this Decision and Order with notice of entry, the filing of a note of issue and a statement of readiness, and the payment of appropriate fees, if any.

The foregoing constitutes the Decision and Order of the Court.

Dated: White Plains, New York
December 17, 2024

ENTER:



HON. DAVID F. EVERETT, J.S.C.

Filed in NYSCEF