Suriel v Ortiz
2025 NY Slip Op 32196(U)
May 23, 2025
Supreme Court, Kings County
Docket Number: Index No. 520403/2024
Judge: Wavny Toussaint
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At an IAS Term, Part 70 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 23rd day of May, 2025.

P R E S E N T :
HON. WAVNY TOUSSAINT,
Justice.

IRIS SURIEL and JOSE ARAUJO PAULINO,

Plaintiff,

- against -

EDISON JAVIER ARCENTALES ORTIZ and GBL MECHANICAL INC.,

Defendants.

Index No.: 520403/2024

DECISION AND ORDER

The following papers numbered 1 to read herein:	Papers Numbered
Notice of Motion/Order to Show Cause/ and Affidavits (Affirmations) Annexed	13-15
Cross Motion and Affidavits (Affirmation) Annexed	
Answers/Opposing Affidavits (Affirmations)	26-27
Reply Affidavits (Affirmations)	31-32
Affidavit (Affirmation)	
Other Papers	

Upon the foregoing papers, plaintiffs' Iris Suriel ("Suriel") and Jose Araujo Paulino ("Paulino") move (Seq. 01) for an order pursuant to CPLR § 3212(b) and (c) seeking summary judgement against defendants Edison Javier Arcentales Ortiz ("Ortiz") and GBL Mechanical Inc. ("GBL") on the issue of liability in connection with the motor vehicle collision that occurred on July 13, 2023, and dismissal of defendants affirmative defenses of comparative negligence and failure to use a seatbelt.

BACKGROUND

This is an action arising out of a motor vehicle accident that occurred on July 12, 2023, at or near the intersection of Boston Road and Prospect Avenue in Bronx, NY. Plaintiff Suriel was operating her vehicle, with plaintiff Paulino a passenger. Plaintiffs allege that while stopped at a red light, their vehicle was rear-ended by a vehicle operated by defendant Ortiz. Plaintiffs further allege that defendant GBL is vicariously liable for the accident, as the registered owner of the vehicle driven by defendant Ortiz at the time of the accident. On June 30, 2025, plaintiffs commenced this action to recover damages for injuries they sustained as a result of the accident. On January 17, 2025, plaintiffs moved for summary judgment against defendants.[1] Defendants oppose the motion.

THE PARTIES CONTENTIONS

Plaintiffs move for summary judgment on the issue of liability, contending that the undisputed fact of a rear-end collision with a stopped vehicle establishes a prima facie case of negligence against the defendants. Plaintiffs further argue that there is no evidence indicating any contributory negligence on their part.

In opposition, defendants argue that plaintiffs' motion is premature, asserting that they have not yet had an adequate opportunity to conduct discovery. They contend that plaintiffs have failed to establish a prima facie case of negligence and argue that the issue of negligence is generally a question of fact, making it inappropriate for resolution on summary judgment. Defendants further contend that a rear-end collision does not automatically entitle the front vehicle to summary judgment, as liability can be contested

[1] Passenger Paulino has waived any potential conflict of interest with plaintiff driver Suriel in this action.

if the rear-ending party can demonstrate negligence on the part of the lead vehicle—a showing they claim cannot be made until discovery is completed. Additionally, defendants maintain that the Court should not strike their affirmative defense of comparative negligence. They argue that plaintiffs failed to demonstrate that this defense lacks merit as a matter of law.

In reply, plaintiffs argue that defendants' opposition is defective, noting the absence of an affidavit from a party with personal knowledge providing a non-negligent explanation for the collision. Plaintiffs emphasize that New York courts have consistently held that a rear-end collision with a stopped or stopping vehicle establishes a prima facie case of negligence against the rear vehicle, which must then offer a non-negligent explanation to rebut that presumption. Plaintiffs maintain that they are not required to disprove their own negligence in order to obtain summary judgment and argue that defendants' speculative assertion that discovery may yield evidence of comparative fault is insufficient to defeat the motion.

DISCUSSION

To prevail on a motion for summary judgment the movant must establish a cause of action or defense "'sufficiently to warrant the court . . . directing judgment' in his favor . . . and he must do so by tender of evidentiary proof in admissible form" (*Zuckerman v. City of New York*, 49 NY2d 557, 562 [1980]; *Lee v Huang*, 223 AD3d 790 [2d Dept 2024]). The opposing party must then "produce evidentiary proof in admissible form sufficient to require a trial of material questions of fact . . . or must demonstrate acceptable excuse for his failure to meet the requirement of tender in admissible form; mere conclusions,

expressions of hope or unsubstantiated allegations or assertions are insufficient" (*id.).* An attorney affirmation that is not based on personal knowledge is insufficient to defeat summary judgment, although it may be used to submit admissible exhibits (*id.* at 563).

It is well established that "[a] rear-end collision with a stopped automobile establishes a prima facie case of negligence on the part of the operator of the moving vehicle and imposes a duty on the operator of the moving vehicle to explain how the accident occurred" (*Leal v. Wolff*, 224 AD2d 392, 393 [2d Dept 1996]; see also *D'Avilar v Bao H. Lu*, 184 AD3d 774 [2d Dept 2020]; *Grant v Carrasco*, 165 AD3d 631 [2d Dept 2018]). "If the operator of the moving vehicle cannot come forward with any evidence to rebut the inference of negligence, the plaintiff may properly be awarded judgment as a matter of law []" (*Wolff* at 393.).

Here, plaintiffs have established a prima facie case of negligence through the submission of affidavits demonstrating that the vehicle was stopped at a red light when they were struck in the rear by defendants' vehicle. Plaintiffs also submitted as evidence an uncertified copy of plaintiff driver's MV-104 accident report in further support of their position. In opposition, defendants failed to submit any affidavits or evidence to rebut the presumption of negligence or to provide an alternative non-negligent explanation for the accident.

The affirmation submitted by defendants' attorney is insufficient to defeat plaintiffs' prima facie showing of negligence, as the affirmation is not based on the attorney's personal knowledge of the accident. Furthermore, without evidence supporting

comparative fault, defendants' affirmative defenses based on comparative negligence and failure to use a seatbelt are dismissed. Discovery may continue on the issue of liability.

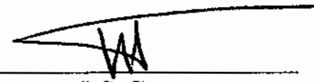
Accordingly, it is hereby

ORDERED that plaintiff's motion for summary judgment (Seq. 03) is granted as to liability and dismissal of the affirmative defenses.

This constitutes the decision and order of the Court.

For Clerks use only
MG___
MD____
Motion Seq.

E N T E R



J.S.C.

Hon. Wavny Toussaint
J.S.C.

KINGS COUNTY CLERK
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