

Beck v Colon
2025 NY Slip Op 35412(U)
January 8, 2025
Supreme Court, Suffolk County
Docket Number: Index No. 600963/2022
Judge: Frank A. Tinari
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SHORT FORM ORDER

INDEX No. 600963/2022SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 50 - SUFFOLK COUNTY**PRESENT:**Hon. FRANK A. TINARI
Acting Justice of the Supreme CourtMOTION DATE 6/11/24
ADJ. DATE 8/20/24
Mot. Seq. # 003 MG-----X
ILICIA BECK,

Plaintiff,

- against -

EDWIN COLON and PORTOROCKS
DELIVERY INC.,Defendants.
-----XBERGMAN BERGMAN FIELDS &
LAMONSOFF, LLP
Attorneys for Plaintiff
801 S. Broadway
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Attorneys for Defendants
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Upon the following papers read on this e-filed motion for partial summary judgment: Notice of Motion/Order to Show Cause and supporting papers by plaintiff, filed May 13, 2024; Notice of Cross-Motion and supporting papers ; Answering Affidavits and supporting papers by defendant, filed July 25, 2024; Replying Affidavits and supporting papers by plaintiff, filed August 19, 2024; Other ; it is

ORDERED that the motion by plaintiff for summary judgment on the issue of defendants' negligence and dismissing defendants' first, eighth and tenth affirmative defenses is granted.

This is an action to recover damages for injuries allegedly sustained by plaintiff as a result of a motor vehicle accident, which occurred on August 16, 2021, on the eastbound Southern State Parkway near exit 30, in Nassau County, New York. The accident allegedly occurred when a vehicle owned and operated by defendant Edwin Colon and registered to defendant's business Portorocks Delivery Inc., reversed into the vehicle driven by the plaintiff.

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Plaintiff moves for summary judgment on the issue of liability against defendants and for dismissal of defendants' first, eighth and tenth affirmative defenses, arguing, among other things, that defendants' negligence in violating Vehicle and Traffic Law § 1211(a) was the proximate cause of the accident. In support of her motion, plaintiff submits, among other things, copies of the pleadings and the deposition transcripts of the parties. In opposition, defendants contend that there are questions of fact as to plaintiff's contributory negligence.

The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence in admissible form to eliminate any material issues of fact from the case (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 508 NYS2d 923 [1986]; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 87 NYS2d 316 [1985]). Once the movant demonstrates a prima facie entitlement to judgment as a matter of law, the burden shifts to the party opposing the motion to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action (*see Vega v Restani Constr. Corp.*, 18 NY3d 499, 942 NYS2d 13 [2012]; *Alvarez v Prospect Hosp.*, 68 NY2d 320, 508 NYS2d 923; *Zuckerman v City of New York*, 49 NY2d 557, 427 NYS2d 595 [1980]; *see also* CPLR 3212 [b]). In deciding the motion, the court must view all evidence in the light most favorable to the nonmoving party (*see New York City Asbestos Litig. v Chevron Corp.*, 33 NY3d 20, 99 NYS3d 734 [2019]; *Stonehill Capital Mgt., LLC v Bank of the West*, 28 NY3d 439, 45 NYS3d 864 [2016]). To establish prima facie entitlement to judgment as a matter of law on the issue of liability, a plaintiff is no longer required to show freedom from comparative fault (*Rodriguez v City of New York*, 31 NY3d 312, 76 NYS3d 898 [2018]; *see Liu v Lowe*, 173 AD3d 946, 102 NYS3d 713 [2d Dept 2019]; *Bloechle v Heritage Catering, Ltd.*, 172 AD3d 1294, 101 NYS3d 424 [2d Dept 2019]; *Catanzaro v Edery*, 172 AD3d 995, 101 NYS3d 170 [2d Dept 2019]).

"[A] vehicle shall not back the same unless such movement can be made with safety and without interfering with other traffic" (Vehicle and Traffic Law § 1211 (a)). "A violation of the Vehicle and Traffic Law constitutes negligence as a matter of law" (*Shanyou Liu v Joerg*, 223 AD3d 762, 203 NYS3d 388 [2d Dept 2024]; *Garcia v Verizon N.Y., Inc.*, 10 AD3d 339, 781 NYS2d 93 [1st Dept 2004]; *Pressner v Serrano*, 260 AD2d 458, 688 NYS2d 227 [2d Dept 1999]).

Plaintiff demonstrated her prima facie entitlement to judgment as a matter of law on the issue of defendants' liability (*see Shanyou Liu v Joerg*, 223 AD3d 762, 203 NYS3d 388; *Garcia v Verizon N.Y., Inc.*, 10 AD3d 339, 781 NYS2d 93; *Pressner v Serrano*, 260 AD2d 458, 688 NYS2d 227). Plaintiff states that her vehicle was traveling eastbound in the right lane of the Southern State Parkway behind the box truck operated by defendant Colon when the box truck stopped just before an overpass and then quickly reversed into the vehicle she was driving. Plaintiff testifies that she honked her horn but did not move her own vehicle because the collision happened quickly. The burden now shifts to defendants to raise a triable issue of fact as to whether there was a non-negligent explanation for the collision (*see Bloechle v Heritage Catering, Ltd.*, 172 AD3d 1294, 101 NYS3d 424; *Catanzaro v Edery*, 172 AD3d 995, 101 NYS3d 170; *Auguste v Jeter*, 167 AD3d 560, 88 NYS3d 509). In opposition, defendants failed to submit evidence offering a non-negligent explanation for the collision (*see Salama v Piccirillo*, 223 AD3d 692, 203 NYS3d 169; *Singh v Jervis*, 222 AD3d 900, 202 NYS3d 260).

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The court now turns to the remaining portion of plaintiff's motion. When moving to dismiss an affirmative defense, "the plaintiff bears the burden of demonstrating that the affirmative defenses 'are without merit as a matter of law because they either do not apply under the factual circumstances of [the] case, or fail to state a defense'" (*Lewis v US Bank N.A.*, 186 AD3d 694, 697, 130 NYS3d 22 [2d Dept 2020], quoting *Shah v Mitra*, 171 AD3d 971, 974, 98 NYS3d 197 [2d Dept 2019]; see *Wells Fargo Bank, N.A. v Rios*, 160 AD3d 912, 74 NYS3d 321 [2d Dept 2018]). In the context of 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" (*LG Funding, LLC v United Senior Props. of Olathe, LLC*, 181 AD3d 664, 665, 122 NYS3d 309 [2d Dept 2020], quoting *Bank of N.Y. v Penalver*, 125 AD3d 796, 797, 1 NYS3d 82 [2d Dept 2015]; see *Gonzalez v Wingate at Beacon*, 137 AD3d 747, 26 NYS3d 562 [2d Dept 2016]). Where there is any doubt regarding the availability of a defense, it should not be dismissed (see *Lewis v US Bank N.A.*, 186 AD3d 694, 130 NYS3d 22; *LG Funding, LLC v United Senior Props. of Olathe, LLC*, 181 AD3d 664, 122 NYS3d 309; *Shah v Mitra*, 171 AD3d 971, 98 NYS3d 197).

Although a plaintiff is no longer required to establish his or her freedom from comparative negligence to be entitled to summary judgment on the issue of liability, the issue of a plaintiff's comparative negligence may be determined in the context of a summary judgment motion where the plaintiff moves for summary judgment dismissing a defendants' affirmative defense alleging comparative negligence and culpable conduct on the part of the plaintiff (see *Tenezaca v State of New York*, 220 AD3d 959, 198 NYS3d 745 [2d Dept 2023]; *Jones v Zuo*, 220 AD3d 933, 198 NYS3d 734 [2d Dept 2023]). While the issue of proximate cause generally is a question for the fact finder to resolve, it may be determined as a matter of law where only one conclusion may be drawn from the established facts (see *Singleton v Summus*, 219 AD3d 1366, 196 NYS3d 484 [2d Dept 2023]; *Angelillo v Guerin*, 219 AD3d 556, 194 NYS3d 272 [2d Dept 2023]). Moreover, the emergency doctrine provides that "when an actor is faced with a sudden and unexpected circumstance which leaves little or no time for thought, deliberation or consideration, or causes the actor to be reasonably so disturbed that the actor must make a speedy decision without weighing alternative courses of conduct, the actor may not be negligent if the actions taken are reasonable and prudent in the emergency context" (*Rivera v New York City Tr. Auth.*, 77 NY2d 322, 327, 567 NYS2d 629 [1991], *rearg denied* 77 NY2d 990, 571 NYS2d 916 [1991]; see *Pappas v New York City Tr. Auth.*, 208 AD3d 890, 174 NYS3d 728 [2d Dept 2022]; *Fergile v Payne*, 202 AD3d 928, 163 NYS3d 216 [2d Dept 2022]). Where the purported emergency resulted from a party's own actions, it will not qualify as an emergency under the doctrine (*Freder v Costello Indus., Inc.*, 162 AD3d 984, 80 NYS3d 371 [2d Dept 2018]; *Shehab v Powers*, 150 AD3d 918, 54 NYS3d 104 [2d Dept 2017]). The emergency doctrine does not apply when a party encounters "a known, foreseeable hazard which he in fact observed enter his path prior to the accident" or where the party "fails to be aware of the potential hazards presented by traffic conditions, including stoppages caused by accident up ahead" (*Freder v Costello Indus., Inc.*, 162 AD3d 984, 986, 80 NYS3d 371, quoting *Cascio v Metz*, 305 AD2d 354, 356, 759 ANYS2d 502 [2d Dept 2003]).

Plaintiff demonstrated her prima facie entitlement to judgment as a matter of law dismissing the defendants' affirmative defense of comparative negligence. Plaintiff's submissions establish that she was not at fault in the happening of the accident (see *Salama v Piccirillo*, 223 AD3d 692, 203 NYS3d 169; *Singh v Jervis*, 222 AD3d 900, 202 NYS3d 260). Plaintiff testifies that she was operating her vehicle within her lane of travel when defendants' vehicle suddenly stopped and reversed, striking her vehicle in

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the process. Plaintiff further testifies that she took all steps possible to avoid the collision. In opposition, defendants fail to raise a triable issue of fact as to plaintiff's comparative fault (*see Salama v Piccirillo*, 223 AD3d 692, 203 NYS3d 169; *Singh v Jervis*, 222 AD3d 900, 202 NYS3d 260). Plaintiff also demonstrates her prima facie entitlement to judgment as a matter of law dismissing the defendants' affirmative defense of emergency doctrine. Plaintiff submits the transcript of the deposition testimony of defendant who testifies that he was aware that box trucks were not permitted on the Southern State Parkway, that he had mistakenly entered the parkway, and that once he realized that he was on the parkway, "he panicked and [] put the truck in reverse trying to get the truck to the grass." Defendants fail to raise a triable issue of fact in opposition.

Plaintiff's submissions were also sufficient to demonstrate, prima facie, entitlement to judgment as a matter of law dismissing defendants' tenth affirmative defense of failure to use a seat belt (*see Giwa v Bloom*, 154 AD3d 921, 62 NYS3d 527 [2d Dept 2017]). Plaintiff asserts that her seat belt was fastened at the time of the accident, without opposition of the defendants.

Accordingly, the motion of the plaintiff is granted.

Dated: _____

January 8, 2025


FRANK A. TINARI, A.J.S.C.

____ FINAL DISPOSITION X NON-FINAL DISPOSITION