

Jouissaint v Tucker
2025 NY Slip Op 35500(U)
February 26, 2025
Supreme Court, Nassau County
Docket Number: Index No. 605028/2023
Judge: Sarika Kapoor
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**SUPREME COURT: STATE OF NEW YORK
COUNTY OF NASSAU**

PRESENT: HON. SARIKA KAPOOR
ACTING JUSTICE OF SUPREME COURT

-----X
VANA JOUISSAINT,

Plaintiff,

-against-

KATHLEEN E. TUCKER and RONALD E. TUCKER, JR,

Defendants.
-----X

TRIAL/IAS PART 32
Index No.: 605028/2023

DECISION AND ORDER

Motion Seq. Nos.: 002, 003
Motion Submission Date:
03/22/2024

NYSCEF docs. 1, 3-5, and 12-16, 18, 21, 23-25, 27,32, 34-44, 46-47 were read and considered in deciding these motions.

Relief Requested

The plaintiff moves pursuant to CPLR 2221 for leave to reargue her prior motion for summary judgment on the issue of liability and for summary judgment dismissing the defendants' affirmative defenses, which prior motion was denied by decision and order of this Court entered June 18, 2024 (motion seq. 002).

The defendants move pursuant to extend the time to move for summary judgment (motion seq. 003).¹

Background

The plaintiff allegedly was injured when her vehicle was struck in the rear by a vehicle owned by the defendant Kathleen E. Tucker (hereinafter Kathleen) and operated by the defendant Ronald E. Tucker, Jr. (hereinafter Ronald). The plaintiff commenced this action to recover damages for personal injuries. The defendants filed an answer, denying the material allegations of the complaint and asserting eight affirmative defenses, including comparative fault.

In a decision and order entered June 18, 2024, this Court denied the plaintiff's prior motion for summary judgment on the issue of liability and for summary judgment dismissing the defendants' affirmative defenses (motion seq. 001). This Court determined that the plaintiff failed

¹ The defendants concede that the branch of their motion which is pursuant to 22 NYCRR 202.17 and 202.21 to strike the action from the trial calendar and to vacate the plaintiff's note of issue and certificate of readiness on the ground that the action is not ready for trial is moot (NYSCEF 47 ¶ 3).

to establish her prima facie entitlement to judgment as a matter of law, as the deposition testimony of the plaintiff and Ronald, the transcripts of which were submitted in support of the motion, failed eliminate triable issues of fact as to whether the plaintiff was at fault in the happening of the accident, as the plaintiff testified at her deposition that the accident occurred while she was traveling 15 to 20 miles per hour, while Ronald testified at his deposition that the accident occurred when he checked his blind spot to go around a car in front of him, and then the plaintiff's car stopped, causing his car to strike the plaintiff's car in the rear.

By certification order entered May 30, 2024, this action was certified for trial. The plaintiff filed a note of issue on August 10, 2024.

Motion Sequence 002

The plaintiff moves pursuant to CPLR 2221 for leave to reargue her prior motion for summary judgment on the issue of liability and for summary judgment dismissing the defendants' affirmative defenses, which prior motion was denied by decision and order of this Court entered June 18, 2024. The defendants oppose the motion.

Pursuant to CPLR 2221(d), a motion for leave to reargue shall, inter alia, "be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion, but shall not include any matters of fact not offered on the prior motion."

Here, the plaintiff is correct that this Court overlooked *Rodriguez v City of New York* (31 NY3d 312 [2018]) and that a rear end collision with a stopped or stopping vehicle gives rise to a presumption of negligence of the following driver (*see e.g. Martinez v Colonna*, 232 AD3d 876, 877 [2d Dept 2024] [citations and internal quotation marks omitted]). Accordingly, the plaintiff's motion pursuant to CPLR 2221 for leave to reargue is granted.

"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. As such, 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. Stops by a lead vehicle which are foreseeable under the prevailing traffic conditions, even if sudden and frequent, must be anticipated by the driver who follows. Moreover, an assertion that the lead vehicle came to a sudden stop, standing alone, is insufficient to rebut the presumption of negligence on the part of the operator of the rear vehicle. 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" (*Martinez v Colonna*, 232 AD3d at 877 [citations and internal quotation marks omitted]).

Upon reargument, this Court's determination denying that branch of the plaintiff's prior motion which was for summary judgment on the issue of liability is vacated, and thereupon, that branch of the plaintiff's prior motion is granted. The plaintiff established her prima facie entitlement to judgment as a matter of law by submitting transcripts of the deposition testimony of herself and Ronald, which established that the defendants' vehicle struck the plaintiffs' vehicle in

the rear (*see id.*). Although Ronald's deposition testimony implies that the plaintiff may have stopped suddenly, this testimony, without more, did not rebut the presumption of negligence on the part of Ronald (*see id.*; *Thompson v New York City Tr. Auth.*, 208 AD3d 815, 817 [2d Dept 2022]; *Perez v Persad*, 183 AD3d 771, 772 [2d Dept 2020]).

Upon reargument, this Court's determination denying that branch of the plaintiff's prior motion which was for summary judgment dismissing the defendants' affirmative defenses is adhered to. In light of Ronald's deposition testimony implying that the plaintiff may have stopped suddenly, the plaintiff failed to establish, *prima facie*, that she was not comparatively at fault in the happening of the accident (*see Martinez v Colonna*, 232 AD3d at 878).

Motion Sequence 003

The defendants move, *inter alia*, to extend the time to move for summary judgment. In an attorney affirmation submitted in support of the motion, counsel for the defendants contends that the defendants' time to move for summary judgment should be extended to 60 days after the exchange of all outstanding discovery is complete. In opposition, the plaintiff contends, *inter alia*, that the motion should be denied on the ground that the defendants failed to confer in good faith before making this motion.

Here, the note of issue was filed on August 10, 2024. Any extension of time beyond the statutory deadline of 120 for the filing of summary judgment motions requires "leave of court on good cause shown" (CPLR 3212[a]; *see Brill v City of New York*, 2 NY3d 648, 652 [2004]). Here, the defendants have failed to show good cause for an extension of time.

Conclusion

Accordingly, it is hereby,

ORDERED that the plaintiff's motion pursuant to CPLR 2221 for leave to reargue her prior motion for summary judgment on the issue of liability and for summary judgment dismissing the defendants' affirmative defenses, which prior motion was denied by decision and order of this Court entered June 18, 2024, is **GRANTED**, and, upon reargument, so much of this Court's prior determination as denied that branch of the plaintiff's prior motion which was for summary judgment on the issue of liability is **VACATED**, and, thereupon, that branch of the plaintiff's prior motion which was for summary judgment on the issue of liability is **GRANTED**, and so much of this Court's prior determination as denied that branch of the plaintiff's prior motion which was for summary judgment dismissing the defendants' affirmative defenses is **ADHERED TO**; and it is further,

ORDERED that the branch of the defendants' motion which is pursuant to 22 NYCRR 202.17 and 202.21 to strike the action from the trial calendar and to vacate the plaintiff's note of issue and certificate of readiness on the ground that the action is not ready for trial is **DENIED AS MOOT**; and it is further,

ORDERED that the branch of the defendants' motion which is to extend the time to move for summary judgment is **DENIED**.

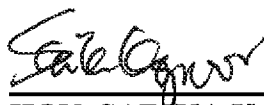
The parties' remaining contentions have been considered and do not warrant discussion.

Any applications not specifically addressed are herewith **DENIED**.

This shall constitute the decision and order of this Court.

Dated: February 26, 2025
Mineola, NY

ENTER:



HON. SARIKA KAPOOR, A.J.S.C.

ENTERED

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NASSAU COUNTY
COUNTY CLERK'S OFFICE