Rodriguez v Febus
2017 NY Slip Op 33443(U)
November 15, 2017
Supreme Court, Westchester County
Docket Number: Index No. 68605/16
Judge: David F. Everett

To commence the 30-day statutory time period for appeals as of right under 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

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MELISSA RODRIGUEZ,

Plaintiff,

-against-

AIDA FEBUS,

Defendant.

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Index No. 68605/16
Motion Sequence No. 001
Decision and Order

EVERETT, J.

The following papers were read on this motion:
Notice of Motion/Affirmation in Supp/Exhibits A-D
Affirmation in Opp/Exhibit A
Reply Affirmation

In this tort action, plaintiff Melissa Rodriguez (Rodriguez) moves for an order granting summary judgment against defendant Aida Febus (Febus) on the issue of liability. Defendant opposes the motion. Upon the foregoing papers, the motion is granted.

The following facts are taken from the motion papers, pleadings, affidavit, and the record, and are undisputed unless otherwise indicated.

Rodriguez commenced this action by filing a summons and complaint in the Office of the Westchester County Clerk on December 8, 2016, to recover damages for the physical injuries she allegedly sustained as a result of an automobile accident that occurred on December 22, 2015. According to Rodriguez, the accident occurred when, while stopped at a stop sign at the intersection of Post Street and Riverdale Avenue in Yonkers, New York, her vehicle was struck

from behind by a motor vehicle owned and operated by Febus, causing her to sustain physical injuries. The complaint sounds in negligence.

Issue was joined by service of defendant's answer with affirmative defenses on or about March 9, 2017. Without completing discovery, Rodriguez served the instant motion for summary judgment on the issue of liability.

As the proponent of the motion for summary judgment, plaintiff must tender evidentiary proof in admissible form sufficient to warrant the court to direct judgment in her favor as a matter of law (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; CPLR 3212 [b]). To make this showing, plaintiff submits copies of the pleadings, the certified police report relative to the accident, and her sworn affidavit attesting to the facts underlying the complaint. In her affidavit, Rodriguez avers, in relevant part, that, at approximately 1:35 p.m., on December 22, 2015, while stopped at the stop sign on Post Road[1] and Riverdale Avenue for approximately 60 seconds, her vehicle was struck in the rear by a 2004 Hyundai, which she came to learn was owned and operated by Febus (Rodriguez aff). Rodriguez avers that she felt the impact to the rear of her vehicle, and reports that her brake lights and all of the signals on the vehicle she was operating at the time of the accident, were in good operating condition (*id.*).

It is well settled that, with respect to collisions between moving vehicles, or between a moving vehicle and a stopped vehicle, "[w]hen the driver of an automobile approaches another automobile from the rear, he or she is bound to maintain a reasonably safe rate of speed and control over his or her vehicle, and to exercise reasonable care to avoid colliding with the other

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[1] Although the motion papers interchange "Post Street" and "Post Road," it is undisputed that the accident occurred at the intersection of Post Street and Riverdale Avenue in Yonkers.

vehicle" (*Taing v Drewery*, 100 AD3d 740, 741 [2d Dept 2012]). Furthermore, "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" (*Robayo v Aghaabdul*, 109 AD3d 892, 893 [2d Dept 2013] [internal quotation marks and citation omitted]).

It is also well settled law that "[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 that operator to rebut the inference of negligence by providing a non-negligent explanation for the collision" (*Chiok v Kouridakis*, 57 AD3d 706, 706 [2d Dept 2008] [internal quotation marks and citations omitted]). Finally, Vehicle and Traffic Law § 1129 provides, at subsection (a), that "[t]he driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon and the condition of the highway."

Here, Rodriguez has satisfied her prima facie burden of establishing negligence on the part of Febus as a matter of law on the issue of liability, and the burden shifts to Febus to submit, in admissible form, a non negligent explanation either for the collision, or for her failure to maintain a reasonably safe distance under the prevailing traffic conditions between her vehicle and the vehicle in front of her (*Robayo v Aghaabdul*, 109 AD3d at 893; *Taing v Drewery*, 100 AD3d at 741).

In opposition, Febus submits her sworn affidavit in which she explains that it was raining on December 22, 2015, and that she was slowing her vehicle to a stop a safe distance behind plaintiff's vehicle, but that the front of her vehicle struck the rear of plaintiff's vehicle when her

wheels skidded on the wet pavement when she applied her brakes in a normal steady manner. Febus argues that the accident occurred because of the emergency situation that developed because of the wet and slippery roadway.

In New York, the common-law emergency doctrine:

> "recognizes 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, provided the actor has not created the emergency. The doctrine recognizes that a person confronted with such an emergency situation "cannot reasonably be held to the same accuracy of judgment or conduct as one who has had full opportunity to reflect, even though it later appears that the actor made the wrong decision"

(*Lifson v City of Syracuse*, 17 NY3d 492, 497 [2011] [internal quotation marks and citations omitted]).

Here, Febus's failure to leave a reasonably safe distance between her motor vehicle and the vehicle in front of her under the prevailing conditions, namely, wet roadways due to rain, does not constitute a non negligent explanation for the accident, nor do the wet weather circumstances evoke relief from liability under the common-law emergency doctrine (*id.*; *Zuckerman v City of New York*, 49 NY2d at 562; *Chiok v Kouridakis*, 57 AD3d at 706; *Robayo v Aghaabdul*, 109 AD3d at 893).

Accordingly, it appearing to the Court that plaintiff is entitled to judgment on liability, it is

ORDERED that the motion for summary judgment is granted as to liability; and it is further

ORDERED that the parties are directed to appear with counsel at the Preliminary Conference Part, courtroom 811 of the Westchester County Courthouse, 111 Dr. Martin Luther King, Jr. Blvd., White Plains, New York, on Monday, December 18, 2017, to schedule discovery as to damages.

This constitutes the decision and order of the Court.

Dated: White Plains, New York
November 15, 2017

ENTER:

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

Hampton & Sontag, LLC
147 E. 233rd Street
Bronx, NY 10470

Gialleonardo & Rayhill
565 Taxter Road
Elmsford, NY 10523