

**Bakalor v Jacoby**

2018 NY Slip Op 34169(U)

December 10, 2018

Supreme Court, Suffolk County

Docket Number: Index No. 616455/2018

Judge: Paul J. Baisley, Jr.

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SHORT FORM ORDER

INDEX NO. 616455/2018

SUPREME COURT - STATE OF NEW YORK  
DCM-J - SUFFOLK COUNTY

**PRESENT:****Hon. Paul J. Baisley, Jr., J.S.C.**


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 JOSEPH H. BAKALOR and JILL BAKALOR,

Plaintiffs,

-against-

 MICHAEL JACOBY and ELIAS MAHER  
 YACOUB,
Defendants.
 

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**ORIG. RETURN DATE:** November 2, 2018**FINAL RETURN DATE:** November 2, 2018**MOT. SEQ. #:** 001 MG**PLTF'S ATTORNEY:**

KERNER &amp; KERNER, ESQ.

15 MAIDEN LANE, STE 1008

NEW YORK, NY 10038

**DEFT'S ATTORNEY:**

RUSSO &amp; TAMBASCO, ESQS.

115 BROAD HOLLOW ROAD, STE 300

MELVILLE, NY 11747

Upon the following papers e-filed and read on this motion for partial summary judgment: Notice of Motion and supporting papers by plaintiffs, dated October 10, 2018; Answering Affidavits and supporting papers by defendants dated October 17, 2018; Replying Affidavits and supporting papers by plaintiffs dated October 30, 2018; (and after hearing counsel in support and opposed to the motion) it is,

**ORDERED** that the motion by plaintiffs for partial summary judgment in their favor on the issue of defendants' liability is granted; and it is further

**ORDERED** that the parties shall appear for a preliminary conference at 10:00 a.m. on January 7, 2019, at the DCM-J Part of the Supreme Court, One Court Street, Riverhead, New York.

This is an action to recover damages for personal injuries allegedly sustained by plaintiff Joseph Bakalor as a result of a motor vehicle accident which occurred on Woodlawn Avenue in the Village of Saint James, New York on July 19, 2018. Plaintiff's spouse, Jill Bakalor, brought a derivative claim for loss of services and companionship. The accident allegedly happened when a vehicle owned by defendant Michael Jacoby and driven by defendant Elias Maher Yacoub collided with the rear of plaintiff's vehicle.

Plaintiffs now move for partial summary judgment on the issue of liability, arguing that defendants are negligent as a matter of law and are the sole proximate cause of the accident. In support of the motion, plaintiffs submit copies of the pleadings, a verified bill of particulars, a certified police accident report, and an affidavit of plaintiff.

In his affidavit, plaintiff states that he was stopped at a traffic light on Woodlawn Avenue near its intersection with Lake Avenue, and that his vehicle was struck in the rear by a vehicle owned and

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operated by defendants. Plaintiff's description of the accident is supported by a certified police accident report which contains an admission by defendant that "he was distracted by looking at some random hardware that he need for his boat." The accident report further indicates that plaintiff's vehicle sustained damage to the rear end, and that the point of impact on defendants' vehicle was at the front end.

It is well settled that a party moving for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issue of fact (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 508 NYS2d 923 [1986]; *Friends of Animals v Associated Fur Mfrs.*, 46 NY2d 1065, 1067, 416 NYS2d 790 [1979]). The failure of the moving party to make a prima facie showing requires the denial of the motion regardless of the sufficiency of the opposing papers (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 487 NYS2d 316 [1985]). The burden then shifts to the party opposing the motion which must produce evidentiary proof in admissible form sufficient to require a trial of the material issues of fact (*Zuckerman v City of New York*, 49 NY2d 557, 427 NYS2d 595 [1980]).

When the driver of a vehicle approaches another vehicle 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 vehicle (*Tumminello v City of New York*, 148 AD3d 108, 449 NYS3d 739 [2d Dept 2017]; *Brothers v Bartling*, 130 AD3d 554, 13 NYS3d 202 [2d Dept 2015]; *Gutierrez v Trillium USA, LLC*, 111 AD3d 669, 974 NYS2d 563 [2d Dept 2013]; *Macauley v ELRAC, Inc.*, 6 AD3d 584, 585, 775 NYS2d 78 [2d Dept 2003]). "A rear-end collision with a stopped or stopping vehicle creates a prima facie case of negligence with respect to the operator of the rear vehicle and imposes a duty on that operator to rebut the inference of negligence by providing a nonnegligent explanation for the collision" (*Le Grand v Silberstein*, 123 AD3d 773, 774, 999 NYS2d 96 [2d Dept 2014]; *see also Tutrani v County of Suffolk*, 10 NY3d 906, 861 NYS2d 610 [2008]; *Miller v Steinberg*, 164 AD3d 492, 82 NYS3d 597 [2d Dept 2018]; *De Castillo v Sormeley*, 140 AD3d 918, 32 NYS3d 654 [2d Dept 2017]).

Here, plaintiffs' submissions are sufficient to establish a prima facie case of entitlement to summary judgment in their favor on the issue of negligence (*see Schmertzler v Lease Plan U.S.A., Inc.*, 137 AD3d 1101, 27 NYS3d 648 [2d Dept 2016]; *Singh v Avis Rent A Car Sys., Inc.*, 119 AD3d 768, 989 NYS2d 302 [2d Dept 2014]; *Markesinis v Jaquez*, 106 AD3d 961, 965 NYS2d 363 [2d Dept 2013]). Therefore, the burden shifts to defendant to offer a nonnegligent explanation for the collision and produce evidentiary proof in admissible form sufficient to require a trial (*Zuckerman v City of New York*, 49 NY2d 557, 427 NYS2d 595; *Lopez v Dobbins*, 164 AD3d 776, 79 NYS3d 566 [2d Dept 2018]).

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Defendants oppose the motion on the grounds that it is premature as they have not conducted discovery. However, defendants failed to demonstrate that additional discovery may have led to relevant evidence or that facts essential to oppose the motion were exclusively within the knowledge and control of plaintiff (see CPLR 3212 [f]; *Skura v Wojtowski*, 165 AD3d 1196, 2018 NY Slip Op 07168 [2d Dept 2018]; *Richards v Burch*, 132 AD3d 752, 18 NYS3d 87 [2d Dept 2015]; *Suero-Sosa v Cardona*, 112 AD3d 706, 977 NYS2d 61 [2d Dept 2013]). The “mere hope or speculation that evidence sufficient to defeat a motion for summary judgment may be uncovered during the discovery process” is an insufficient basis for denying the motion (*Gasis v City of New York*, 35 AD3d 533, 534-535, 828 NYS2d 407, 409 [2d Dept 2006]; see also *Dyer Trust 2012-1 v Global World Realty, Inc.*, 140 AD3d 827, 33 NYS3d 14 [2d Dept 2016]; *Savage v Quinn*, 91 AD3d 748, 937 NYS2d 265 [2d Dept 2012]).

Having failed to submit competent evidence sufficient to raise a triable issue of fact as to whether defendant has a nonnegligent explanation for the accident, plaintiffs’ motion for partial summary judgment on the issue of liability is granted.

Dated: 12/10/18

  
HON. PAUL J. BAISLEY, JR. J.S.C.