

Monsalve v Speakeasy Intercom and Elec. Serv. Inc.
2017 NY Slip Op 31569(U)
June 9, 2017
Supreme Court, Queens County
Docket Number: 701229/2017
Judge: Robert J. McDonald
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.
This opinion is uncorrected and not selected for official publication.

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK
CIVIL TERM - IAS PART 34 - QUEENS COUNTY
25-10 COURT SQUARE, LONG ISLAND CITY, N.Y. 11101

P R E S E N T : HON. ROBERT J. MCDONALD
Justice

----- x

MICHELLE MONSALVE, Index No.: 701229/2017

Plaintiff, Motion Date: 5/22/17

- against - Motion No.: 118

SPEAKEASY INTERCOM AND ELECTRIC Motion Seq.: 1

SERVICE INC. and EDWARD R. DOMINGUEZ,

Defendants.

----- x

The following electronically filed documents read on this motion by plaintiff, MICHELLE MONSALVE, for an order pursuant to CPLR 3212, granting plaintiff partial summary judgment on the issue of liability:

	<u>Papers</u> <u>Numbered</u>
Notice of Motion-Affirmation-Exhibits.....	EF 5 - 11
Affirmation in Opposition-Exhibits.....	EF 12 - 14
Affirmation in Reply.....	EF 16

FILED
JUN 19 2017
COUNTY CLERK
QUEENS COUNTY

In this negligence action, plaintiff seeks to recover damages for personal injuries allegedly sustained as a result of a motor vehicle accident that occurred on October 25, 2016 at the intersection of 61st Street and Northern Boulevard, in Queens County, New York.

Plaintiff commenced this action by filing a summons and verified complaint on January 26, 2017. Issue was joined by service of defendants' verified answer on February 24, 2017. Plaintiff now moves for an order pursuant to CPLR 3212(b), granting partial summary judgment on the issue of liability.

In support of the motion, plaintiff submits an affidavit dated February 13, 2017, affirming that at the time of the accident, she was stopped at a red traffic light at the intersection of 61st Street and Northern Boulevard. Her vehicle was struck from behind by defendants' vehicle. Her vehicle had been stopped for approximately 10 seconds after having come to a

gradual stop.

Plaintiff's counsel contends that the accident was caused solely by the negligence of defendant driver, Edward R. Dominguez, in that defendant driver's vehicle was traveling too closely to the vehicle in front in violation of VTL § 1129, and defendant driver failed to safely bring his vehicle to a stop prior to rear-ending plaintiff's vehicle. Thus, plaintiff is entitled to partial summary judgment as to liability because defendant driver was solely responsible for causing the accident while plaintiff was free from culpable conduct.

In opposition, defendant driver submits an affidavit dated May 4, 2017, affirming that while in the course of his employment with defendant Speakeasy Intercom and Electric Service, Inc., he was involved in the subject accident. Prior to the accident, he was stopped at a red light at the intersection of 61st Street and Northern Boulevard. Plaintiff's vehicle was stopped immediately in front of his vehicle. Approximately one car length separated their vehicles. He was stopped at the traffic light for approximately two minutes. The light then turned from red to green, and plaintiff's vehicle began to proceed. After traveling approximately one to two car lengths, plaintiff's vehicle suddenly stopped short, without any warning. As soon as he saw plaintiff's vehicle's brake lights, he applied his vehicle's brakes. His vehicle made contact with the rear of plaintiff's vehicle. He was traveling approximately ten miles per hour when the accident occurred. He was looking straight ahead the entire time he was stopped at the traffic light and at all times immediately before the accident occurred.

Defendants' counsel argues that the motion should be denied because issues of fact exist regarding how the accident occurred and whether plaintiff contributed to the accident by making a sudden stop. Counsel further contends that defendants have provided a non-negligent explanation for the rear end collision in that plaintiff suddenly stopped his vehicle.

The proponent of a summary judgment motion must tender evidentiary proof in admissible form eliminating any material issues of fact from the case. If the proponent succeeds, the burden shifts to the party opposing the motion, who then must show the existence of material issues of fact by producing evidentiary proof in admissible form in support of his or her position (see Zuckerman v. City of New York, 49 NY2d 557 [1980]). "A court deciding a motion for summary judgment is required to view the evidence presented in the light most favorable to the party opposing the motion and to draw every reasonable inference from the pleadings and proof submitted by the parties in favor of the opponent to the motion" (Myers v Fir Cab Corp., 64 NY2d 806

[1985]).

"When 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 vehicle" (Macauley v ELRAC, Inc., 6 AD3d 584 [2d Dept. 2003]). It is well established law that a rear-end collision with a stopped or stopping vehicle creates a prima facie case of negligence on the part of the driver of the rearmost vehicle, requiring the operator of that vehicle to proffer an adequate, non-negligent explanation for the accident (see Klopchin v Masri, 45 AD3d 737 [2d Dept. 2007]; Hakakian v McCabe, 38 AD3d 493 2d Dept. 2007]; Reed v New York City Tr. Auth., 299 AD2 330 [2d Dept. 2002]; Velazquez v Denton Limo, Inc., 7 AD3d787 [2d Dept. 2004]).

Here, plaintiff affirmed that her vehicle was stopped when it was struck from behind by defendants' vehicle. Thus, plaintiff satisfied her prima facie burden of establishing her entitlement to judgment as a matter of law on the issue of liability by demonstrating that her vehicle was stopped for a red traffic light when it was struck in the rear by defendants' vehicle (see Volpe v Limoncelli, 74 AD3d 795 [2d Dept. 2010]; Vavoulis v Adler, 43 ad3d 1154; [2d Dept. 2007]; Levine v Taylor, 268 AD2d 566 [2d Dept. 2000]).

Having made the requisite prima facie showing of entitlement to summary judgment, the burden then shifted to defendants to raise a triable issue of fact as to whether plaintiff was also negligent, and if so, whether that negligence contributed to the happening of the accident (see Goemans v County of Suffolk, 57 AD3d 478 [2d Dept. 2007]).

Viewing the evidence submitted in the light most favorable to the nonmoving party, there are issues of credibility which must be determined by the trier of fact rather than on a motion for summary judgment. "A court may not weigh the credibility of witnesses on a motion for summary judgment, unless it clearly appears that the issues are not genuine, but feigned" (Conciatori v Port Auth. of N. Y. & N. J., 46 AD3d 501 [2d Dept. 2007]).

This Court finds that as the parties have presented differing versions as to how the accident occurred, including, inter alia, whether the traffic light was red or green at the time of the accident and whether plaintiff's vehicle stopped suddenly without explanation, there are triable issues of fact (see Boockvor v Fischer, 56 AD3d 405 [2d Dept. 2008]; Makaj v Metropolitan Transp. Auth., 18 AD3d 625 [2d Dept. 2005];

Gildersleeve v Leo, 274 AD2d 547 [2d Dept. 2000]).

Accordingly, for all of the above stated reasons, it is hereby,

ORDERED, that plaintiff MICHELLE MONSALVE's motion for an order granting partial summary judgment on the issue of liability is denied.

Dated: 6/9/, 2017
Long Island City, N.Y.



ROBERT J. McDONALD
J.S.C.

FILED
JUN 19 2017
COUNTY CLERK
QUEENS COUNTY