Washington v Posillico
2017 NY Slip Op 33389(U)
June 5, 2017
Supreme Court, Nassau County
Docket Number: Index No. 606057/16E
Judge: Anna R. Anzalone
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SUPREME COURT - STATE OF NEW YORK

PRESENT: ***Honorable Anna R. Anzalone***
Justice of the Supreme Court

x

WILLIE WASHINGTON,

Plaintiff,

- against -

TIMOTHY W. POSILLICO,

Defendant.

x

TRIAL/IAS, PART 24
NASSAU COUNTY

Index No. 606057/16E

Motion Seq. No.: 001
Motion Submit Date: 4/24/17

The following papers read on this motion:

Plaintiff's Notice of Motion 1
Defendant's Affirmation in Opposition 2
Plaintiff's Reply Affirmation 3

The plaintiff, Willie Washington, moves for an order pursuant to CPLR §3212, granting summary judgment on the issue of liability. The defendant opposes the motion. The plaintiff files a reply. The motion is decided as follows.

Procedural Background

The plaintiff commenced this personal injury cause of action for injuries allegedly sustained in a motor vehicle accident that occurred on or about March 17, 2015.

Applicable Law

Rear end collision cases create a *prima facie* case of liability with respect to the party who collides with the vehicle in front of it. This *prima facie* liability imposes a duty of explanation upon the operator of the rear vehicle to rebut the inferences of negligence by providing some non-negligible explanation for the collision (*Crisano v Comp Tools Corp.*, 295 AD2d 393 [2d Dept 2002]; *Brothers v Bartling*, 130 AD3d 554 [2d Dept 2015]). A rear end collision with a stopped or stopping vehicle creates a *prima facie* case of liability with

respect to the operator of the rearmost vehicle, imposing a duty of explanation on that operator to excuse the collision either through a mechanical failure, a sudden stop of the vehicle ahead, an unavoidable skidding on a wet pavement, or any other reasonable cause (*Filippazzo v Santiago,* 277 AD2d 419 [2d Dept 2000]).

When a 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 (*Id.*; *see* Vehicle and Traffic Law §1129[a]; *Brothers v Bartling*, 130 AD3d 554 [2d Dept 2015; *Gallo v Jairath*, 122 AD3d 79 [2d Dept 2014]). This rule imposes upon drivers the duty to be aware of tr affic conditions, including vehicle stoppages (*Johnson v Phillips*, 261 AD2d 269 [1st Dept 1999]). It has been applied even where the front vehicle stops suddenly (*see Mascitti v Greene*, 250 AD2d 821 [2d Dept 1998]); *Barba v Best Sec. Corp.*, 235 AD2d 381 [2d Dept 1997]). Further, "drivers have a duty to see what should be seen and to exercise reasonable care under the circumstances to avoid an accident" (*Johnson v Phillips*, 261 AD2d 269 [1st Dept 1999]).

While the defendant contends that the plaintiff caused or contributed to the accident by stopping abruptly, under the facts of this case, this is not a non-negligent explanation sufficient to avoid summary judgment on liability. The traffic light was turning yellow according to the defendant. Instead of assuming the plaintiff would proceed through the yellow light, the defendant should have maintained a safe distance from the plaintiff's vehicle and should have been prepared to stop. It is well settled that in a rear end collision, the abrupt or sudden stop of the front vehicle, standing alone, is insufficient to rebut the inference of negligence on the part of the rear vehicle (*see Jumandeo v Franks*, 52 AD3d 614

[2d Dept 2008]; *Russ v Investech Sec., Inc.*, 6 AD3d 602 [2d Dept 2004]; *Arias v Rosario*, 52 AD3d 551 [2d Dept 2008]). In the instant matter, the defendant testified at his Examination Before Trial that the traffic light had started to turn to yellow before he started to stop. The plaintiff clearly testified that she was stopped.

A rear end collision with a stopped automobile creates a *prima facie* case of liability with respect to the operator of the motor vehicle, imposing a duty of explanation on its operator (*Gambino v City of New York*, 205 AD2d 583; *Starace v Inner Circle Qonexions, Inc.*, 198 AD2d 493). Absent excuse, it is negligence as a matter of law if a stopped car is hit in the rear (*Cohen v Terranella*, 112 AD2d 264; *DeAngelis v Kirschner*, 171 AD2d 593).

Here, the plaintiff, in her moving papers, has established *prima facie* entitlement to judgment as a matter of law by submitting evidence that her vehicle was struck in the rear. As the plaintiff has met her initial burden of proof, the burden shifts to the defendant, to provide evidence in admissible form to demonstrate the existence of a triable issue of fact (*Gaddy v Eyler*, 582 NYS2d 990).

In a rear-end collision, the plaintiff or remaining defendants must provide a non-negligent explanation for the collision (*Giangrasso v Callahan*, 87 AD3d 521). It is well established that evidence must be viewed in the light most favorable to the non-moving party (*Gonzalez v Metropolitan Life Ins. Co.*, 269 AD2d 495). The non-moving party's evidence must be accepted as true and the non-moving party is entitled to every favorable inference which can be reasonably drawn from the evidence (*Wong v Tang*, 2 AD3d 840; *Farrukh v Board of Education of the City of NY*, 227 AD2d 440).

Discussion

Here, as in *Markesinis v Jaquez*, 106 AD3d 961, the defendant, Willie Washington,

in opposition to the plaintiff's *prima facie* entitlement to summary judgment on a rear-end collision, "raised triable issues of fact as to whether the plaintiff was negligent in the operation of his vehicle, and whether his alleged negligence caused or contributed to the accident. In his affidavit the defendant averred that the plaintiff's vehicle "abruptly stopped" (*see* Posillico Affidavit).

The Court's function on this motion for summary judgment is issue finding rather than issue determination (*Sullivan v Twentieth Century Fox Film Corp.*, 165 NYS2d 498). Since summary judgment is a drastic remedy, it should not be granted where there is any doubt as to the existence of a triable issue (*Rotuba Extruders v Ceppos*, 413 NYS2d 141). Thus, when the existence of an issue of fact is even arguable or debatable, summary judgment should be denied (*Stone v Goodson,* 200 NYS2d 627). The role of the Court is to determine if bonafide issues of fact exists, and not to resolve issues of credibility (*Gaither v Saga Corp.*, 203 AD2d 239; *Black v Chittenden*, 69 NY2d 665). In reviewing a motion for summary judgment, the Court evaluates the evidence in the most favorable light to the party opposing the motion (*Sullivan v Twentieth Century Fox Film Corp., supra*).

Here, the defendant has met his burden in establishing that triable issues of fact exist as to the manner in which the accident occurred. Moreover, the Court notes that discovery is incomplete.

Conclusion

In light of the foregoing, the plaintiff's motion for summary judgment is denied in its entirety.

All parties are directed to appear for a conference in this matter on June 29, 2017 **at 9:30 a.m.** before the Hon. Anna R. Anzalone and report to Supreme Court, 100 Supreme

Court Drive, Mineola, New York, Part 24.

The foregoing constitutes the Decision and Order of the Court.

DATED: June 5, 2017
Mineola, New York

ENTER:

Anna R. Anzalone
Hon. Anna R. Anzalone, JSC

ENTERED

JUN 19 2017

NASSAU COUNTY
COUNTY CLERK'S OFFICE