White-Williams v Living Earth Landscape Design, LLC
2017 NY Slip Op 33428(U)
December 18, 2017
Supreme Court, Orange County
Docket Number: Index No. EF000612/17
Judge: Robert A. Onofry
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SUPREME COURT-STATE OF NEW YORK
IAS PART-ORANGE COUNTY

Present: HON. ROBERT A. ONOFRY, A.J.S.C.

SUPREME COURT : ORANGE COUNTY

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FRANCES WHITE-WILLIAMS,

Plaintiff,

- against –

LIVING EARTH LANDSCAPE DESIGN, LLC & JUAN MEDINAMONTOYA,

Defendants.

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To commence the statutory time period for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

Index No. EF000612/17

DECISION AND ORDER

Motion Date: November 21, 2017

The following papers numbered 1 to 6 were read and considered on a motion by the Plaintiff, pursuant to CPLR §3212, for summary judgment on the issue of liability.

Notice of Motion- Bernsley Affirmation- Exhibits A-D 1-3
Affirmation in Opposition- Appelbaum- Exhibit 1 4-5
Affirmation in Reply- Bernsley 6

Upon the foregoing papers, it is hereby,

ORDERED, that the motion is denied.

Introduction

The Plaintiff Frances White-Williams commenced this action to recover damages allegedly arising from a motor vehicle accident involving a truck owned by the Defendant Living Earth Landscape Design, LLC (hereinafter "Living Earth") and being driven by the Defendant Juan Medinamontoya.

The Plaintiff moves for summary judgment on the issue of liability.

The motion is denied.

Factual/Procedural Background

In an affidavit, the Plaintiff asserts that, on October 6, 2016, at around 7:45 a.m., she was driving her vehicle (a Jeep Wrangler) in "stop and go" traffic in Mahway, New Jersey (Motion, Exhibit B). She avers that, after she brought her vehicle to a gradual and complete stop due to congestion ahead, her vehicle was struck from the rear by a truck owned by Living Earth and being driven by Medinamontoya. At the time of impact, she asserts, her foot was on the brake pedal. Finally, she avers, she was at a complete stop for approximately 45 seconds prior to the impact, and had been in the same lane of travel for approximately 15 minutes.

At an examination before trial, Medinamontoya testified that, at the time of the accident, he was driving a dump truck that was towing a trailer with three lawnmowers in the course of his employment with Living Earth (Motion, Exhibit C). As he was driving in the middle lane of traffic, he testified, the Plaintiff's vehicle "crossed [him] and then she stopped suddenly and she stayed there stopped. I couldn't stop. I stopped but I couldn't really stop all the way because the machines are very heavy" (T-17). Medinamontoya testified that the accident "happened very, very fast. It crossed me then stopped. Less than a minute it stopped. 30 seconds." (T-27). Medinamontoya testified that, although he braked immediately, the Plaintiff's vehicle was "very, very close" and he couldn't stop in time (T-27-28). The Plaintiff's vehicle was stopped when he struck it (T-29-30). His highest rate of speed that day was 30 miles per hour (T-17-18). Just prior to the accident, he was traveling at around 15 miles per hour (T-19). Finally, he testified, he had told the police and his boss the same version of events (T-38).

The Motion at Bar

In support of the Plaintiff's motion for summary judgment, her attorney, Richard Bernsley, argues that Medinamontoya admitted that he observed the Plaintiff's vehicle stopped for 30 seconds to one minute prior to impact, and that he struck the vehicle from the rear without taking any evasive or other action. Similarly, he notes, the police report states that the Plaintiff's vehicle was stopped when it was struck from the rear by Medinamontoya's vehicle. Thus, he argues, it may be found, as a matter of law, that Medinamontoya was negligent, and that the Plaintiff was free from negligence, in the happening of the accident.

In opposition to the motion, the attorney for the Defendants, Joel Appelbaum, argues that Bernsley had mis-characterized Medinamontoya's testimony. Appelbaum asserts that Medinamontoya actually testified that the Plaintiff cut across his lane of travel and then stopped suddenly; not that he saw her vehicle stopped for 30 seconds to one minute prior to impact. Thus, Appelbaum argues, there are triable issues of fact as to comparative fault in the case.

In reply, Bernsley argues that, if the facts are as argued by Appelbaum, Medinamontoya should have corrected the transcript of his testimony before trial.

Discussion/Legal Analysis

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. *Tumminello v. City of New York*, 148 A.D.3d 1084 [2nd Dept. 2017]; *Phillip v. D & D Carting Co., Inc.*, 136 A.D.3d 18 [2nd Dept. 2015]. A nonnegligent explanation may include a mechanical failure, a sudden, unexplained stop of the vehicle ahead, an unavoidable skidding on

wet pavement, or any other reasonable cause. *Tumminello v. City of New York*, 148 A.D.3d 1084 [2nd Dept. 2017]. However, while a nonnegligent explanation for a rear-end collision may include evidence of a sudden stop of the lead vehicle, 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. *Tumminello v. City of New York*, 148 A.D.3d 1084 [2nd Dept. 2017].

There can be more than one proximate cause of an accident. Thus, to prevail on a motion for summary judgment on the issue of liability, a plaintiff must establish, *prima facie*, not only that the opposing party was negligent, but also that the plaintiff was free from comparative fault. *Pillasagua v. Losco*, 135 A.D.3d 843 [2nd Dept. 2016]; *Phillip v. D & D Carting Co., Inc.*, 136 A.D.3d 18 [2nd Dept. 2015].

Here, in support of her motion, the Plaintiff demonstrated a *prima facie* entitlement to judgment as a matter of law on the issue of liability with her affidavit.

However, in opposition to the motion, the Defendants raised a triable issue of fact with the testimony of Medinamontoya that the Plaintiff cut in front of his vehicle and then suddenly stopped. The Court does not read Medinamontoya's testimony as stating that he saw the Plaintiff's vehicle stopped for 30 seconds to a minute prior to impact. Rather, the testimony relied upon by Bernsley appears to be the result of a language barrier.[1]

Accordingly, and for the reasons cited herein, it is hereby,

ORDERED, that the motion is denied; and it is further,

ORDERED, that the parties, through respective counsel, are directed to, and shall, appear

[1] Medinamontoya testified through a translator.

for a Status Conference on Tuesday, January 30, 2018, at 1:30 p.m., at the Orange County Surrogate's Court House, 30 Park Place, Goshen, New York.

The foregoing constitutes the decision and order of the court.

Dated: December 18, 2017
Goshen, New York

ENTER

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