

Arevalo v Djurkinjak

2017 NY Slip Op 33442(U)

August 4, 2017

Supreme Court, Westchester County

Docket Number: Index No. 50985/17

Judge: David F. Everett

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This opinion is uncorrected and not selected for official publication.

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

-----X
MONICA AREVALO,

Plaintiff,

-against-

KRISTA DJURKINJAK and BRANKO DJURKINJAK,

Defendants.

-----X
EVERETT, J.

Index No. 50985/17
Motion Sequence No. 001
Decision and Order

The following papers were read on the motion:

- Notice of Motion/Affirmation in Supp/Aff of Service/Exhibits 1-6/
- Aff of Service of Motion

Plaintiff Monica Arevalo (Arevalo) moves for an order, pursuant to CPLR 3212, granting summary judgment against defendants Krista Djurkinjak and Branko Djurkinjak on the issue of liability. Upon the foregoing papers, the unopposed motion is granted.

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

Plaintiff commenced the instant action by filing a summons and complaint in the Office of the Westchester County Clerk on January 23, 2017, to recover damages arising from an automobile accident, which occurred on September 17, 2016. It is alleged that, at approximately 7:45 a.m., the motor vehicle being operated by Arevalo, who was traveling southbound on Rumsey Road in Yonkers, New York, was struck by the vehicle owned by Branko Djurkinjak and operated by Krista Djurkinjak at or about the intersection of Rumsey Road and Wendover

Road, Yonkers, New York, causing her to sustain a serious injury. Issue was joined by service of defendants' joint answer with affirmative defenses on or about March 21, 2017, and Arevalo now moves for summary judgment on the issue of liability.

As the proponent of a motion for summary judgment, which is the procedural equivalent of a trial, plaintiff "must make a prima face showing of entitlement to judgment as a matter of law, tending sufficient evidence to demonstrate the absence of any material issues of fact. Failure to make such prima facie showing requires a denial of the motion, regardless of the sufficiency of the opposing papers" (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]).

Summary judgment:

"should not be granted merely because the party against whom judgment is sought failed to submit papers in opposition to the motion (i.e., 'defaulted') (*Vermont Teddy Bear Co. v 1-800 Beargram Co.*, 373 F3d 241, 244 [2d Cir 2004] ['the failure to oppose a motion for summary judgment alone does not justify the granting of summary judgment. Instead, the . . . court must still assess whether the moving party has fulfilled its burden of demonstrating that there is no genuine issue of material fact and its entitlement to judgment as a matter of law']; see *Cugini v System Lbr. Co.*, 111 AD2d 114, 115 [1985]).' (*Liberty Taxi Mgt., Inc. v Gincherman*, 32 AD3d 276, 277 n [1st Dept 2006])"

(*Brown v Coca*, 31 Misc 3d 1025, 1027-1028 [Sup Ct, Kings County 2011]). The function of the summary judgment motion court is to identify whether there are material issues of fact for resolution by the trier of fact (*S.J. Capelin Assoc. v Globe Mfg. Corp.*, 34 NY2d 338, 341 [1974]; *Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404 [1957]; *Assaf v Ropog Cab Corp.*, 153 AD2d 520, 521 [1st Dept 1989]).

In support of the instant motion, Arevalo submits a sworn affidavit attesting to the facts constituting the claim. Specifically, Arevalo avers, in relevant part, that after being in a stopped position at the subject intersection for approximately 15 seconds at a traffic signal that was red in

her (southbound) direction of travel, she was “unexpectedly struck directly in the rear by defendants’ 2013 Toyota . . . which came up from behind me traveling in the same southbound direction” (Arevalo aff, ¶ 4). Arevalo denies hearing either the sound of a horn or the sound of screeching brakes prior to impact, and she recalls Krista Djurkinjak apologizing, stating that she did not see her car until it was too late to avoid contact, and exchanging relevant information (*id.* ¶¶ 4, 6).

With respect to collisions between moving vehicles, or between a moving vehicle and a stopped vehicle, it is well settled that, “[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 vehicle” (*Taing v Drewery*, 100 AD3d 740, 741 [2d Dept 2012]). It is also well settled law that, “any rear-end collision establishes a prima facie case of negligence on the part of the rear-ending driver” (*De La Cruz v Ock Wee Leong*, 16 AD3d 199, 200 [1st Dept 2005]), and that, when “a rear-end collision occurs, the occupants of the front vehicle are entitled to summary judgment on liability, unless the driver of the following vehicle can provide a nonnegligent explanation, in evidentiary form, for the collision” (*Johnson v Phillips*, 261 AD2d 269, 271 [1st Dept 1999]). 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, plaintiff satisfied her prima facie burden of establishing negligence on the part of defendants as a matter of law on the issue of liability by submitting evidence that her stopped vehicle was struck in the rear by the vehicle operated by Krista Djurkinjak. Having made the

requisite showing, the burden shifts to defendants to produce evidentiary proof in admissible form sufficient to require a trial on one or more issues of fact (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). By failing to challenge Arevalo's evidence, or her prima facie showing, defendants effectively concede that there are no material issues of fact for resolution by the trier of fact.

Accordingly, it appearing to the Court that plaintiff is entitled to judgment on liability and that the triable issues of fact relate only to the amount of damages to which she is entitled, it is

ORDERED that plaintiff's motion for summary judgment is granted with regard to liability; and it is further

ORDERED that counsel for the parties are directed to appear at the Westchester County Courthouse, 111 Dr. Martin Luther King, Jr. Blvd., White Plains, New York, at the Compliance Conference Part, Courtroom 800, on August 22, 2017, at 9:30 a.m.

This constitutes the decision and order of the Court.

Dated: White Plains, New York
August 4, 2017

ENTER:


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

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