Tedder v Abreu
2018 NY Slip Op 34252(U)
December 19, 2018
Supreme Court, Westchester County
Docket Number: Index No. 60037/2018
Judge: Terry Jane Ruderman
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To commence the statutory time 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.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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DONALD L. TEDDER and RHONDA L. TEDDER,

Plaintiffs,

-against-

RITA R. ABREU,

Defendant.

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DECISION and ORDER
Motion Sequence No . 1
Index No. 60037/2018

RUDERMAN, J.

The following papers were considered in connection with the motion by plaintiffs for partial summary judgment on the issue of liability against defendant:

Papers	Numbered
Notice of Motion, Affirmation, Exhibits A - G	1
Affirmation and Affidavit in Opposition	2
Reply Affirmation	3

This is an action for personal injuries allegedly sustained in a motor vehicle collision. Plaintiff Rhonda Tedder asserts that on April 21, 2018 at approximately 2:30 p.m., on 12th Avenue southbound at the intersection of West 44th Street in New York County, the motor vehicle owned and operated by defendant Rita Abreu struck the rear bumper of the vehicle owned and operated by plaintiff Rhonda Tedder, in which plaintiff Donald Tedder was a passenger.

According to plaintiff Rhonda Tedder, her car had been in the lane directly to the right of the left-turn lane, completely stopped for a red light for approximately 1-2 minutes prior to the accident, with at least one car in front of her, when just as the light turned green her car was hit

in the rear by the vehicle driven by defendant.

Defendant's narrative of the collision contradicts plaintiffs' in some respects. Defendant initially describes the traffic on 12th Avenue as extremely heavy, bumper-to-bumper, so that her vehicle's rate of speed never exceeded five miles per hour, and states that the traffic light cycled through a number of green-yellow-red cycles without traffic advancing, because of the conditions ahead. She asserts that the car in front of her, plaintiffs' vehicle, at first accelerated as if it were going to proceed through the intersection while the light was yellow, but then abruptly and unexpectedly stopped short at the crosswalk. She maintains that when plaintiffs' vehicle accelerated as if it were going to proceed through the intersection, it attained a speed of greater than five miles per hour, and she characterizes the movement of plaintiffs' vehicle as lurching forward and back from the suddenness and abruptness of the manner in which it came to a stop. She asserts that she had maintained a safe distance between her car and the other vehicles, and it was only the acceleration of plaintiffs' vehicle as if it intended to pass through the intersection, followed by its sudden, abrupt and unexpected short stop at the crosswalk, that caused the collision.

Analysis

Since "[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" (Vehicle and Traffic Law § 1129 [a]), "a rear-end collision with a stopped or stopping vehicle establishes a prima facie case of negligence on the part of the operator of the rear vehicle, thereby requiring that operator to rebut the inference of negligence by providing a nonnegligent explanation for the collision" (*Kuris v El Sol Contr. & Constr. Corp.*, 116 AD3d 675, 675-676 [2d Dept 2014] [citations omitted]). "A nonnegligent

explanation may include evidence of a mechanical failure, a sudden stop of the vehicle ahead, an unavoidable skidding on wet pavement or any other reasonable cause" (*Ramos v TC Paratransit*, 96 AD3d 924, 925 [2d Dept 2012]).

Plaintiffs' submissions establish prima facie entitlement to summary judgment on the issue of liability, by establishing that their vehicle was struck in the rear while they were stopped at an intersection. The question is whether defendant's submissions are sufficient to raise a triable issue of fact.

Issues of fact have been found in rear-end collision cases where, for instance, defendants submitted evidence that "the plaintiff's vehicle stopped suddenly and without warning approximately 40 to 50 feet from the nearest intersection, despite the fact that there was no traffic in front of that vehicle" (*see Kertesz v Jason Transp. Corp.*, 102 AD3d 658, 659 [2d Dept 2013]). Similarly in *Ramos v TC Paratransit* (96 AD3d 924, *supra*), an issue of fact as to the defendant's non-negligent explanation was created by testimony that "the plaintiff driver suddenly and without warning stopped the plaintiffs' vehicle in the left lane of moving traffic in order to make an illegal left turn . . . at a point where such turns were prohibited (*id.* at 925-926). In *Martin v Cartledge* (102 AD3d 841 [2d Dept 2013]), while the plaintiff asserted that her car was struck in the rear by the defendants' vehicle when stopped on an entrance ramp waiting to merge onto a roadway, "the defendants raised triable issues of fact in opposition to the motion by submitting evidence that the collision actually occurred after the plaintiff's vehicle had already completed the merge and then came to a sudden and unexplained stop in the middle of the roadway" (*id.; see also Foti v Fleetwood Ride, Inc.*, 57 AD3d 724, 725 [2d Dept 2008] [summary judgment properly denied where deposition testimony indicated that the plaintiffs' vehicle came to an abrupt stop in the middle of the roadway after the driver was informed that he

was headed in the wrong direction]).

However, "[a] claim that the driver of the lead vehicle made a sudden stop, standing alone, is insufficient to rebut the presumption of negligence. Thus, the defendant's contention, made in opposition to the plaintiffs' motion, that the plaintiff proceeded once the traffic light turned green but then suddenly stopped, did not rebut the inference of negligence by providing a non-negligent explanation for the collision" (*Ramirez v Konstanzer*, 61 AD3d 837, 837 [2d Dept 2009] [citations omitted]).

Here, although the parties' respective narratives do not agree in all respects, there is no material issue of fact as to defendant's claim of non-negligence. It is immaterial whether plaintiff's vehicle had been stopped at a red light and was struck by defendant's vehicle immediately after the light turned green, or whether instead, the cars had been stopped at a green light due to heavy traffic ahead, and plaintiffs vehicle lurched forward as if to proceed through a yellow light, only to then halt at the crosswalk. In either situation, given the traffic conditions, the possible need to come to a complete stop after commencing to accelerate could not have been unexpected, and therefore defendant's inability to stop before striking plaintiffs' car was necessarily caused by her following plaintiffs' vehicle more closely than was reasonable and prudent (*see* Vehicle and Traffic Law § 1129[a]). Accordingly, defendant has not provided a showing of non-negligence such as would prevent an award of partial summary judgment against her on the issue of liability.

Even if plaintiff Rhonda Tedder's driving may arguably be said to have contributed to the accident with her own negligence, the possibility of a finding of comparative fault does not preclude an award of partial summary judgment on the issue of liability (*see Rodriguez v City of New York*, 31 NY3d 312 [2018]).

This Court rejects the argument propounded by counsel for defendant, that the motion is premature since depositions have not been conducted. "A party who contends that a summary judgment motion is premature is required to demonstrate that discovery might lead to relevant evidence" (*Cortes v Whelan*, 83 AD3d 763, 764 [2d Dept 2011] [citation omitted]). "The mere hope or speculation that evidence sufficient to defeat a motion for summary judgment may be uncovered during the discovery process is insufficient to deny the motion" (*id.*). "Before a party can defeat a motion for summary judgment claiming ignorance of facts due to unconducted discovery, he must show that he has made reasonable steps to discover these facts and that the facts sought would give rise to a triable issue" (*Gillinder v Hemmes*, 298 AD2d 493 [2d Dept 2002]). The record here fails to show that facts essential to justify opposition to the motion may exist but cannot be stated as they are in the exclusive knowledge of the other party. Defendant has failed to show what additional facts regarding the sequence of events and each party's role in the accident were not already within her knowledge. Since the parties have all the necessary information to make out their cases, the absence of discovery need not preclude summary judgment in this instance.

Accordingly, it is hereby

ORDERED that plaintiff's motion for an award of partial summary judgment against defendant on the issue of liability is granted; and it is further

ORDERED that the parties appear, *as previously directed*, on February 1, 2019, at 9:30 a.m., at the Compliance Part of the Westchester County Courthouse located at 111 Dr. Martin Luther King Jr. Boulevard, White Plains, New York, 10601.

This constitutes the Decision and Order of the Court.

Dated: White Plains, New York
December 19, 2018

HON. TERRY JANE RUDERMAN, J.S.C.