Matus v Leconte-Dean
2018 NY Slip Op 34265(U)
October 31, 2018
Supreme Court, Suffolk County
Docket Number: Index No. 609433/2018
Judge: Paul J. Baisley, Jr.
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SHORT FORM ORDER **INDEX NO. 609433/2018**

SUPREME COURT - STATE OF NEW YORK
DCM-J - SUFFOLK COUNTY

PRESENT:
Hon. Paul J. Baisley, Jr., J.S.C.

ROSEMARIE MATUS,

Plaintiff,

-against-

NICOLE LECONTE-DEAN,

Defendant.

ORIG. RETURN DATE: July 12, 2018
FINAL RETURN DATE: August 23, 2018
MOT. SEQ. #: 001 MG

PLTF'S ATTORNEY:
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Upon the following papers read on this motion for partial summary judgment: Notice of Motion/ Order to Show Cause and supporting papers by plaintiff, dated June 25, 2018; Notice of Cross Motion and supporting papers _____; Answering Affidavits and supporting papers _____; Replying Affidavits and supporting papers _____; Other _____; it is,

ORDERED that plaintiff's motion for partial summary judgment in her favor on the issue of negligence is granted; and it is further

ORDERED that counsel for the parties shall appear at 10:00 a.m. on November 28, 2018, at the DCM-J Part of the Supreme Court, 1 Court Street, Riverhead, New York, for a preliminary conference.

This is an action to recover damages for injuries allegedly sustained by plaintiff Rosemarie Matus as a result of a motor vehicle collision that occurred on February 22, 2016, on Sunrise Highway near Connetquot Avenue in Islip, New York. The accident allegedly occurred when a motor vehicle owned and operated by defendant Nicole Leconte-Dean struck plaintiff's vehicle in the rear.

Plaintiff now moves for partial summary judgment in her favor on the issue of liability, arguing that defendant's negligence was a legal and proximate cause of the collision. In support of her motion, plaintiff submits copies of the pleadings, a certified police accident report, and her own affidavit. Defendant has not submitted any opposition to the motion.

It is well settled that the proponent of a summary judgment motion bears the initial burden of establishing his or her entitlement to judgment, as a matter of law, in his or her favor by offering admissible evidence sufficient to eliminate any material issues of fact from the case (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 508 NYS2d 923 [1986]; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 487 NYS2d 316 [1985]; *Zuckerman v City of New York*, 49 NY2d 557, 427 NYS2d 595 [1980]). Failure to make such a showing requires denial of the motion, regardless of the sufficiency of any opposition thereto (*Winegrad v New York Univ. Med. Ctr.*, *supra*). Once the movant has made the requisite showing, the burden then shifts

to the opposing party, requiring him or her to present admissible evidence and facts sufficient to require a trial on any issue of fact (CPLR 3212 [b]; *Alvarez v Prospect Hosp.*, *supra*; *Zuckerman v City of New York*, *supra*). On such a motion, the Court is charged with determining whether issues of fact exist while viewing any evidence in a light most favorable to the nonmoving party; the court is not responsible for resolving issues of fact or determining matters of credibility (*see Chimbo v Bolivar*, 142 AD3d 944, 37 NYS3d 339 [2d Dept 2016]; *Pearson v Dix McBride, LLC*, 63 AD3d 895, 883 NYS2d 53 [2d Dept 2009]; *Kolivas v Kirchoff*, 14 AD3d 493, 787 NYS2d 392 [2d Dept 2005]). A motion for summary judgment should be denied where the facts are in dispute, where conflicting inferences may be drawn from the evidence, or where there are issues of credibility (*see Chimbo v Bolivar*, *supra*; *Benetatos v Comerford*, 78 AD3d 730, 911 NYS2d 155 [2d Dept 2010]).

"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 the operator of the moving vehicle to come forward with an adequate non-negligent explanation for the accident" (*Ramirez v Konstanzer*, 61 AD3d 837, 878 NYS2d 381 [2d Dept 2009], quoting *Arias v Rosario*, 52 AD3d 551, 552, 860 NYS2d 168 [2d Dept 2008]). A driver following behind another must maintain a reasonably safe rate of speed and distance to avoid colliding with the preceding vehicle (*Cajas-Romero v Ward*, 106 AD3d 850, 965 NYS2d 559 [2d Dept 2013]; see Vehicle and Traffic Law § 1129 [a]).

"[V]ehicle 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 car and the car ahead " (*Shamah v Richmond County Ambulance Serv.*, 279 AD2d 564, 719 NYS2d 287 [2d Dept 2001]; *see* Vehicle and Traffic Law § 1129 [a]). However, the preceding driver also has the duty to "not stop suddenly or slow down without proper signaling so as to avoid a collision" (*Drake v Drakoulis*, 304 AD2d 522, 756 NYS2d 881 [2d Dept 2003], quoting *Niemiec v Jones*, 237 AD2d 267, 268, 654 NYS2d 163 [2d Dept 1997]; *see Balducci v Velasquez*, 92 AD3d 626, 938 NYS2d 178 [2d Dept 2012]; *see* Vehicle and Traffic Law § 1163). Thus, a conclusory assertion that "the driver of the [preceding] vehicle made a sudden stop, standing alone, is insufficient to rebut the presumption of negligence" (*Ramirez v Konstanzer*, *supra*, quoting *Russ v Investech Securities,* Inc., 6AD3d 602, 602, 775 NYS2d 867 [2d Dept 2004]; *see Shamah v Richmond County Ambulance Serv.*, *supra*). A plaintiff may obtain partial summary judgment on the issue of liability without demonstrating the absence of his or her own comparative fault (*Rodriguez v City of New York*, 31 NY3d 312, 76 NYS3d 898 [2018]; *Poon v Nisanov*, 162 AD3d 804, 79 NYS3d 227 [2d Dept 2018]).

Plaintiff has made a prima facie case of entitlement to summary judgment in her favor on the issue of negligence, as her affidavit established that her vehicle was hit in the rear by defendant's vehicle while traveling westbound on Sunrise Highway (*see Shamah v Richmond County Ambulance Serv.*, *supra*). The police accident report denotes that the rear of plaintiff's vehicle and the front of defendant's vehicle were damaged, describing the accident as a "rear end." As the police report is a certified copy, it is admissible to show contact between the vehicles (*see* CPLR 4518 [a]; *Lynch v Fleming*, 115 AD2d 712, 496 NYS2d 447 [2d Dept 1985]). Therefore, plaintiff has demonstrated, prima facie, that she is entitled to summary judgment on the issue of liability (*see Lewis v City of New York*, 157 AD3d 879, 66 NYS3d 916 [2d Dept 2017]; *Cortese v Pobejimov*, 136 AD3d 635, 24 NYS3d 405 [2d Dept 2016]).

Having made the requisite prima facie showing of entitlement to summary judgment, the burden shifts to the defendants to rebut the presumption of negligence or raise a triable issue of fact or offer a non negligent explanation (*see Cortes v Whelan*, 83 AD3d 763, 922 NYS2d 419 [2d Dept 2011]; *Balducci v Velasquez*, *supra*). Defendant has failed to submit any opposition or evidence in admissible form to raise a triable issue of fact. Therefore, defendants has not met her burden (*Alvarez v Prospect Hosp.*, *supra*; *Zuckerman v City of New York*, *supra*).

Accordingly, the motion by plaintiff for partial summary judgment in her favor on the issue of liability is granted.

Dated: 10/31/18

HON. PAUL J. BAISLEY, JR., J.S.C.