

Commerford v Schettkoe
2019 NY Slip Op 34717(U)
December 30, 2019
Supreme Court, Orange County
Docket Number: Index No. EF004998-2019
Judge: Sandra B. Sciortino
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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 ORANGE

-----X
STEPHEN COMMERFORD
Plaintiff,

-against-

DECISION AND ORDER
INDEX NO.: EF004998-2019
Motion Date: 10/23/19
Sequence No. 1

KELSEY SCHETTKOE,
Defendants.

-----X
SCIORTINO, J.

The following papers numbered 1 to 5 were considered in connection with plaintiff's motion seeking an order granting partial summary judgment on the issue of liability:

<u>PAPERS</u>	<u>NUMBERED</u>
Notice of Motion/Affirmation (Rosenrauch)/Exhibits 1-5	1 – 7
Affirmation (Fugelsang)	8

Background and Procedural History

This personal injury action arises out of a motor vehicle accident that took place on June 27, 2019, at the intersection of State Route 211E and North Galleria Drive, Town of Wallkill, Orange County, New York. Plaintiff commenced this action by filing a Summons and Complaint (Exhibit 1) on or about June 27, 2019. Defendants filed a Verified Answer dated July 17, 2019. (Exhibit 2).

The underlying facts in this case are disputed. Defendant Kelsey Schettkoe was

operating a motor vehicle when it struck a motor vehicle, which was being operated by plaintiff and was stopped a red light. The collision is alleged to have caused severe and serious personal injuries to plaintiff.

Current Motion

By Notice of Motion filed September 19, 2019, plaintiff seeks partial summary judgment on the issue of liability. The motion is supported by plaintiff's affidavit and his attorney's affirmation. The plaintiff states that, on August 9, 2016 while his vehicle was stopped at a red light, it was struck by defendant's vehicle from behind. Plaintiff counsel avers that a rear-end collision establishes *prima facie* negligence on the part of the operator of the vehicle. A duty is then imposed upon the operator to provide an adequate, non-negligent explanation for the accident. Plaintiff avers that defendant Schettkoe had an absolute duty to stop at the red traffic signal and keep her vehicle under control to avoid a collision, and defendant's failure to do so constitutes negligence as a matter of law.

The defendant counsel filed an affirmation on September 24, 2019. Defendant does not oppose plaintiff's motion on the issue of liability.

Discussion

Summary judgment is a drastic remedy, appropriate only when there is a clear demonstration of the absence of any triable issue of fact. *Piccirillo v. Piccirillo*, 156 A.D.2d 748 (2nd Dep't. 1989), citing *Andre v. Pomeroy*, 35 N.Y.2d 361 (1974). The Court's function on such a motion is issue finding, not issue determination. *Sillman v. Twentieth Century-Fox Film Corp.*, 3 N.Y.2d 395 (1957). The Court is not to engage in the weighing of evidence; instead, the Court

must determine whether “by no rational process could the trier of facts find for the non-moving party.” *Jastrzebski v. N. Shore Sch. Dist.*, 232 A.D.2d 677, 678 (2nd Dep’t. 1996).

In the matter at bar, plaintiff has established a *prima facie* entitlement to summary judgment, by the proffer of a sworn statement alleging that he was stopped at a red light when struck by defendant’s vehicle. A rear-end collision with a stopped or stopping vehicle establishes a *prima facie* case of negligence on the part of the driver of the moving vehicle, thereby requiring the operator to rebut the inference of negligence by providing a non-negligent explanation. *Williams v. Spencer-Hall*, 113 AD3d 759 (2nd Dep’t 2014)

A driver is expected to drive at a sufficiently safe speed and to maintain enough distance between herself and cars ahead of her so as to avoid collisions with stopped vehicles, taking into account the weather and road conditions. Veh. & Traffic Law §1129(1). A failure to do so constitutes negligence as a matter of law, in the absence of an adequate explanation. *Velasquez v. Quijada*, 269 AD2d 592 (2nd Dep’t 2000). As the instant motion is not opposed on the issue of liability, defendants have failed to provide such an explanation.

The denials and affirmative defenses in defendants’ Answer do not suggest, much less demonstrate, that there are any facts in dispute that would rebut the presumption of negligence established by the rear-end collision.

Accordingly, the motion for partial summary judgment on the issue of liability is granted.

This decision shall constitute the order of the Court.

Dated: December 30, 2019
Goshen, New York

ENTER:

HON. SANDRA B. SCIORTINO, J.S.C.

To: *Counsel of Record via NYSCEF*