Villafuerte v Lopresti
2019 NY Slip Op 35020(U)
November 18, 2019
Supreme Court, Bronx County
Docket Number: Index No. 30968/2018
Judge: Mary Ann Brigantti
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX
--X
GLADIS VILLAFUERTE,

Plaintiff,

Index No.: 30968/2018

-against-

MATTHEW M. LOPRESTI and
MADELINE M. LOPRESTI,

Defendants.
--X
HON. MARY ANN BRIGANTTI:

Plaintiff moves for partial summary judgment in her favor on the issue of liability. This is an action to recover damages for alleged personal injuries sustained by Plaintiff, GLADIS VILLAFUERTE, in a motor vehicle accident, which occurred on or about July 13, 2017, at 5:45 p.m., on the southbound Bronx River Parkway, near its exit to the Cross County Parkway, in Westchester County, Yonkers, New York.

In support of her motion, Plaintiff's submissions include the pleadings, Police Accident Report, and Plaintiff's Affidavit. In opposition, Defendants' Counsel submits his bare Affirmation.

According to Plaintiff, while she was driving southbound, in the middle lane, of the Bronx River Parkway, she "gradually began to slow down ... due to the accumulation of traffic ahead" of her. Soon thereafter, the 2009 Toyota owned and operated by Defendants rear-ended her vehicle. The heavy impact damaged the rear and undercarriage of Plaintiff's vehicle, and caused her to sustain personal

injuries (Plaintiff VILLAFUERTE Affidavit, dated April 15, 2019).

Vehicle and Traffic Law § 1129(a) "Following too closely", provides that: "The 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." In this regard, it has been established that:

> " "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 rear vehicle, and imposes a duty on the part of the operator of the moving vehicle to come forward with an adequate, nonnegligent explanation for the accident" (Matos v Sanchez, 147 AD3d 585, 586, 47 NYS3d 307 [1st Dept 2017]). Here, defendant driver's assertion that plaintiffs' vehicle stopped abruptly does not explain why defendant driver failed to maintain a safe distance, and is insufficient to constitute a nonnegligent explanation"

(*Urena v GVC Ltd.*, 160 AD3d 467, 467 [1st Dept 2018]). The Court of Appeals has stated that: "It is well settled that a "rear-end collision with a stopped vehicle establishes a prima facie case of negligence on the part of the driver of the rear vehicle" " *(Tutrani v County of Suffolk*, 10 NY3d 906, 908 [2008].

Plaintiff VILLAFUERTE made a prima facie showing of her entitlement to partial summary judgment on the issue of Defendants' liability by attesting that Defendant rear-ended her vehicle while she was slowing down in traffic. Thus, she shifted the burden to Defendants to advance a non-negligent explanation for the accident.

Herein, however, Defendant driver, MATTHEW M. LOPRESTI, the person

having knowledge of the relevant facts concerning the circumstances surrounding the happening of the accident, has not submitted his own affidavit,[1] and, in his Counsel's Affirmation, there is merely a recitation of general principals; and so Defendants have not made the requisite showing.

It is well-established that where the submission on the part of the party opposing a summary judgment motion "consisted only of the bare affirmation of [his] ... attorney who demonstrated no personal knowledge of the manner in which the accident occurred [, s]uch an affirmation by counsel is without evidentiary value and thus unavailing" (*Zuckerman v New York*, 49 NY2d 557, 563 [1980]). In *Zuckerman*, as here, the opponent of the motion proffered no affidavit made by a party or eyewitness having knowledge of the relevant facts. There was no explanation for the failure to submit affidavits. (*Zuckerman v New York,* 49 NY2d at 563).

A plaintiff's motion for partial summary judgment on liability was properly granted, where, as here, in "opposition to plaintiff's prima facie showing, defendants failed to submit any evidence to raise a triable issue of fact, and instead relied solely upon ... the arguments of counsel ... [, who] claimed no personal knowledge of the accident, his affirmation has no probative value" (*Thompson v*

[1] It is noted that, although Defendants' Counsel asserts that Defendant's Affidavit was attached to the Opposition papers, there were no attachments thereto.

Pizzaro, 155 AD3d 423, 423 [1st Dept 2017]). In *Thompson*, the Court also held that "Plaintiff's motion was not premature. Depositions are unnecessary, since defendants have personal knowledge of the facts, yet "failed to meet their obligation of laying bare their proof and presenting evidence sufficient to raise a triable issue of fact" " (*Thompson v Pizzaro*, 155 AD3d at 423).

Defendants' *Counsel* seeks to rebut the presumption of negligence, by surmising that Plaintiff's vehicle "short stopped ahead of" Defendant. However, even if this allegation were in proper evidentiary form, it would not be a sufficient non-negligent explanation for the accident. The Court has recently reiterated, for instance, that:

> "Plaintiffs met their prima facie burden by demonstrating that they were stopped or stopping in stop-and-go traffic when they were rear-ended by the defendants' vehicle (see e.g. Bajrami v Twinkle Cab Corp., 147 AD3d 649, 46 N.Y.S.3d 879 [1st Dept 2017]; Chowdhury v Matos, 118 AD3d 488, 987 N.Y.S.2d 132 [1st Dept 2014]; Cartagena v Martinez, 112 AD3d 521, 976 N.Y.S.2d 662 [1st Dept 2013]; Johnson v Phillips, 261 AD2d 269, 271, 690 N.Y.S.2d 545 [1st Dept 1999]). Defendants' allegation that plaintiffs' vehicle stopped suddenly in stop-and-go traffic is not a sufficient non-negligent explanation for the accident, and therefore fails to raise a triable issue of material fact in opposition"

(*Elihu v Nicoleau*, 173 AD3d 578, 578 [1st Dept 2019]).

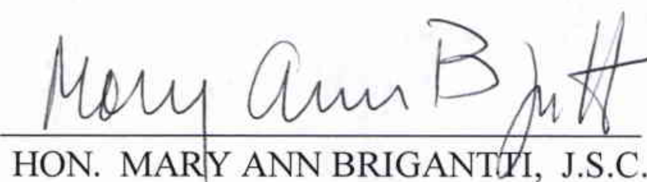
Likewise, herein, Defendants' Counsel's similar contention is insufficient to rebut the presumption of his negligence, because Defendant was: "expected to maintain enough distance between himself and cars ahead of him so as to avoid collisions with stopped vehicles, taking into account weather and road conditions

... Defendants' ... argument, that plaintiff stopped suddenly, is insufficient to rebut the presumption of [his] negligence" (*Matos v Sanchez*, 147 AD3d 585, 586 [1st Dept 2017]).

Accordingly, Plaintiff's Motion, for partial summary judgment in her favor on liability, is granted, to the extent that Defendants are found liable and Defendant's negligence was a substantial factor in causing the accident; and that Plaintiff was free from comparative fault for the happening of this rear-end collision. However, this Court makes no determination as to other issues herein, such as whether Plaintiff's alleged injuries were proximately caused by the negligence of the Defendants, and whether Plaintiff sustained a "serious injury" within the meaning of the Insurance Law.

This constitutes the decision and order of this Court.

Dated: 11/18, 2019



HON. MARY ANN BRIGANTTI, J.S.C.