Santora v Mazariego-Martinez
2020 NY Slip Op 35051(U)
August 27, 2020
Supreme Court, Orange County
Docket Number: Index No. EF004858-2019
Judge: Maria S. Vazquez-Doles

.At a term of the IAS Part of the Supreme Court of the State of New York,
held in and for the County of Orange, at 285 Main Street,
Goshen, New York 10924 on the 27th th day of August, 2020.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

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, on all parties.

DAVID A. SANTORA.,

PLAINTIFF,

-AGAINST-

JORGE E. MAZARIEGO-MARTINEZ and,
JORGE M. MAZARIEGO,

DEFENDANTS

DECISION & ORDER
Motion date: 05/29/2020
Motion Seq.#1
Index No. EF004858-2019

VAZQUEZ-DOLES, J.S.C.

The following papers numbered 1 - 7 were read in connection with the application of plaintiff, David Santora, for partial summary judgment on the issue of liability, and to strike the first; second; and third affirmative defenses of defendants Jorge E. Mazariego-Martinez and Jorge M. Mazariego:

Notice of Motion/Affirmation (Bernsley)/Exhibits A-D 1-5
Affirmation in Opposition (Doherty) 6
Reply Affirmation (Bernsely)..... 7

Background and Procedural History

This personal injury action arises out of a motor vehicle accident that took place on December 10, 2018 on State Route 17 in the Village of Sloatsburg, County of Rockland, State of New York. Plaintiff was the operator of a 2017 Toyota Camry that was struck in the rear by a 2001 Honda CRV, being operated by Jorge E. Mazariego-Martinez ("Defendant Martinez"), and owned by co-defendant Jorge M. Mazariego.

Plaintiff commenced this action by filing a Summons and Complaint on or about June 21,

2019 (Ex. A). Issue was joined by service of Defendants Verified Answer with Affirmative Defenses on or about July 26, 2019 (Ex. A). Following the filing of Note of Issue, plaintiff moved for summary judgment on the issue of liability.

Plaintiff asserts he is entitled to summary judgment on liability based on the rear-end collision, which establishes a *prima facie* case of negligence on the part of defendant. In support of his motion, plaintiff avers that his vehicle was at a complete stop in the right lane of traffic because two vehicles in front of him had also stopped for between thirty and sixty seconds before the collision. Plaintiff argues that defendants' purported non-negligent explanation is insufficient to raise a triable issue of fact based upon Vehicle & Traffic Law §1129(a) which requires a driver to maintain a safe distance between his vehicle and the vehicle in front of him. Defendant alleges that his vision was hampered by sun glare causing him to close his eyes, and when he reopened them, there were only a few seconds before impact.

In opposition, defendants do not offer a sworn affidavit, but submit only the affirmation of their attorney. Defendants argue that the reasonableness of the parties' actions are questions of fact to be determined at trial, that defendant Martinez has available to him the defense of the emergency doctrine, and that summary judgment is not appropriate.

In reply, plaintiff asserts that the emergency doctrine is inapplicable in that defendants created the hazardous situation by failing to maintain a safe distance behind plaintiff's vehicle and by failing to see what should have been seen by a proper use of the senses.

Discussion

For the reasons which follow, plaintiff's motion is granted.

Summary judgment is a drastic remedy, and is appropriate only when there is a clear

demonstration of the absence of any triable issue of fact (*see Piccirillo v Piccirillo*, 156 AD2d 748 [2d Dept 1989], citing *Andre v Pomeroy*, 35 NY2d 361 [1974]). The function of the Court on such a motion is issue finding, and not issue determination *(see Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395 [1957]). The Court is not to engage in the weighing of evidence; rather, the Court's function is to determine whether "by no rational process could the trier of facts find for the non-moving party" (*Jastrzebski v N. Shore Sch. Dist.*, 232 AD2d 677, 678 [2d Dept 1996]).

The Court is obliged to draw all reasonable inferences in favor of the non-moving party *(see Rizzo v. Lincoln Diner Corp.*, 215 AD2d 546 [2d Dept 1995]). Where there is any doubt about the existence of a material and triable issue of fact, summary judgment must not be granted (*see Anyanwu v. Johnson*, 276 AD2d 572 [2d Dept 2000]). Where facts are in dispute, where conflicting inferences may be drawn from the evidence, or where there are issues of credibility, summary judgment must not be granted (*see Jastrzebski, supra*, 223 AD2d at 678).

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, in the absence of any negligence on the part of the plaintiff (*see Velazquez v Denton Limo, Inc.*, 7 AD3d 787 [2d Dept 2004]; *Trombetta v Cathone*, 59 AD3d 526 [2d Dept 2009]).

Plaintiff has established his *prima facie* entitlement to summary judgment by the proffer of a sworn statement alleging that his "...vehicle was completely stopped in the right southbound lane of State Route 17 for approximately thirty to sixty seconds..." prior to the impact with the vehicle driven by defendant Martinez. (Ex. B at ¶10). Such a showing requires defendant to come forward with a non-negligent explanation for the accident (*see Velazquez, supra,* citing *Shamah v. Richmond County Ambulance Serv.*, 279 AD2d 564 [2d Dept 2001]). Additionally, the Vehicle and Traffic Law requires a driver to maintain a safe distance between his vehicle and

the vehicle in front of him (VTL §1129[a]).

Defendant Martinez testified that he was traveling at: "Roughly forty (40) miles an hour" (tr at 14 line 3) behind plaintiff's vehicle, and that: "The sun hit my eyes. I closed my eyes for approximately, two seconds opened them back up and the car was right in front of me." (Ex. C at 14, 16). Defendant also testified that: "When the glare hit me I applied my brakes. Shortly thereafter I seen [sic] the vehicle and that's when I tried to come to a complete stop" (Ex. C at 15). Defendant further testified that : "I moved the car to the right attempting [to get onto the shoulder]" (Ex. C at 17-18). It was at this point the vehicles came into contact with each other.

In opposition, defendants do not offer sworn affidavits; but rather submit only the affirmation of their attorney, in which defendants argue the proximate cause of the accident to be sun glare, and as a result, Defendant Martinez has available to him the defense of emergency.

This Court disagrees with both assertions.

Case law consistently rejects sun glare as a non-negligent explanation for the happening of a motor vehicle accident (*see e.g. Marsella v. Sound Distrib. Corp.*, 248 AD2d 683,684 [2d Dept 1998] [finding that "[t]he explanation proffered by the plaintiff, that the sun was shining into her eyes, was insufficient to raise a triable issue of fact as to the negligence of the defendant's employee in parking the truck at the location where the accident occurred...the proximate cause of the accident was the plaintiff's failure to control her vehicle and to see that which, under the facts and circumstances, she should have seen by the proper use of her senses.").

Furthermore, the common law emergency doctrine is inapplicable to the case at bar. Under the emergency doctrine, "...those faced with a sudden and unexpected circumstance, not of their own making, that leaves them with little or no time for reflection or reasonably causes them to be so disturbed that they are compelled to make a quick decision without weighing alternative

courses of conduct, may not be negligent if their actions are reasonable and prudent in the context of the emergency" (*Bello v Transit Auth. Of N.Y. City*, 12 AD3d 58, 60 [2004]). In general, however, the emergency doctrine does not apply to typical accidents involving rear-end collisions because trailing drivers are required to leave a reasonable distance between their vehicles and the vehicles ahead of them (*see* VTL§1129[a]; *Jacobellis v New York State Thruway Auth.*, 51 AD3d 976, 977 [2d Dept 2008]; *Shehab v Powers*, 150 AD3d 918, 920 [2d Dept 2017]).

On the basis of the foregoing, it is hereby

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

ORDERED that plaintiff's motion striking defendant's first, second, and third affirmative defenses in defendants' verified answer is granted: and it is

ORDERED that this matter is scheduled for a SKYPE status conference on September 23, 2020 at 2:00 pm.

Any matters not specifically addressed have been considered and denied.

The foregoing constitutes the Decision and Order of this Court.

Dated: August 27th, 2020
Goshen, NY

ENTER:

HON. MARIA S. VAZQUEZ-DOLES, J.S.C.

TO: Counsel of record via NYSCEF