Massa v Simpson
2020 NY Slip Op 35071(U)
January 27, 2020
Supreme Court, Suffolk County
Docket Number: Index No. 600728/2019E
Judge: William B. Rebolini
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Short Form Order

SUPREME COURT - STATE OF NEW YORK

I.A.S. PART 7 - SUFFOLK COUNTY

PRESENT:
WILLIAM B. REBOLINI
Justice

Tina L. Massa and Nicholas Massa,

Plaintiffs,

-against-

Kenneth B. Simpson and Kenneth B. Simpson, Jr.,

Defendants.

Motion Sequence No.: 002; MG
Motion Date: 10/30/19
Submitted: 1/15/19

Index No.: 600728/2019**E**

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Upon the **E-file document list** numbered 17 to 29 and 32 to 33 read on this application by plaintiffs for an order granting them summary judgment against defendants on the issue of liability pursuant to CPLR 3212; it is

ORDERED that plaintiffs' motion for summary judgment on the issue of liability is granted.

In this action, plaintiffs seek damages for personal injuries alleged to have occurred as a result of a motor vehicle accident that occurred on January 27, 2016. The action was commenced by the filing of a summons and complaint on January 10, 2019. Issue was joined on March 18, 2019. Another action under index number 617086/2018 was commenced by plaintiff Rosemary T. Donnelly (the "first action") against defendants Kenneth B. Simpson and Kenneth B. Simpson, Jr.

(collectively referred to herein as the "Simpson defendants"), Nicholas Massa and Neil Massa (the "Massa defendants"). This first action involves the same motor vehicle accident. In the first action, plaintiff Donnelly and defendants Nicholas Massa and Neil Massa were granted summary judgment on the issue of liability against the Simpson defendants by order of this Court dated May 1, 2019. In that decision, the court found that the Massa defendants rebutted the inference of negligence by providing a non-negligent explanation for the accident. As noted by the court, Nicholas Massa presented that "his vehicle completely stopped behind [the Donnelly vehicle]....and was propelled into the [Donnelly vehicle] when it was struck in the rear by [the Simpson vehicle]." The court further noted that the Simpson defendants failed to raise an issue of fact. Plaintiffs herein, Tina Massa and Nicholas Massa (the "Massa plaintiffs") now move for summary judgment on the issue of liability. In support of their motion, plaintiffs submit, *inter alia*, a copy of the pleadings in this action and the first action and the order in the first action. Defendants oppose the motion.

It is well settled that a party moving for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issue of fact (*see* ***Alvarez v. Prospect Hosp.***, 68 NY2d 320, 508 NYS2d 923 [1986]; ***Friends of Animals v. Associated Fur Mfrs.***, 46 NY2d 1065, 1067, 416 NYS2d 790 [1979]). The failure of the moving party to make a prima facie showing requires the denial of the motion regardless of the sufficiency of the opposing papers (*see* ***Winegrad v. New York Univ. Med. Ctr.***, 64 NY2d 851, 487 NYS2d 316 [1985]). However, once the movant has made the requisite showing, the burden then shifts to the party opposing the motion to produce evidentiary proof in admissible form sufficient to require a trial on any material issue of fact (***Zuckerman v. City of New York***, 49 NY2d 557, 427 NYS2d 595 [1980]. To defeat a motion for summary judgment, a party opposing such motion must lay bare his proof in evidentiary form; conclusory allegations are insufficient to raise a triable issue of fact (*see* ***Friends of Animals, Inc. v. Associated Fur Mfrs.***, 46 NY2d 1065, 416 NYS2d 790; ***Burns v. City of Poughkeepsie***, 293 AD2d 435, 739 NYS2d 458 [2d Dept 2002]). In deciding the motion, the Court must view all evidence in the light most favorable to the nonmoving party (***Nomura***, *supra*; *see also* ***Ortiz v. Varsity Holdings, LLC***, 18 NY3d 335, 339, 937 NYS2d 157 [2011]). 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***, 142 AD3d 944, 37 NYS3d 339 [2d Dept 2016]; ***Benetatos v. Comerford***, 78 AD3d 730, 911 NYS2d 155 [2d Dept. 2010]).

When a driver approaches another vehicle from the rear, he is bound to maintain a reasonably safe rate of speed and to maintain control of his vehicle and use reasonable care to avoid colliding with the other vehicle (Vehicle and Traffic Law § 1129 [a]; ***Gallo v. Jairath***, 122 AD3d 795, 996 NYS2d 682 [2d Dept 2014]; ***Cajas-Romero v. Ward***, 106 AD3d 850, 965 NYS2d 559 [2d Dept 2013]; ***Nsiah-Ababio v. Hunter***, 78 AD3d 672, 913 NYS2d 659 [2d Dept 2010]). A driver is negligent in failing to see that which under the facts and circumstances he should have seen by the proper use of his senses (*see* ***Barbieri v. Vokoun***, 72 AD3d 853, 900 NYS2d 315 [2d Dept.2010]; ***Domanova v. State of New York***, 41 AD3d 633, 838 NYS2d 644 [2d Dept. 2007]; ***Lester v Jolicofur et al.,*** 120 AD2d 574; 502 NYS2d 61 [2d Dept 1986]). The occurrence of a rear-end collision with a stopped or stopping vehicles creates a prima facie case of negligence on the part of the operator of the rear vehicle and imposes a duty on that operator to come forward with a non-

negligent explanation for the collision (***Montalvo v. Cedeno,*** 170 AD3d 1166, 96 NYS3d 638 [2d Dept. 2019]; ***McLaughlin v. Lunn***, 137 AD3d 757, 26 NYS3d 338 [2d Dept 2016]; ***Cheow v. Cheng Lin Jin***, 121 AD3d 1058, 995 NYS2d 186 [2d Dept 2014]; ***Perez v Roberts***, 91 AD3d 620, 936 NYS2d 259 [2d Dept 2012]; ***Volpe v. Limoncelli***, 74 AD3d 795, 902 NYS2d 152 [2d Dept 2010]; ***Ramirez v. Konstanzer***, 61 AD3d 837, 878 NYS2d 381 [2d Dept 2009]). This burden is placed on the driver of the rear vehicle because he is in the best position to explain whether the collision was due to a mechanical failure, a sudden stop of the vehicle ahead, unavoidable skidding on wet pavement, or some other reasonable cause (***Sayyed v. Murray***, 109 AD3d 464, 970 NYS2d 279 [2d Dept 2013]; ***Fajardo v. City of New York***, 95 AD3d 820, 943 NYS2d 587 [2d Dept 2012]). "Vehicle 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 or her car and the car ahead" (***Volpe v. Limoncelli***, *supra* at 795-796, 902 NYS2d 152 [2d Dept 2010], *quoting* ***Shamah v. Richmond County Ambulance Serv.***, 279 AD2d 564, 565, 719 NYS2d 287 [2d Dept 2001]; *see* ***Gutierrez v. Trillium, USA, LLC***, 111 AD3d 669, 974 NYS2d 563 [2d Dept 2013]; ***Kimyagarov v. Nixon Taxi Corp.***, *supra*). Thus, the assertion that the lead car suddenly stopped, by itself, is insufficient to rebut the presumption of negligence by the rear vehicle (*see* ***Waide v. Ari Fleet, LT,*** 143 AD3d 975, 39 NYS3d 512 [2d Dept. 2016]; ***Brothers v. Bartling,*** 130 AD3d 554, 13 NYS3d 202 [2d Dept. 2015](assertion of a "sudden stop" is insufficient to provide a non-negligent explanation); ***LeGrand v. Silberstein,*** 123 AD3d 773, 999 NYS2d 96 [2d Dept. 2014]; ***Gutierrez v. Trillium USA, LLC,*** 111 AD3d 669, 974 NYS2d 563 [2d Dept. 2013]; ***Volpe v. Limoncelli***, *supra* at 795-796, 902 NYS2d 152 [2d Dept 2010], *quoting* ***Shamah v. Richmond County Ambulance Serv.***, 279 AD2d 564, 565, 719 NYS2d 287 [2d Dept 2001];***Animah v. Agyei,*** 63 Misc.3d 783, 97 NYS3d 440 [Bronx Cty. 2019]). If the operator of the rear vehicle cannot come forward with evidence to rebut the inference of negligence, then the plaintiff is entitled to summary judgment (***Gibson v Levine***, 95 AD3d 1071, 944 NYS2d 6 10 [2d Dept 2012]; ***Kimyagarov v. Nixon Taxi Corp.***, 45 AD3d 736, 846 NYS2d 309 [2d Dept 2007]). 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]; ***Edgerton v. City of New York***, 160 AD3d 809, 74 NYS3d 617 [2d Dept 2018]).

Plaintiffs argue that their motion for summary judgment should be granted as there are no issues of fact in this hit in the rear accident case. Plaintiffs further argue that they are entitled to summary judgment pursuant to the doctrines of collateral estoppel and res judicata. Plaintiffs assert that the issue of liability was decided in the first action against the Simpson defendants and thus, the same result is warranted here.

Collateral estoppel precludes a party from relitigating an issue which has been previously decided against that party, or those in privity with that party, in a prior action or proceeding where the party had a full and fair opportunity to litigate such issue (***Ryan v. New York Telephone Co.,*** 62 NY2d 494, 500, 478 NYS2d 823, [1984]; ***Luscher v. Arrua,*** 21 AD3d 1005, 1007, 801 NYS2d 379 [2d Dept 2005]). "The party seeking the benefit of the doctrine of collateral estoppel bears the burden of establishing that the identical issue was necessarily decided in the prior action, and the party to be estopped bears the burden of demonstrating the absence of a full and fair opportunity to contest

the prior determination" (***Leung v. Suffolk Plate Glass Co., Inc.,*** 78 AD3d 663, 663-64, 911 NYS2d 376 [2d Dept. 2010]; *see also* ***SSJ Dev. Of Sheepshead Bay I, LLC v. Amalgamated Bank,*** 128 AD3d 674, 676, 10 NYS3d 105 [2d Dept. 2015]). Under the doctrine of res judicata, a judgment on the merits by a court of competent jurisdiction is conclusive of the issues of fact and questions of law necessarily decided therein in any subsequent action involving the parties to a litigation and those in privity with them (***Luscher v Arrua,*** 21 AD3d 1005, 1006, 801 NYS2d 379 [2d Dept 2005]).

In the prior decision, the court relied upon the affidavit of Nicholas Massa in finding there was a non-negligent explanation for the Massa vehicle hitting the Donnelly vehicle in the rear, that being, the Massa vehicle was hit in the rear by the Simpson vehicle, propelling it into the Donnelly vehicle. These facts were established in the first action. Defendants had an opportunity to refute the facts alleged, offer their own explanation for how the accident occurred, and raise an issue of fact, which they failed to do. Thus, the doctrines of collateral estoppel and res judicata bar defendants from relitigating issues previously resolved against them, that being their negligence in causing the subject accident (*see, e.g.,* ***Lapierre v. Love,*** 100 AD3d 713, 954 NYS2d 154 [2d Dept. 2012]; ***Abselet v. Horn,*** 2014 N.Y. Slip Op. 31150, 2014 WL 1806462 [Sup. Ct. Suffolk Cty. 2014]; *see also* ***Madison Acquisition Group, LLC v. 7614 Fourth Real Estate Development, LLC***, 134 A.D. 3d 683, 20 N.Y.S.3d 418 [2d Dept. 2015]; ***Discover Bank v. Qader,*** 105 AD3d 892, 962 NYS2d 911 [2d Dept 2013]). Notwithstanding, defendants have not offered a non-negligent explanation for the accident and thus, plaintiffs, in any event, are entitled to an award of summary judgment on the issue of liability (***Lapierre v. Love,*** *supra*). Plaintiffs, however, are not entitled to an immediate trial on damages. On September 11, 2019, a preliminary conference stipulation with respect to discovery on damages was entered into between the attorneys for the parties. Stipulations are essentially agreements which are governed by general principles of contract law (*see* ***Daibes v. Kahn,*** 116 AD3d 994, 983 NYS2d 898 [2d Dept. 2014] and cases cited therein) and thus, are to be enforced according to their terms. Accordingly, the parties are directed to proceed with discovery on the issue of damages. [1] The Court has considered the arguments raised by defendants and finds that they lack merit (***Finney v. Morton,*** 127 AD3d 1134, 1134, 7 NYS3d 508 [2d Dept. 2015]).

The foregoing constitutes the ***Decision*** and ***Order*** of this Court.

Dated: 1/27/2020

HON. WILLIAM B. REBOLINI, J.S.C.

_____ FINAL DISPOSITION ___X___ NON-FINAL DISPOSITION

[1] Moreover, plaintiffs did not request this relief in their notice of motion and thus, are not entitled to same.