Puglia v Timpe
2020 NY Slip Op 35273(U)
October 19, 2020
Supreme Court, Suffolk County
Docket Number: Index No. 623127/2019
Judge: Jr., Paul J. Baisley
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

SHORT FORM ORDER **INDEX NO. 623127/2019**

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

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

CARL PUGLIA and JOSEPHINE PUGLIA,

Plaintiffs,

-against-

PETER TIMPE,

Defendant.

ORIG. RETURN DATE: July 15, 2020
FINAL RETURN DATE: August 18, 2020
MOT. SEQ. #: 001 MG

ORIG. RETURN DATE: August 18, 2020
FINAL RETURN DATE: August 18, 2020
MOT. SEQ. #: 002 WDN

PLTFS' ATTORNEY:
ROBERT K. YOUNG & ASSOCIATES
2284 BABYLON TURNPIKE
MERRICK, NY 11566

DEFT'S ATTORNEY:
LAW OFFICE OF ANDREA G. SAWYERS
3 HUNTINGTON QUADRANGLE, STE 102S
MELVILLE, NY 11747

Upon the following papers read on this motion for summary judgment : Notice of Motion/ Order to Show Cause and supporting papers by plaintiffs, dated June 15, 2020 ; Notice of Cross Motion and supporting papers ___; Answering Affidavits and supporting papers by defendant, dated August 12, 2020 ; Replying Affidavits and supporting papers ___; Other ___; it is

ORDERED that the motion by plaintiffs Carl Puglia and Josephine Puglia for summary judgment in their favor on the issue of negligence is granted;

ORDERED that the cross motion by defendant Peter Timpe for, inter alia, an order compelling plaintiffs to comply with their demands for a bill of particulars and discovery hereby is permitted to be withdrawn in accordance with a stipulation received from counsels dated August 17, 2020; and it is further

ORDERED that a preliminary conference shall be held on November 9, 2020.

Plaintiffs Carl Puglia and Josephine Puglia commenced this action to recover damages for injuries they allegedly sustained as a result of a motor vehicle accident that occurred at the intersection of North Saxon and Union Boulevard in the Town of Islip on September 20, 2019. It is alleged that the accident occurred when the vehicle owned and operated by defendant Peter Timpe struck the rear of the vehicle owned and operated by plaintiff while it stopped at a red traffic light on North Saxon Avenue. As a result of the impact between plaintiff and defendant's vehicles, plaintiff's vehicle was pushed forward into the vehicle preceding it, and then struck, once again, in the rear by defendant's vehicle. At the time of the accident, plaintiff Josephine Puglia was riding as a front seat passenger in the vehicle operated by her husband, plaintiff Carl Puglia.

Plaintiffs now move for summary judgment on the basis that defendant's negligent operation of his vehicle was the sole proximate cause of the subject accident. In support of the motion, plaintiffs submit copies of the pleadings and the affidavits of Carl Puglia and Josephine Puglia. Defendant opposes the motion on the grounds that there are material triable issues of fact regarding the accident's occurrence and that the motion is premature. In opposition to the motion, defendant submits his own affidavit.

To establish prima facie entitlement to judgment as a matter of law, a movant must come forward with evidentiary proof, in admissible form, demonstrating the absence of any material issues of fact (*see Rodriguez v City of New York*, 31 NY3d 312, 76 NYS3d 898 [2018]; *Alvarez v Prospect Hosp.*, 68 NY2d 320, 508 NYS2d 923 [1986]; *Sillman v Twentieth Century Fox Film Corp.*, 3 NY2d 395, 165 NYS2d 498 [1957]). The failure to make such showing requires a 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]). Moreover, a plaintiff does not bear the double burden of establishing a prima facie case of defendant's liability and the absence of his or her own comparative fault (*Rodriguez v City of New York*, *supra*).

"A rear-end collision with a stopped or stopping vehicle creates a prima facie case of negligence against the operator of the rear vehicle, thereby requiring that operator to rebut the inference of negligence by providing a non-negligent explanation " (*DeLouise v S.K.I. Wholesale Beer Corp.*, 75 AD3d 489, 490, 904 NYS2d 761 [2d Dept 2010]; *see Reitz v Seagate Trucking, Inc.*, 71 AD3d 975, 898 NYS2d 173 [2d Dept 2010]; *Harrington v Kern*, 52 AD3d 473, 859 NYS2d 480 [2d Dept 2008]). However, the lead vehicle also has a duty not to stop suddenly or slow down without proper signaling so as to avoid a collision (*Chepel v Meyers*, 306 AD2d 235, 237, 762 NYS2d 95 [2d Dept 2003]; *see Carhuayano v J&R Hacking*, 28 AD3d 413, 813 NYS2d 162 [2d Dept 2006]; *Gaeta v Carter*, 6 AD3d 576, 775 NYS2d 86 [2d Dept 2004]; *Purcell v Axelsen*, 286 AD2d 379, 729 NYS2d 495 [2d Dept 2001]; *Colonna v Suarez*, 278 AD2d 355, 718 NYS2d 618 [2d Dept 2000]; *see also* Vehicle and Traffic Law § 1163). A non-negligent explanation for the collision, such as mechanical failure or the sudden and abrupt stop of the vehicle ahead, is sufficient to overcome the inference of negligence and preclude an award of summary judgment (*Danner v Campbell*, 302 AD2d 859, 859, 754 NYS2d 484 [4th Dept 2003]; *see Davidoff v Mullokandov*, 74 AD3d 862, 903 NYS2d 107 [2d Dept 2010]; *Rodriguez-Johnson v Hunt*, 279 AD2d 781, 718 NYS2d 501 [3rd Dept 2001]).

Plaintiff Carl Puglia submits an affidavit in which he avers that prior to the accident he was traveling on North Saxon Avenue, that his wife, plaintiff Josephine Puglia, was riding as a front seat passenger in the vehicle, and that after bringing his vehicle to a stop at a red traffic light, it was struck in the rear by the vehicle operated by defendant Peter Timpe. He further states that as a result of the impact between his vehicle and the Puglia vehicle, his vehicle was propelled forward into the vehicle preceding ahead of his vehicle, striking that vehicle in the rear, and that his vehicle was struck for a second time in the rear by defendant's vehicle. In addition, plaintiff Josephine Puglia submits an affidavit, wherein she states that she was riding as a front seat passenger in the Puglia vehicle; that when their vehicle reached the intersection of North Saxon Avenue and Union Boulevard, Carl Puglia brought the vehicle to a gradual stop at the red light; and that while the vehicle was stopped at the red traffic light it was struck in the rear by defendant's vehicle. She further states that after the Puglia vehicle was struck in the rear it

was pushed forward into the vehicle ahead, and that defendant's vehicle struck the rear of the Puglia vehicle a second time. Thus, plaintiffs' submissions are sufficient to establish their prima facie entitlement to judgment as a matter of law on the issue of negligence (*see Hamdamova v New Dawn Tr., LLC*, 163 AD3d 786, 81 NYS3d 495 [2d Dept 2018]; *Pilgrim v Vishwanathan*, 151 AD3d 769, 56 NYS3d 268 [2d Dept 2017]; *Graham v Courtesy Transp. Servs., Inc.*, 145 AD3d 966, 44 NYS3d 157 [2d Dept 2016]; *Bowen v Farrell,* 140 AD3d 1001, 34 NYS3d 165 [2d Dept 2016]). Moreover, a driver approaching a vehicle from the rear is bound to maintain a reasonably safe rate of speed and control over his or her vehicle, and to exercise reasonable care to avoid colliding with the other vehicle (*Scheker v Brown*, 85 AD3d 1007, 1007, 925 NYS2d 528 [2d Dept 2011]; *see* Vehicle and Traffic Law § 1129[a]; *Orellana v Maggies Paratransit Corp.*, 138 AD3d 941, 30 NYS3d 224 [2d Dept 2016]; *Billis v Tunjian*, 120 AD3d 1168, 992 NYS2d Dept 2014]). Furthermore, vehicle stops that are foreseeable under the prevailing traffic conditions, even if sudden and frequent, must be anticipated by the driver who follows, since he or she has a duty to maintain a safe distance between his or her vehicle and the car ahead (*see Arslan v Costello*, 164 AD3d 1408, 84 NYS3d 229 [2d Dept 2018]; *Waide v ARI Fleet, LT*, 143 AD3d 975, 39 NYS3d 512 [2d Dept 2016]; *Shamah v Richmond County Ambulance Serv.*, 279 AD2d 564, 719 NYS2d 287 [2d Dept 2001]; *see also* Vehicle and Traffic Law § 1129 [a]).

In opposition to the motion, defendant failed to raise a triable issue of fact (*see Arazashvilli v Executive Fleet Mgt., Corp.*, 90 AD3d 682, 934 NYS2d 341 [2d Dept 2011]). Defendant has submitted his own affidavit in opposition to the motion, and in it he avers that prior to the accident's occurrence he was traveling on North Saxon Avenue, that when he crossed over the railroad tracks on North Saxon Avenue he observed a line of vehicles stopped at the red traffic light, and that he applied his brakes, but his brakes did not respond, causing his vehicle to strike the rear of plaintiffs' vehicle. Defendant further states that he learned the metal brake line broke on his vehicle, resulting in the brake failure that occurred on the day of the accident; that prior to the subject accident, his vehicle was regularly inspected and maintained; that he had not previously experienced any problems with his vehicle's brakes; and that such brake failure was sudden and unexpected. "When the driver of the offending vehicle in an automobile accident lays blame for the accident on brake failure, it is incumbent upon that party to show that the brake problem was unanticipated, and that he took reasonable care to keep his brakes in good working condition" (*Ballatore v HUB Truck Rental Corp.*, 83 AD3d 978, 980, 922 NYS2d 180 [2d Dept 2011]; *see Vidal v Tsitsiashvili*, 297 AD2d 638, 747 NYS2d 524 [2d Dept 2002]; *Hollis v Kellog*, 306 AD2d 244, 245, 761 NYS2d 253 [2d Dept 2003]). Here, defendant merely proffered brake failure as an excuse for striking the rear of plaintiff's vehicle, not once, but twice, without further explanation. Defendant failed to offer any admissible evidence in opposition to support his contention that he was faced with an emergency situation as a result of his brakes failing unexpectedly or that he exercised reasonable care to keep the brakes in good working order (*see Reid v Rayamjhi*, 17 AD3d 557, 795 NYS2d 56 [2d Dept 2005]; *Elgendy v Pilpel*, 303 AD3d 446, 755 NYS2d 896 [2d Dept 2003]). Moreover, despite defendant stating that the brakes on his vehicle were regularly inspected and maintained, he failed to submit any paperwork or documentation in admissible form from an auto shop to show that he properly maintained his brakes in good working order, and, therefore, such failure was unanticipated.

Lastly, contrary to defendant's contention, the motion is not premature (*see Lopez v WS Distrib., Inc.*, 34 AD3d 759, 825 NYS2d 516 [2d Dept 2006]). Before a party can defeat or delay a motion for

summary judgment claiming ignorance of fact due to unconducted discovery (*see* CPLR 3212(f)), a party must demonstrate that the needed proof is within the exclusive knowledge of the moving party (*see Berkeley v Fed. Bank & Trust v 229 E. 53rd St. Assoc.*, 242 AD2d 489, 662 NYS2d 481 [1st Dept 1997]), that the claims in opposition are supported by something more than mere hope or conjecture (*see Neryaev v Solon*, 6 AD3d 510, 775 NYS2d 348 [2d Dept 2004]), and that the party has made reasonable attempts to discover these facts and that the facts sought would give rise to a triable issue (*see Cruz v Ortis El. Co.*, 238 AD2d 540, 656 NYS2d 688 [2d Dept 1997]). Here, defendant failed to make such a showing. Accordingly, plaintiff's motion for summary judgment in their favor on the issue of negligence is granted.

Dated: 10/19/20

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