

Hernandez-Escobar v Ricardo
2020 NY Slip Op 35283(U)
September 30, 2020
Supreme Court, Orange County
Docket Number: Index No. EF009326-2019
Judge: Maria S. Vazquez-Doles
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This opinion is uncorrected and not selected for official publication.

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.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

JOSE A. HERNANDEZ-ESCOBAR,

PLAINTIFF,

-AGAINST-

LINDA S. RICARDO,

DEFENDANT.

VAZQUEZ-DOLES, J.S.C.

DECISION & ORDER

INDEX NO.: EF009326-2019

Motion date: 06/04/2020

Motion Sequence #1

The following papers numbered 1 - 9 were read on Plaintiff's motion for an Order, pursuant to CPLR 3212, granting partial summary judgment against defendant on the issue of liability;

<u>PAPERS</u>	<u>NUMBERED</u>
Notice of Motion/Affirmation (Ianuzzi)/Exhibits 1-5	
Affidavit(Hernandez-Escobar).....	1-7
Affirmation in Opposition (Iacobucci)	8
Affirmation in Further Support of Motion(Ianuzzi).....	9

Upon the foregoing it is **ORDERED** that plaintiff's motion for partial summary judgment on the issue of liability is **GRANTED**.

Background and Procedural History

This personal injury action arises out of a motor vehicle accident that took place on May 28, 2019 on State Route 17 in the Town of Monroe, County of Orange, State of New York.

Plaintiff was the operator of a 2003 Lincoln suburban owned by non-party Ignacio Ponce that was struck in the rear by a 2015 Nissan sedan, being operated by Linda S. Ricardo.

Plaintiff commenced this action by filing a Summons and Verified Complaint on November 25, 2019. Issue was joined by service of Defendant's Answer with Affirmative Defenses and Demands on December 30, 2019. The Verified Bill of Particulars was served on or about March 11, 2020. Neither party has been deposed. By Notice of Motion filed June 04, 2020, plaintiff seeks partial summary judgment on the grounds of liability only.

Plaintiff asserts he is entitled to summary judgment on liability based on the rear-end collision. In support of his motion, plaintiff avers in his Affidavit, that he was traveling on Route 17 in 'stop and go' traffic, that he gradually brought his vehicle to a complete stop when traffic in front of him came to a stop, and that he was struck forcefully from behind by defendant's vehicle (Ex 5). Plaintiff also includes a certified copy of the police accident report which states "Op-1 [defendant] states she went to put down coffee and struck V-2[,]".(Ex. 4). Plaintiff argues that defendant failed to exercise reasonable care to avoid the collision. Plaintiff further argues that defendant was following plaintiff's vehicle too closely, and failed to maintain a safe distance between vehicles as required by statute (*see* VTL § 1160(a)).

In opposition, defendant does not offer a sworn affidavit, but submits only the affirmation of her attorney. Defendant argues that issues of fact exist to be determined at trial, and that plaintiff's motion is premature in that neither party has been deposed.

In reply, plaintiff asserts that defendant has not only failed to offer a non-negligent explanation for the accident, but also fails to meet her burden by raising a triable issue of fact.

Discussion

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 asserting that "[He] was traveling on State Route 17...in stop and go traffic when traffic came to a stop. [He] gradually brought the 2003 Lincoln...to a complete stop. While at a complete stop, suddenly and without warning [his] vehicle was forcefully rear-ended [by the

defendant]” (Ex.5). 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 (*see* VTL §1129[a]).

In opposition, defendant does not offer a sworn affidavit; but rather submits only the affirmation of her attorney, in which defendant argues that plaintiff’s motion is premature in that neither party has been deposed. Defendant fails, however, to raise a triable issue of fact in that she does not offer a non-negligent explanation for the occurrence of the collision. On the basis of the foregoing, plaintiff’s motion must be granted. Accordingly, it is hereby

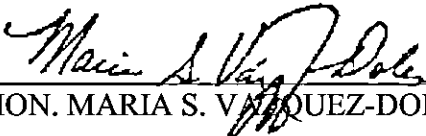
ORDERED that plaintiffs’ motion for partial summary judgment on the issue of liability is granted, and it is further

ORDERED that all parties shall appear for a virtual settlement conference on December 3, 2020 at 11:15a.m.. A link shall be forwarded by the Part Clerk.

The foregoing constitutes the Decision and Order of the Court

Dated: September 30, 2020
Goshen, New York

ENTER :



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

TO: Counsel of record via NYSCEF