Davis v City of New York
2021 NY Slip Op 30167(U)
January 8, 2021
Supreme Court, New York County
Docket Number: 152464/2019
Judge: J. Machelle Sweeting
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. J. MACHELLE SWEETING** **PART** **IAS MOTION 62**

Justice

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AISHA DAVIS,

Plaintiff,

- v -

THE CITY OF NEW YORK, NEW YORK CITY DEPARTMENT OF TRANSPORTATION, BRIAN SKEET

Defendant.

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INDEX NO. 152464/2019

MOTION DATE 05/05/2020

MOTION SEQ. NO. 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38

were read on this motion to/for JUDGMENT - SUMMARY.

This action arises out of a motor vehicle accident that occurred on April 24, 2018 on 7th Avenue at or near the intersection of West 135th Street in New York, New York. Plaintiff alleges that she was injured when her vehicle was struck in the rear by a vehicle owned by defendant New York City Department of Transportation (the "DOT") and operated by defendant Brian Skeet (the "Driver").

Pending before the court is a motion filed by plaintiff seeking summary judgment against all defendants on the issue of liability pursuant to Civil Practice Law and Rules (CPLR) §3212. Upon the foregoing documents, this motion is GRANTED.

The function of the court when presented with a motion for summary judgment is one of issue finding, not issue determination (Sillman v. Twentieth Century-Fox Film Corp., 3 N.Y.2d 395 [NY Ct. of Appeals 1957]; Weiner v. Ga-Ro Die Cutting, Inc., 104 A.D.2d331 [1st Dept. 1985]). The proponent of a motion for summary judgment must tender sufficient evidence to show

the absence of any material issue of fact and the right to entitlement to judgment as a matter of law (Alvarez v. Prospect Hospital, 68 N.Y.2d 320 [NY Ct. of Appeals 1986]; Winegrad v. New York University Medical Center, 64 N.Y.2d 851 [NY Ct. of Appeals 1985]). Summary judgment is a drastic remedy that deprives a litigant of his or her day in court. Therefore, the party opposing a motion for summary judgment is entitled to all favorable inferences that can be drawn from the evidence submitted and the papers will be scrutinized carefully in a light most favorable to the non-moving party (Assaf v. Ropog Cab Corp., 153 A.D.2d 520 [1st Dept. 1989]). Summary judgment will only be granted if there are no material, triable issues of fact (Sillman v. Twentieth Century-Fox Film Corp., 3 N.Y.2d 395 [NY Ct. of Appeals 1957]).

Here, plaintiff's testimony is that she was driving on 7th Avenue and as she crossed the intersection of 135th street, she noticed congestion ahead and the motor vehicles in front of hers coming to a complete stop. She pressed her brake pedal and brought her own motor vehicle to a complete stop. She was at a complete stop for approximately five seconds when she was suddenly struck from behind by the Driver's car. Plaintiff argues that she is entitled to summary judgment as a matter of law on the issue of liability, as the evidence establishes that the Driver struck her vehicle in the rear, and the Driver presented no non-negligent explanation for this occurrence.

Defendants, who are all represented by Corporation Counsel (hereinafter known as the "City"), do not dispute the facts as set forth by plaintiff, but argue that plaintiff's motion for summary judgment should be denied for two reasons. First, a non-negligent explanation for the accident exists because the City is entitled to the emergency doctrine; specifically, a question of fact exists as to whether the Driver acted reasonably under the circumstances. In short, the City argues that plaintiff came to a "sudden" and "abrupt" stop, and that "questions of fact exist as to the reasonableness of the Driver's actions under the circumstances should be presented to a jury

to assess […] whether or not Plaintiff was negligent in causing this accident and thus should be submitted to a jury […] there are questions of fact as to liability in this matter, namely, whether or not Mr. Skeet acted reasonably under the emergency doctrine in response to Plaintiff's own flagrant violation of the VTL; specifically, coming to an abrupt stop in front of Mr. Skeet."

Contrary to the City's assertions, the First Department has consistently held that in a rear-end collision, a "sudden stop" by a vehicle in front is insufficient to rebut the presumption of liability of the vehicle in the rear. *See e.g.* Rodriguez v. Sharma, 178 A.D.3d 508 (Sup. Ct. App. Div. 1st Dept. 2019) (holding that a rear-end collision with a stopped vehicle creates a *prima facie* case of negligence on the part of the operator of the moving vehicle unless the operator presents evidence sufficient to rebut the inference of negligence. A sudden stop of the front vehicle is a non-negligent explanation for a rear-end collision); Agramonte v. City of New York, 288 A.D.2d 75 (Sup. Ct. App. Div. 1st Dept. 2001) (finding that plaintiff's sudden stop was insufficient to rebut the presumption of negligence since defendants failed to offer a non-negligent explanation for the happening of the accident); Morales v. Consol. Bus Transit, Inc., 167 A.D.3d 457 (Sup. Ct. App. Div. 1st Dept. 2018) (concluding that the driver's excuse for rear-ending a bus, namely, that the bus made a sudden stop, mid-block, is insufficient to rebut the presumption of negligence); Morgan v. Browner, 138 A.D.3d 560 (Sup. Ct. App. Div. 1st Dept. 2016) (claiming that the lead vehicle made a sudden stop, standing alone, is insufficient to rebut the presumption of negligence on the part of the rear driver); Johnson v. Phillips, 261 A.D.2d 269 (Sup. Ct. App. Div. 1st Dept. 1999) (upholding the principle that drivers must maintain safe distances between their cars and cars in front of them and that drivers have a "duty to see what should be seen and to exercise reasonable care under the circumstances to avoid an accident . . . even if the sudden stop is repetitive; when

the front vehicle, although in stop-and-go traffic, stopped while crossing an intersection; … and when the front car stopped after having changed lanes").

The City's second argument is that plaintiff's motion is premature, as discovery in this matter remains incomplete. However, this court finds that further discovery is not required, in light of the undisputed facts of the this case and in application of the law as stated above. *See e.g.* Johnson v. Phillips, 261 A.D.2d 269 (Sup. Ct. App. Div. 1st Dept. 1999) (applying the law to the essential facts as asserted by defendant and upholding the trial court's finding that the defendant's failure to raise any factual issues to absolve him of liability defeated the need for discovery. Since the defendant is the party with knowledge of the factual circumstances as to how he collided with the front vehicle, discovery would serve no purpose); Soto-Maroquin v. Mellet, 63 A.D.3d 449 (Sup. Ct. App. Div. 1st Dept. 2009) (finding defendant's argument that summary judgment was prematurely granted prior to plaintiff's deposition unavailing, whereas here, defendant's passenger provided no information concerning road conditions other than plaintiff's alleged sudden stop and the defendant driver is the party with knowledge of any non-negligent reasons for the accident); Jeffrey v. DeJesus, 116 A.D.3d 574 (Sup. Ct. App. Div. 1st Dept. 2014) (concluding that the trial court erred in denying, as premature, plaintiff's motion for partial summary judgment on the issue of liability where plaintiff driver averred that the accident at issue occurred when defendant's vehicle struck the back of the vehicle she was operating).

For all of the aforementioned reasons, plaintiff's motion for summary judgment on the issue of liability against all defendants is GRANTED and this matter is set down for trial on the issue of damages.

This is the decision of the court.

1/8/2020
DATE

J. MACHELLE SWEETING, J.S.C.

CHECK ONE:		CASE DISPOSED		X	NON-FINAL DISPOSITION		
	X	GRANTED	DENIED		GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT		REFERENCE