Xia v Jablonowski
2021 NY Slip Op 30594(U)
January 12, 2021
Supreme Court, Queens County
Docket Number: 704056/2020
Judge: Donna-Marie E. Golia

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

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PRESENT: Donna-Marie E. Golia, JSC Part 21

LINDA XIA,

Plaintiff,

v

Index No. 704056/2020
Motion Date: 1/11/2021
Motion Seq. No.: 001

DECISION & ORDER

PATRYK JABLONOWSKI and DSC CONSTRUCTION, INC.

Defendants.

The following electronically filed documents numbered EF8 to EF15, EF16 to EF17 and EF19 to EF20 read on this motion by plaintiff for summary judgment on the issue of liability and to dismiss defendants' second, third and sixth affirmative defenses:

	Papers Numbered
Notice of Motion, Affirmation, Exhibits, and Affidavit of Service.....	EF8 – EF15
Affirmation in Opposition and Affidavit of Service.....	EF16 – EF17
Affirmation in Reply and Affidavit of Service.....	EF19 – EF20

Plaintiff Linda Xia ("plaintiff") moves, pursuant to New York Civil Practice Law and Rules ("CPLR") § 3212, for summary judgment on liability. Plaintiff also moves to strike defendants' second, third and sixth affirmative defenses regarding the emergency doctrine and plaintiff's alleged comparative negligence and failure to wear a seatbelt. Defendants Patryk Jablonowski ("Jablonowski"), the driver of a vehicle owned by DSC Construction, Inc. (collectively "defendants"), oppose the motion. Upon the papers submitted, plaintiff's motion is granted in its entirety.

This action arises out of a motor vehicle accident that occurred on September 7, 2018. Plaintiff alleges that she sustained personal injuries as a result of a hit-in-the-rear collision that occurred on Gardner Avenue at its intersection with Metropolitan Avenue in Brooklyn, New York.

In her motion, plaintiff avers that she was a seat-belted driver of a vehicle when Jablonowski, the driver of the offending vehicle, caused the alleged accident by failing to maintain a reasonably safe distance from her vehicle when she was stopped at a red light in violation of Vehicle and Traffic Law § 1129(a). Further, plaintiff submits the certified police accident report which contains Jablonowski's admission that he was looking at his GPS when he struck plaintiff's vehicle in the rear. In that regard, plaintiff avers that Jablonowski's negligence is the sole proximate cause of the collision and that she was not comparably negligent as a matter of law.

In opposition, defendants argue that plaintiff's pre-discovery motion for summary judgment as to liability and to strike defendants' second, third and sixth affirmative defenses should be denied as premature as it is only through discovery that defendants may have the means to show the existence of a material issue of fact.

In the alternative, defendants argue that summary judgment should be denied as there are triable issues of fact as to how the alleged accident occurred. Specifically, defendants maintain that plaintiff has failed to establish that she was not comparatively negligent for causing the alleged accident.

Additionally, defendants assert that plaintiff has failed to show why the Court should strike their affirmative defense as to plaintiff's alleged failure to wear a seatbelt. Defendants contend that they should be allowed the opportunity to consult with a biomechanical engineer and offer said expert testimony at trial in support of this affirmative defense.

In reply, plaintiff highlights that defendants have failed to submit an affidavit by a person with personal knowledge of the facts in support of their opposition—namely, the affidavit of Jablonowski. Therefore, plaintiff underscores that the affirmation of defendants' attorney alone will not defeat her motion for summary judgment as it has no probative value.

Plaintiff also points out that defendants did not refute the statements contained in her affidavit or the fact that Jablonowski admitted to the police that he was looking at his GPS when he struck plaintiff's vehicle in the rear. As such, plaintiff argues that the Court should grant her motion for summary judgment in its entirety.

DISCUSSION

Summary judgment pursuant to CPLR § 3212 provides a mechanism for the prompt disposition, prior to trial, of civil actions which can be decided as a matter of law (see generally, Brill v City of New York, 2 NY3d 648, 650 [2004]). On a motion for summary judgment, the moving party must make out a *prima facie* case by submitting evidence in admissible form which establishes its entitlement to judgment as a matter of law (see Marshall v Arias, 12 AD3d 423, 424 [2d Dept 2004]). Upon such a showing, the burden shifts to the non-moving party to present admissible evidence which demonstrates the necessity of a trial as to an issue of fact (see Zolin v Roslyn Synagogue, 154 AD2d 369, 369 [2d Dept 1989]). The non-moving party must be afforded every favorable inference that can be drawn from the evidentiary facts established (see McArdle v M & M Farms, 90 AD2d 538 [2d Dept 1982]). However, conclusory, unsupported allegations or general denials are insufficient to defeat a motion for summary judgment (see William Iselin & Co., Inc. v Landau, 71 NY2d 420, 427 [1988]; Stern v Stern, 87 AD2d 887, 887 [2d Dept 1982]).

As a preliminary matter, plaintiff's pre-discovery motion for summary judgment is not premature (see Rainford v Han, 18 AD3d 638,639–40 [2d Dept 2005]). To be sure,

the Appellate Division, Second Department has held that, "The purported need to conduct discovery [does] not warrant denial" of a motion for summary judgment where "[t]he opponents of the motion had personal knowledge of the relevant facts" (see id.; Emil Norsic & Son, Inc. v L.P. Transp., Inc., 30 AD3d 368, 369 [2d Dept 2006]; Rainford, 18 AD3d at 639–40, supra; Niyazov v Bradford, 13 AD3d 501, 502 [2d Dept 2004]; Morissaint v Raemar Corp., 271 AD2d 586, 587 [2d Dept 2000]). Here, the relevant facts underlying the alleged accident would be within Jablonowski's personal knowledge as he was the driver of the vehicle that allegedly struck plaintiff's vehicle in the rear. Accordingly, defendants' "purported need to conduct discovery does not warrant denial of the motion" (see Emil Norsic & Son, Inc. 30 AD3d at 369, supra; Rainford, 18 AD3d at 639–40, supra).

Turning to the substance of plaintiff's motion, plaintiff contends that defendants violated Vehicle and Traffic Law § 1129(a). Under New York Vehicle and Traffic Law § 1129(a), "The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon and the condition of the highway." Therefore, "[a] driver of a vehicle approaching another vehicle from the rear is required to maintain a reasonably safe distance and rate of speed under the prevailing conditions to avoid colliding with the other vehicle" (Nsiah-Ababio v Hunter, 78 AD3d 672, 672 [2d Dept 2010]; NY Veh. & Traf. Law § 1129). In that regard, "a rear-end collision establishes a *prima facie* case of negligence on the part of the operator of the rear vehicle, thereby requiring that operator to rebut the inference of negligence by providing a nonnegligent explanation for the collision" (Ortiz v Hub Truck Rental Corp., 82 AD3d 725, 726 [2d Dept 2011]).

Here, plaintiff has met her burden by submitting evidence sufficient to establish her *prima facie* entitlement to summary judgment on the issue of liability (see Emil Norsic & Son, Inc., 30 AD3d at 368, supra). Notably, plaintiff has submitted an affidavit in which she attests that she was stopped at a red light on Gardner Avenue at the intersection of Metropolitan Avenue when defendants' vehicle struck the rear of her vehicle (see Pl. Aff. p. 2; Clements v Giatas, 178 AD3d 894, 895 [2d Dept 2019]; Ortiz, 82 AD3d at 727, supra). Plaintiff also submits a certified police accident report which contains Jablonowski's admission that he was looking at his GPS when he hit plaintiff's vehicle in the rear (see Pl. Exh. B; Liu v Lowe, 173 AD3d 946, 947 [2d Dept 2019]; Mastricova v Ruderman, 164 AD3d 1435, 1436 [2d Dept 2018]).

In opposition to plaintiff's *prima facie* showing of negligence, defendants failed to raise a triable issue of fact as to the existence of a nonnegligent explanation for the rear-end collision (see Ortiz, 82 AD3d at 727, supra). Indeed, as plaintiff correctly highlights, defendants neither contest that Jablonowski was looking at his GPS when he struck plaintiff's vehicle in the rear nor provide a nonnegligent explanation for the rear-end collision (see id.; Niyazov v Hunter EMS, Inc., 154 AD3d 954, 955 [2d Dept 2017]; Zweeres v Materi, 94 AD3d 1111, 1112 [2d Dept 2012]; Smith v Seskin, 49 AD3d 628, 629 [2d Dept 2008]; Niyazov, 13 AD3d at 502; supra; Morissaint, 271 AD2d at 587, supra).

In that regard, defendants' argument that plaintiff bears the burden to establish that she is free of comparative negligence is misplaced. Indeed, the Court of Appeals has held that a plaintiff need not prove "an absence of comparative fault in order to make out

a *prima facie* case on the issue of defendant's liability" (Rodriguez v City of New York, 31 NY3d 312, 318 [2018]; see also Xin Fang Xia v Saft, 177 AD3d 823, 825 [2d Dept 2019]; Mastricova, 164 AD3d at 1436, supra). Rather, in cases like the one at bar, where a plaintiff has "established a *prima facie* case of negligence on the part of the operator of the rear vehicle," the defendant operator is required to "rebut the inference of negligence by providing a nonnegligent explanation for the collision" (Tumminello v City of New York, 148 AD3d 1084, 1085 [2d Dept 2017]; see also Theo v Vasquez, 136 AD3d 795, 796 [2d Dept 2016]). As defendants here have failed to meet that requirement (see supra), the branch of plaintiff's motion seeking summary judgment on the issue of liability is granted.

Similarly, as defendants have not raised a triable issue of fact as to whether plaintiff caused the alleged accident or "whether any culpable conduct" by plaintiff "contributed to the happening of the subject accident" (see supra), plaintiff's application to strike defendants' third affirmative defense regarding the same is granted (see Rodriguez, 31 NY3d at 324, supra; Niyazov, 154 AD3d 955, supra; Comas-Bourne v City of New York, 146 AD3d 855, 856 [2d Dept 2017]).

Moreover, plaintiff's application to strike defendants' second affirmative defense regarding plaintiff's alleged failure to wear a seatbelt is granted. Notably, in her affidavit, plaintiff avers that she was wearing a seatbelt at the time of the alleged accident (see Pl. Aff. p. 2; Giwa v Bloom, 154 AD3d 921, 923 [2d Dept 2017]; Johnson v Barry, No. 32570/2018E, 2019 WL 4922536, at 1 [NY Sup Ct Aug 26, 2019]; see also, Brabham v City of New York, 105 AD3d 881, 883 [2d Dept 2013]). In response, defendants did not oppose plaintiff's statement or submit any evidence to rebut plaintiff's assertion (see id.). Accordingly, this branch of plaintiff's motion is granted, and defendants' second affirmative defense is dismissed.

Furthermore, defendants' sixth affirmative defense as to the emergency doctrine is inapplicable. In general, "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 vehicles ahead" (Lowhar-Lewis v Metro. Transp. Auth., 97 AD3d 728, 729 [2d Dept 2012]; NY Veh. & Traf. Law § 1129). Here, as defendants have failed to oppose this branch of plaintiff's motion or proffer any evidence to show that Jablonowski was reacting to an emergency, plaintiff's application to strike defendants' sixth affirmative defense regarding the emergency doctrine is granted (see id.; Jacobellis v New York State Thruway Auth., 51 AD3d 976, 977 [2d Dept 2008]).

In sum, plaintiff's motion for summary judgment on the issue of liability is granted. The Court further grants the branches of plaintiff's motion to strike defendants' second, third and sixth affirmative defenses regarding the emergency doctrine and plaintiff's alleged comparative negligence and failure to wear a seatbelt.

This constitutes the Decision & Order of the Court.

Dated: January 12, 2021

Donna-Marie E. Golia, JSC

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