

Sabalza v Phadke

2021 NY Slip Op 33031(U)

December 16, 2021

Supreme Court, Bronx County

Docket Number: Index No. 21989/2016E

Judge: Veronica G. Hummell

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX, IAS PART 31**

MARIA SABALZA and DOMINGO SALAS,

Plaintiff,

-against-

HARISH A. PHADKE, MARINA RIVERA, G. CURTIS
OSTERMAN, and PARUL ARORA,

Defendants.

Index No. 21989/2016E**HON. VERONICA G. HUMMEL, A.J.S.C.****Mot. Seq. Nos. 5 & 6**

In accordance with CPLR 2219(a), the decision herein is made upon consideration of all papers filed by the parties in NYSCEF in support of and in opposition to: (1) defendants HARISH PHADKE's ("Phadke") and PARUL ARORA's (together with Phadke, the "Phadke Car Defendants") motion (Seq. No. 5) seeking an order, pursuant to CPLR 3212, granting them summary judgment dismissing plaintiffs MARIA SABALZA's ("Sabalza") and DOMINGO SALAS's ("Salas"; and, together with Sabalza, "Plaintiffs") complaint; and (2) defendant G. CURTIS OSTERMAN's ("Osterman") motion (Seq. No. 6) seeking an order, pursuant to CPLR 3212, granting him summary judgment dismissing Plaintiffs' complaint and all cross-claims as well as an order, pursuant to § 130-1.1 of the Rules of the Chief Administrator (22 NYCRR 130-1.1), awarding costs and sanctions against Plaintiffs' counsel for failing to discontinue a frivolous action. The Phadke Car Defendants' and Osterman's respective motions are consolidated herein for disposition.

This is a personal-injury action arising out of a multi-vehicle accident that occurred on October 29, 2015, on Henry Hudson Parkway, a/k/a the Westside Highway (the "Accident"). On the motions, the Phadke Car Defendants and Osterman (the "Moving Defendants") both seek an order determining that they bear no liability for the Accident and dismissing the complaint as alleged against them. In support of the motions, the Moving Defendants submit copies of: the pleadings and the filed note of issue; the transcripts of the depositions of Plaintiffs, Phadke, and Osterman; the police accident report; a Stipulation of Discontinuance as to defendant Marina Rivera ("Rivera"); and certain photos of the vehicles involved in the Accident and email correspondence between the parties' attorneys. The submitted copy of the police accident report is not certified, and, therefore, the Court cannot consider it as competent evidence in deciding the motions. *Coleman v. Maclas*, 61 A.D.3d 569, 569 (1st Dep't 2009).

Phadke testified that, on October 29, 2015, he was driving northbound in the right-most lane of the Henry Hudson Parkway at approximately 45 mph when a vehicle merged into his lane in front of him. Because the merging vehicle was moving at a slower speed than Phadke's vehicle, Phadke immediately slowed from approximately 45 mph to 20 mph or less to maintain a safe distance between his vehicle and the merging vehicle. Less than 20 seconds after slowing, Phadke was rear-ended by a vehicle driven by a woman. Phadke's vehicle continued forward in the right-most lane after the impact and did not strike any other vehicles on the three-lane parkway. The rear bumper of Phadke's vehicle was damaged by the impact.

Sabalza testified that, on October 29, 2015, at approximately 8:30 a.m., she was driving in the middle lane of the Henry Hudson Parkway at approximately 48 mph when her vehicle was struck in the rear. The driver of the vehicle that struck Sabalza was a woman. The impact did not cause Sabalza's vehicle to strike any other vehicles on the road. After the Accident, Sabalza observed that the right rear bumper of her vehicle was damaged. The vehicle that Sabalza was driving at the time of the Accident was owned by her husband, Salas, who was not in the vehicle and did not personally witness the Accident.

Osterman testified that, on October 29, 2015, he was driving northbound in the left-most lane of the Henry Hudson Parkway at approximately 50 mph when his vehicle was suddenly and without warning struck on the front bumper and right side by a piece of debris. He did not strike any vehicle on the road. After the impact, Osterman observed that the debris that struck his vehicle was a front bumper that came from another vehicle. He did not observe any impacts between any other vehicles on the road, but, after the Accident, he observed severe rear-end damage to Phadke's vehicle. Osterman's own vehicle was totaled.

Rivera, the driver of the vehicle that allegedly struck Phadke's and Plaintiffs' vehicles in the rear, and whose bumper allegedly struck Osterman's vehicle, was not deposed in this action. This action was discontinued as to Rivera pursuant to a Stipulation of Discontinuance, dated June 18, 2020. Phadke's counsel alleges, upon information and belief, that Plaintiffs have settled their action against Rivera.

Plaintiffs failed to submit any opposition to either motion. On March 24, 2021, Plaintiffs' counsel, William Pager, filed letters addressed to the Court requesting an adjournment of both motions to April 26, 2021, purportedly to allow him time to recover from an illness and file opposition papers. (NYSCEF Docs. 94, 95.) The Phadke Car Defendants' motion (Seq. No. 5) was then returnable on March 25, 2021, so Mr. Pager's adjournment request came only after opposition

had already been due under CPLR 2214(b). Osterman's motion (Seq. No. 6), by contrast, had been fully submitted since February 26, 2021, almost a *month* prior to Mr. Pager's letter. As Osterman's counsel pointed out in opposition to Mr. Pager's adjournment request, despite another attorney at Mr. Pager's firm having signed the pleadings and other filings in the action and having conducted the parties' depositions on behalf of Plaintiffs, Mr. Pager's letters failed to explain if that attorney was also unavailable and, if so, for what reason, or why that attorney could not otherwise have filed Plaintiffs' opposition to the motions. Furthermore, during the intervening months since filing his letters, Mr. Pager has made no subsequent attempts to seek additional time to file opposition papers from the Court. In any event, the Court now has all available testimony of the parties to the Accident before it on these motions and, upon review of that testimony, discerns no material question of fact that Plaintiffs could bring to the Court's attention should they now, many months after submission of the motions, be granted time to file opposition. Mr. Pager's request for such time is, therefore, denied.

"The proponent of a summary judgment motion must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering evidence sufficient to eliminate any material issues of fact from the case." *Winegrad v. N.Y. Univ. Med. Ctr.*, 64 N.Y.2d 851, 853 (1985). Upon such a showing, the burden then shifts to the nonmovant to "present evidentiary facts in admissible form sufficient to raise a genuine, triable issue of fact." *Mazurek v. Metro. Museum of Art*, 27 A.D.3d 227, 228 (1st Dep't 2006). Since there can be more than one proximate cause of an accident, a defendant moving for summary judgment is required to make a *prima facie* showing that she is free from fault. *Hilago v. Vasquez*, 187 A.D.3d 683, 684 (1st Dep't 2020); *Harrigan v. Sow*, 165 A.D.3d 463, 464 (1st Dep't 2018). In order for a defendant driver to establish entitlement to summary judgment on the issue of liability in a motor-vehicle-collision case, therefore, the driver must demonstrate, *prima facie*, that she kept the proper lookout, or that her alleged negligence, if any, did not contribute to the accident. *Hilago*, 187 A.D.3d at 684; *Harrigan*, 165 A.D.3d at 464.

It is well settled that "[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 rear vehicle, and imposes a duty on the part of the operator of the moving vehicle to come forward with an adequate, nonnegligent explanation for the accident." *Urena v. GVC Ltd.*, 160 A.D.3d 467, 467 (1st Dep't 2018) (quoting *Matos v. Sanchez*, 147 A.D.3d 585, 586 (1st Dep't 2017)); *Santos v. Booth*, 126 A.D.3d 506, 506 (1st Dep't 2015); *Woodley v. Ramirez*, 25 A.D.3d 451, 452 (1st Dep't 2006). Under New York Vehicle and Traffic Law ("VTL") § 1129(a), "a 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 vehicle and traffic upon the condition of the highway.” In other words, a driver must maintain a safe distance between his vehicle and the one in front of her. A violation of VTL § 1129(a) is *prima facie* evidence of negligence, and “[t]his rule has been applied when the front vehicle stops suddenly in slow-moving traffic.” *Rodriguez v. Budget Rent-A-Car Sys., Inc.*, 44 A.D.3d 216, 223-24 (1st Dep’t 2007) (quoting *Johnson v. Phillips*, 261 A.D.2d 269, 271 (1st Dep’t 1999)); *Mascitti v. Greene*, 250 A.D.2d 821, 822 (2d Dep’t 1998). In a rear-end collision, there is a presumption of non-negligence of the driver of the lead vehicle. *See Soto-Marouquin v. Mellet*, 63 A.D.3d 449, 450 (1st Dep’t 2009).

Based on the submissions, the Phadke Car Defendants establish *prima facie* entitlement to judgment as a matter of law by submitting evidence that Phadke was driving safely when he was struck in the rear by the vehicle driving behind him. The Phadke Car Defendants further establish *prima facie* that Phadke’s actions were not negligent, as Phadke was properly adjusting his speed to maintain a safe distance between his vehicle and the vehicle merging in front of him prior to the Accident. *See* VTL § 1129(a).

Likewise, based on the submissions, Osterman establishes *prima facie* entitlement to judgment as a matter of law by submitting evidence that he played no part whatsoever in causing the Accident.

Neither movants’ *prima facie* showings have been opposed, and the record before the Court does not reveal a material question of fact. Accordingly, the Phadke Car Defendants’ and Osterman’s motions for summary judgment dismissing the complaint as alleged against them are granted.

That part of Osterman’s motion seeking the awarding of costs and sanctions against Plaintiffs’ counsel is denied.

The Court has considered the additional contentions of the parties not specifically addressed herein. To the extent that any relief requested by the movant was not addressed by the Court, it is hereby denied.

ORDERED that defendants HARISH PHADKE’s and PARUL ARORA’s motion (Seq. No. 5) seeking an order, pursuant to CPLR 3212, granting them summary judgment dismissing plaintiffs MARIA SABALZA’s and DOMINGO SALAS’s complaint is **GRANTED**; and it is further

ORDERED that that part of defendant G. CURTIS OSTERMAN’s motion (Seq. No. 6) seeking an order, pursuant to CPLR 3212, granting him summary judgment dismissing plaintiffs MARIA SABALZA’s and DOMINGO SALAS’s complaint and all cross-claims is **GRANTED**; and it is further

ORDERED that that part of defendant G. CURTIS OSTERMAN’s motion (Seq. No. 6) seeking an order, pursuant to § 130-1.1 of the Rules of the Chief Administrator (22 NYCRR 130-1.1), awarding costs and sanctions against plaintiffs MARIA SABALZA’s and DOMINGO SALAS’s counsel is **DENIED**; and it is further

ORDERED that the Clerk shall mark the motions (Seq. Nos. 5 and 6) disposed in all court records; and it is further

ORDERED that the Clerk shall enter judgment dismissing the complaint and any and all cross-claims against defendants HARISH PHADKE, PARUL ARORA, and G. CURTIS OSTERMAN; and it is further

ORDERED that, because this action was previously discontinued as to defendant MARINA RIVERA, the Clerk shall mark the action disposed in all court records.

This constitutes the decision and order of the Court.

Dated: December 16, 2021

Hon. s/Hon. Veronica G. Hummel/signed 12/16/2021

VERONICA G. HUMMEL, A.J.S.C.

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- 1. CHECK ONE..... CASE DISPOSED IN ITS ENTIRETY CASE STILL ACTIVE
 - 2. MOTION SEQ # 5 IS..... GRANTED DENIED GRANTED IN PART OTHER
 - 3. MOTION SEQ # 6 IS..... GRANTED DENIED GRANTED IN PART OTHER
 - 4. CHECK IF APPROPRIATE..... SETTLE ORDER SUBMIT ORDER SCHEDULE APPEARANCE
 FIDUCIARY APPOINTMENT REFEREE APPOINTMENT
 CONVERT TO ELECTRONIC FILING