Younge v Patel
2021 NY Slip Op 33140(U)
December 13, 2021
Supreme Court, Queens County
Docket Number: Index No. 716090/2020
Judge: Donna-Marie Golia

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

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

TASHEA YOUNGE,

Plaintiff,

v

RAMESHCHANDRA BHAVIK PATEL and MAMU TRANSPORTATION,

Defendants.

Index No. 716090/2020
Motion Date: 9/27/2021
Motion Seq.: 001 & 002

DECISION & ORDER

RAMESHCHANDRA BHAVIK PATEL and MAMU TRANSPORTATION,

Third-Party Plaintiffs,

v

KAYODE O. NURSE,

Third-Party Defendants.

The following electronically filed papers numbered EF11 to EF27 and EF33 to EF43 read on Motion Seq. Nos. 001 and 002:

	Papers Numbered
Notice of Motion, Affirmation, Statement of Material Facts, Exhibits.....	EF11 – EF15
Notice of Motion, Affirmation, Statement of Material Facts, Exhibits, Supporting Papers.....	EF16 – EF25
Affirmation in Opposition, Statement of Material Facts	EF26 – EF27
Affirmation in Opposition, Certificate of Merit, Statement of Material Facts, Affidavit of Service.....	EF33 – EF40
Affirmation in Reply, Supporting Papers.....	EF41 – EF42
Affirmation in Reply.....	EF43

By Motion Seq. No. 001, third-party defendant Kayode O. Nurse ("Nurse") moves, pursuant to CPLR 3212, for summary judgment on liability dismissing the complaint against him. Defendants/third-party plaintiffs Rameshchandra Bhavik Patel ("Patel"), the driver of the vehicle owned by Mamu Transportation (collectively "defendants") oppose the motion.

By Motion Seq. No. 002, plaintiff Tashea Younge moves, pursuant to CPLR 3212, for summary judgment on the issue of liability against defendants Patel and Mamu Transportation. Defendants oppose plaintiff's motion and Nurse submits papers in partial opposition to plaintiff's motion.

Upon the papers submitted, Nurse and plaintiff's motion are both granted, as discussed more fully below.

Plaintiff commenced this action for personal injuries she allegedly sustained as a result of a two-car motor vehicle accident that occurred on August 22, 2019 on Jewel Avenue near its intersection with the Van Wyck Expressway in Queens, New York. Plaintiff alleges that she was a passenger in a vehicle operated by Nurse when defendants' vehicle struck the rear of Nurse's vehicle.

In his motion (Motion Seq. No. 001), Nurse argues that his vehicle was stopped in the right lane at an intersection due to a red traffic light and when the light turned green, a truck that was traveling to his left began to merge in front of him onto his lane of travel. Nurse notes that he slowed his vehicle down to allow the truck to merge in front of him when the vehicle operated by Patel struck his vehicle in the rear. Therefore, Nurse argues that he did not proximately cause plaintiff's alleged injuries as he was hit in the rear and that he did not cause or contribute to the happening of the alleged accident.

In opposition, defendants argue that Nurse's motion should be denied as premature since discovery is outstanding. Defendants also assert that Nurse's affidavit is insufficient to establish his *prima facie* entitlement to summary judgment because it does not address issues such as how long his vehicle was stopped before the alleged accident, the manner in which he brought his vehicle to a stop and whether he came to a sudden stop.

In reply, Nurse avers that defendants failed to provide a non-negligent explanation for the alleged accident and that their argument that he may have stopped suddenly is speculative.

In her motion (Motion Seq. No. 002), plaintiff argues that defendants were traveling too closely to the vehicle in which she was a passenger and failed to stop prior to striking said vehicle in the rear. Plaintiff also contends that defendants' negligence is the sole cause of the alleged accident and that she is not comparatively at fault since she was a passenger in the vehicle that was struck in the rear by defendants' vehicle.

In opposition, defendants argue that plaintiff's motion should be denied as premature since discovery is outstanding. Defendants also aver that even if the Court grants plaintiff's motion for summary judgment on the issue of liability, there is still a dispute as to how the alleged accident occurred.

Nurse submits papers in partial opposition to plaintiff's motion reiterating that defendants solely caused the alleged accident by striking the rear of his vehicle. In that regard, Nurse notes that plaintiff does not place any liability on him for the happening of the alleged accident.

In reply, plaintiff argues that it is undisputed that defendants caused the alleged accident when their vehicle struck the rear of the vehicle in which she was a passenger.

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]).

As a preliminary matter, Nurse and plaintiff's respective motions for summary judgment on the issue of liability are not premature (see Rainford v Han, 18 AD3d 638,639–40 [2d Dept 2005]). Indeed, the Appellate Division, Second Department has held that, "[t]he 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 defendants' personal knowledge as they were the owner and operator of the vehicle that was allegedly involved in this accident. Accordingly, defendants' "purported need to conduct discovery does not warrant denial" of the motions (see, Emil Norsic & Son, Inc. 30 AD3d at 369, supra; Rainford, 18 AD3d at 639–40, supra).

The Court next addresses the substance of defendant Nurse and plaintiff's respective motions for summary judgment on liability. Nurse and plaintiff argue, in essence, that defendants violated Vehicle and Traffic Law § 1129(a). Under New York Vehicle and Traffic Law § 1129(a), "[t]he 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, Nurse has met his burden by submitting evidence sufficient to establish his *prima facie* entitlement to summary judgment on the issue of liability (see, Emil Norsic & Son, Inc., 30 AD3d at 368, supra). Indeed, Nurse has submitted an affidavit in which he attests that he "came to a gradual stop at the red light" at the intersection of Jewel Avenue and the Van Wyck Expressway with a truck to the left of him and started to move once the light changed to green (see, Nurse Exh. E). Nurse further states that he slowed his vehicle due to the truck merging in front of him when his "vehicle was struck in the rear" by the vehicle operated by Patel (see, id.; Clements v Giatas, 178 AD3d 894, 895 [2d Dept 2019]; Ortiz, 82 AD3d at 727, supra). According to Nurse, he "was not able to take any evasive measures to avoid the accident since [he] was struck in the rear (see, id.).

Similarly, plaintiff has met her *prima facie* burden by submitting an affidavit in which she attests that on August 22, 2019, she "was a passenger in a vehicle that was moving slowly due to traffic ahead . . . when suddenly a vehicle owned by defendant Mamu Transportation, and operated by defendant [Patel], struck [the] host vehicle in the rear" (see, Pl. Exh. F; Clements, 178 AD3d at 895, supra; Ortiz, 82 AD3d at 727, supra; Emil Norsic & Son, Inc., 30 AD3d at 368, supra). Plaintiff further states that she did not "contribute to the happening" of the alleged accident (see, id.).

In response to Nurse and plaintiff's respective *prima facie* showing of negligence, defendants have failed to raise a triable issue of fact as to the existence of a non-negligent explanation for the rear-end collision (see, Ortiz, 82 AD3d at 727, supra). Indeed, defendants neither contest that Patel struck Nurse's vehicle in the rear nor provide a non-negligent explanation for the rear-end collision (see id.; Niyazov v Hunter EMS, Inc., 154 AD3d 954, 955 [2d Dept 2017]; Smith v Seskin, 49 AD3d 628, 629 [2d Dept 2008]; Niyazov, 13 AD3d at 502; supra; Morissaint, 271 AD2d at 587, supra). Rather, defendants state in a broad and conclusory manner that there is a dispute as to how the alleged accident occurred. However, defendants do not offer any explanation as to how the alleged accident occurred, challenge Nurse or plaintiff's version of the events leading up to the alleged accident or raise any questions of fact as to whether Nurse or plaintiff caused or contributed to the alleged accident (see, Levine v Taylor, 268 AD2d 566, 566 [2d Dept 2000]). Accordingly, as defendants have failed to rebut Nurse and plaintiff's respective *prima facie* showing of negligence, Nurse and plaintiff's motions for summary judgment on the issue of liability are granted.

In sum, third-party defendant Kayode O. Nurse's motion (Motion Seq. No. 001) for summary judgment on liability dismissing the complaint against him is granted and the Clerk of the Court is directed to enter judgment dismissing the action against him. Plaintiff's motion (Motion Seq. No. 002) for summary judgment on the issue of liability is granted.

This constitutes the Decision and Order of the Court.

Dated: December 13, 2021

Donna-Marie E. Golia, JSC

FILED
12/13/2021
COUNTY CLERK
QUEENS COUNTY