

Flores v Burgos

2021 NY Slip Op 33762(U)

June 2, 2021

Supreme Court, Westchester County

Docket Number: Index No. 58846/2020

Judge: Sam D. Walker

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This opinion is uncorrected and not selected for official publication.

To commence the statutory time period for appeals as of right (CPLR 5513 [a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

**SUPREME COURT OF THE STATE OF NEW YORK
WESTCHESTER COUNTY
P R E S E N T: HON. SAM D. WALKER, J.S.C.**

-----X
MARISOL FLORES,

Plaintiff,

DECISION & ORDER
Index No. 58846/2020
Seq. 1 & 2

-against-

RUTH CASTRO BURGOS and EDDIE H. RIVERA

Defendants.
-----X

The following papers were read on a motions for summary judgment pursuant to

CPLR 3212, on the issue of liability:

- Notice of Motion/Affirmation/Exhibits 1-5
- Affirmations in Opposition/Exhibits 1-3
- Reply Affirmation
- Notice of Motion/Affirmation/Exhibits A-G
- Affirmations in Opposition/Exhibits 1-2
- Reply Affirmation

Upon the foregoing papers it is ordered that the motions are GRANTED.

FACTUAL AND PROCEDURAL BACKGROUND

The plaintiff, Marisol Flores ("Flores"), commenced this action to recover damages for alleged serious injuries she sustained in a motor vehicle accident which occurred on October 4, 2017 at or near the entrance ramp used to enter Southern Boulevard from Bedford Park Boulevard in Bronx County, New York. The plaintiff alleges that while she was a front seat passenger in a vehicle operated by the defendant, Eddie H. Rivera ("Rivera"), that vehicle was struck in the rear by a vehicle owned and operated by the

defendant, Ruth Castro Burgos ("Burgos").

The plaintiff commenced the action by filing a summons and complaint in Bronx County on November 18, 2019. Rivera and Burgos interposed answers, the plaintiff moved for a change of venue, which motion was granted and the matter was transferred to Westchester County.

Flores now files a motion for summary judgment against the defendants, pursuant to CPLR 3212 on the issue of liability. The plaintiff's attorney argues that the defendants are in violation of VTL 1129(a) and based on the applicable case law Flores is entitled to partial summary judgment on the issue of liability, since the occurrence of the rear-end collision creates a prima facie case of liability on the part of the Burgos. The attorney argues that there is clearly no issue of culpable conduct on Flores' part, who was a passenger in the vehicle that was struck in the rear and therefore, she is entitled to summary judgment.

Rivera also files a motion for summary judgment, seeking dismissal of the complaint against him. In opposition of Flores' motion and in support of his own motion for summary judgment, Rivera's attorney argues that no material issues of fact exist with regard to Rivera's negligence, since Flores was a passenger in his vehicle and his vehicle was rear-ended by Burgos. The attorney argues that Burgos lacks a non-negligent explanation for failing to stop her vehicle prior to the collision.

Burgos opposes the motions for summary judgment. Burgos' attorney argues that there are different versions of the facts with regard to the happening of the accident, creating questions of fact and credibility and precluding summary judgment on the issue of liability. The attorney asserts that in contrast to Flores' testimony that the accident

occurred when his vehicle was rear-ended while stopped at a stop sign on the entrance ramp and after bringing his vehicle to a gradual stop, Burgos testified that the accident occurred when Rivera brought his vehicle to a sudden and unexplained stop on the entrance ramp, after both vehicles had passed the stop sign. Burgos' attorney contends that summary judgment should not be granted since there are questions of fact and credibility that must be resolved by the jury and Rivera's culpability must be determined by the jury.

Flores also opposes Rivera's motion for summary judgment, arguing that although it is undisputed that Rivera's vehicle was rear-ended by the vehicle owned and operated by Burgos, it should be left to the trier of fact to determine whether Rivera was partially at fault and apportion fault between the drivers.

In reply to her motion, Flores' attorney argues that she is an innocent passenger who could not possibly be found at fault and therefore, is entitled to partial summary judgment. The attorney asserts that the Appellate Division, Second Department has stated that the right of an innocent passenger to summary judgment is not restricted by questions of comparative negligence as between the drivers.

In reply to his motion, Rivera's attorney argues that he has met his burden and that Flores and Burgos have failed to raise a question of fact as to how the accident occurred. The attorney argues that Burgos' testimony suggests that both Rivera's and Burgos' vehicle left the stop sign at the same time, which would indicate that Burgos did not make a proper stop at the stop sign and followed Rivera's vehicle at an unsafe distance. The attorney further argues that the testimony confirmed the existence of moving vehicles on Southern Boulevard, requiring any vehicle entering that roadway from the entrance ramp,

to wait until it was safe to proceed.

The attorney next argues that Burgos failed to introduce any admissible evidence to dispute that Rivera's vehicle was completely stopped at some point on the entrance ramp at the time of the accident and the exact location where the vehicle was stopped is irrelevant.

Discussion

"[T]he proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact" (see *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). Only when such a showing has been made must the opposing party set forth evidentiary proof establishing the existence of a material issue of fact, *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]).

"A rear-end collision with a stopped or stopping vehicle creates a prima facie case of negligence with respect to the operator of the moving vehicle, and imposes a duty on that operator to rebut the inference of negligence by providing a nonnegligent explanation for the collision" (see *Sokolowska v Song*, 123 AD3d 1004 [2d Dept 2014]); see also *Agramonte v City of New York*, 288 AD2d 75, 76 [2001]; *Johnson v Phillips*, 261 AD2d 269, 271 [1999]; *Danza v Longieliere*, 256 AD2d 434, 435 [1998], lv dismissed 93 NY2d 957 [1999]).

In this case, both Flores and Rivera have made out a prima facie showing of their entitlement to summary judgment as a matter of law, thereby shifting the burden to Burgos to demonstrate the existence of a factual issue requiring a trial (see *Macauley v Elrac, Inc.*,

6 AD3d 584, 585 [2d Dept 2004]) [Rear-end collision is sufficient to create a prima facie case of liability.] If the operator of the striking vehicle fails to rebut this presumption and the inference of negligence, the operator of the stopped vehicle is entitled to summary judgment on the issue of liability (see *Leonard v City of New York*, 273 AD2d 205 [2d Dept 2000]; *Longhito v Klein*, 273 AD2d 281 [2d Dept 2000]; *Velasquez v Quijada*, 269 AD2d 592 [2d Dept 2000]; *Brant v Senatobia Operating Corp.*, 269AD2d 483 [2d Dept 2000]).

Burgos' attorney asserts a non-negligent explanation with respect to the happening of the accident. However, the attorney failed to provide a non-negligent explanation as to why Burgos could not stop before hitting Rivera's vehicle.

New York Vehicle and Traffic Law § 1129 states in pertinent part that:

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. NY VTL § 1129 (a)

In (*Leal v Wolff*), the Second Department held that "[s]ince the defendant was under a duty to maintain a safe distance between his car and [the plaintiff's] car (see Vehicle and Traffic Law Section 1129[a]), his failure to do so in absence of a non negligent explanation constituted negligence as a matter of law" (*Leal v Wolf*, 224 AD2d 392 [2d Dept 1996]).

Further, "[w]hen the driver of an automobile approaches from the rear, he or she is bound to maintain a reasonably safe rate of speed and control over his or her vehicle, and to exercise reasonable care to avoid colliding with the other vehicle" (see *Zweeres v Materi*, 94 AD3d 1111 [2d Dept 2012]). "Drivers have a duty to see what should be seen and to exercise reasonable care under the circumstances to avoid an accident" (*Id.*).

Burgos failed to offer any non-negligent explanation for the accident and the

opposition does not create any issues of fact with regard to liability. Burgos' assertion that Rivera stopped at the stop sign and then stopped suddenly after the sign, does not offer a non-negligent explanation for why she could not stop before hitting the plaintiff's vehicle and does not create an issue of material fact. She was required to stop at the stop sign and if there was traffic approaching that required Rivera to stop his vehicle after leaving the stop sign, Burgos was required to pay attention to the vehicle in front of her and not follow at so close a distance that she could not stop. Further, Burgos clearly stated in her testimony that she does not "recall rather well how the accident took place". Additionally, the movants are not required to show the absence of comparative fault for a grant of summary judgment (*Rodriguez v City of New York*, 31 NY3d 312 [2018]).

Furthermore, with regard to Flores, "[t]he right of an innocent passenger to an award of summary judgment on the issue of liability against one driver is not barred or restricted by potential issues of comparative fault as between that driver and the driver of another vehicle involved in the accident" (*Rodriguez v Farrell*, 115 AD3d 929, 931 [2d Dept 2014]). Burgos did not establish the existence of any material issue of fact to rebut Flores' and Rivera's prima facie showing of entitlement to summary judgment.

Accordingly, based on all the foregoing, it is

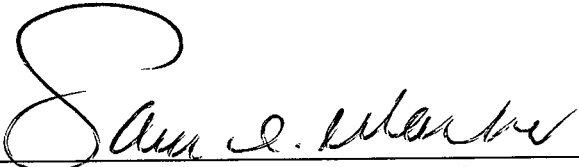
ORDERED that the plaintiff, Marisol Flores' motion for summary judgment on the issue of liability is granted; and it is further

ORDERED that the defendant, Eddie H. Rivera's motion for summary judgment is granted; and it is further

ORDERED that the action as against Eddie H. Rivera is dismissed.

The foregoing shall constitute the Decision and Order of the Court.

Dated: White Plains, New York
June 2, 2021



HON. SAM D. WALKER, J.S.C.