

**Burke v Rodriguez**

2021 NY Slip Op 33791(U)

January 12, 2021

Supreme Court, Dutchess County

Docket Number: Index No. 2020-51082

Judge: Edward T. McLoughlin

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF DUTCHESS

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ROSALIE BURKE,

Plaintiff,

- against -

RICHARD PANIAGUA RODRIGUEZ and JOSE A.  
AMEZQUITA-FLORENT,

Defendants.

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DECISION AND ORDER

Index No.: 2020-51082

Motion Sequence No. 1

McLOUGHLIN, J., Acting Supreme Court Justice

The following papers were read and considered in deciding this motion:

*NYSCEF Docket Numbers: 6 - 15*

This is a personal injury action arising out of a motor vehicle collision that occurred on May 16, 2017, on Albany Post Road, in the Town of Hyde Park, County of Dutchess, State of New York. The complaint alleges that defendant Amezquita-Florent negligently operated a vehicle owned by defendant Paniagua Rodriguez in that he caused said vehicle to collide with a vehicle in which the plaintiff was a passenger. The plaintiff alleges that she suffered severe and serious personal injuries as a result of the collision.

Following joinder of issue, the plaintiff moved for an order, pursuant to CPLR 3212, for partial summary judgment on the issue of liability. The defendants opposed the motion, asserting that triable issues of fact exist and that the motion is premature because no discovery has been conducted. For the reasons stated herein, the plaintiff's motion is granted in part and denied in part.

The plaintiff submitted an affidavit, police report, and verified bill of particulars in support of her motion for summary judgment. In the affidavit, the plaintiff attested that on May 16, 2017, at approximately 1:30 p.m., she was a passenger in a vehicle owned by Carlos Valdivieso and operated by Rachel Valdivieso. Prior to the collision, the vehicle was located on Albany Post Road in the Town



of Hyde Park and was making a left-hand turn into the entrance of Vanderbilt Mansion, near the intersection of Albany Post Road and Sherwood Place. While waiting to make the left-hand turn, the vehicle in which the plaintiff was a passenger came to a complete stop for 5-10 seconds. While stopped, waiting to make the turn, the vehicle was struck in the rear by the vehicle operated by defendant Amezquita-Florent [*see* ECF Docket No. 11, Affidavit of Rosalie Burke, ¶¶3-6]. Neither defendant submitted an affidavit in opposition to the motion.

#### DISCUSSION

Because summary judgment “deprives the litigant of its day in court it is considered a drastic remedy which should only be employed when there is no doubt as to the absence of triable issues” [*Andre v. Pomeroy*, 35 NY2d 361, 364 (1974)]. “But when there is no genuine issue to be resolved at trial, the case should be summarily decided” [*id.*]. Although negligence cases do not usually lend themselves to summary judgment [*Ugarriza v Schmieder*, 46 NY2d 471, 474 (1979)], negligence cases are not immune from summary judgment, and the courts should not harbor an unfounded reluctance to employ the remedy of summary judgment when there are no triable issues of fact [*Andre, supra* at 364].

“The 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 issue of fact” [*Alvarez v Prospect Hospital*, 68 NY2d 320, 324 (1986)]. “Once this showing has been made, however, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action” [*Alvarez, supra*, at 324]. “Mere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient” to establish a triable issue of fact [*Zuckerman v. City of New York*, 49 N.Y.2d 557, 562 (1980)].



“A rear-end collision with a stopped or stopping vehicle creates a prima facie case of negligence with respect to the operator of the rear vehicle and imposes a duty on that operator to rebut the inference of negligence by providing a nonnegligent explanation for the collision” [*LeGrand v. Silberstein*, 123 AD3d 773, 774 (2d Dept. 2014); *see also Buchanan v. Keller*, 169 AD3d 989 (2d Dept. 2019); *DeCastillo v. Sormeley*, 140 AD3d 918 (2d Dept. 2016); *Schmertzler v. Lease Plan U.S.A., Inc.*, 137 AD3d 1101 (2d Dept. 2016)]. “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” [*Buchanan, supra* at 991 (internal quotation marks and citations omitted); *see also* Vehicle and Traffic Law §1129(a)]. “Although a sudden stop of the lead vehicle may constitute a nonnegligent explanation for a rear-end collision, ‘vehicle stops which are foreseeable under the prevailing traffic conditions, even if sudden and frequent, must be anticipated by the driver’” [*id.* at 991-992 (quoting *LeGrand*, 123 AD3d at 774); *see also Theo v. Vasquez*, 136 AD3d 795, 796 (2d Dept. 2016)].

Here, the plaintiff established her *prima facie* entitlement to judgment as a matter of law as against defendant Amezquita-Florent by proffering her affidavit, which demonstrated that she was a passenger in a motor vehicle that was struck in the rear by a vehicle operated by defendant Amezquita-Florent. The opposition papers submitted on behalf of defendant Amezquita-Florent failed to raise a triable issue of fact as to whether there was a nonnegligent explanation for the collision [*see Piltser v. Donna Lee Mgt. Corp.*, 29 AD3d 973, 974 (2d Dept. 2006) (“Defendant[] [has] failed to submit an affidavit from a person with personal knowledge of the facts either denying plaintiff’s allegations or offering a non-negligent explanation for the accident”); *see also Catanzaro v. Edery*, 172 AD3d 995 (2d Dept. 2019); *Arslan v. Costello*, 164 AD3d 1408 (2d Dept. 2018)].

The defendants’ argument that summary judgment should be denied as premature due to outstanding discovery is unavailing. The defendants failed to demonstrate that discovery might lead



to relevant evidence or that facts essential to justify opposition to the motion were exclusively within the knowledge and control of the plaintiff [*Sterling Natl. Bank v. Alan B. Brill, P.C.*, 186 AD3d 515, 518 (2d Dept. 2020); (*Pierre v. Demoura*, 148 AD3d 736, 737 (2d Dept. 2017); *Thompson v. Pizzaro*, 155 AD3d 423, 423 (1st Dept. 2017) (summary judgment motion was not premature since the defendant had personal knowledge of the relevant facts but failed to lay bare her proof as she did not submit an affidavit in opposition to the motion); (*Le Grand, supra* at 775; CPLR 3212(f)]. The defendants failed to satisfy their burden of demonstrating that the plaintiff's motion is premature since "[t]he mere hope or speculation that evidence sufficient to defeat the motion might be uncovered during discovery is an insufficient basis for denying the motion" [*Sterling Natl. Bank, supra*; *Skura v. Wojtowski*, 165 AD3d 1196, 1200 (2d Dept. 2018) (citations omitted); *Bentick v. Gatchalian*, 147 AD3d 890, 892 (2d Dept. 2017) quoting *Lopez v. WS Distrib., Inc.*, 34 AD3d 759 (2d Dept. 2006)]. Accordingly, the plaintiff's motion for partial summary judgment on liability is granted as against defendant Amezquita-Florent.

However, the plaintiff's motion is denied as to defendant Paniagua Rodriguez. The plaintiff's moving papers do not establish, *prima facie*, that defendant Paniagua Rodriguez was the registered owner of the vehicle driven by defendant Amezquita-Florent at the time of the collision. The only evidence submitted by the plaintiff that purports to establish that defendant Paniagua Rodriguez was the registered owner<sup>1</sup> is the Hyde Park Police Department report [*see* NYSCEF Docket No. 10]. However, the police report is not certified, nor has a foundation for its admissibility been laid by some other method. Thus, the police report proffered by the plaintiff constitutes inadmissible hearsay and cannot be considered by the Court in determining whether the plaintiff has met its *prima facie* burden on its motion for summary judgment as against defendant Paniagua Rodriguez [*see Yassin v.*

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<sup>1</sup> While the defendants admitted in their Answer that defendant Amezquita-Florent was operating the vehicle that struck the vehicle in which the plaintiff was an occupant, they denied that defendant Paniagua Rodriguez was the registered owner of the vehicle [*see* Verified Answer, NYSCEF Docket No. 4, ¶¶ First and Second].

*Blackman*, 188 AD3d 62, 65-66 (2d Dept. 2020); *Nationwide General Ins. Co. v. Bates*, 130 AD3d 795, 796 (2d Dept. 2015) (uncertified police accident reports submitted by the plaintiff on its summary judgment motion were not admissible); *Cheul Soo Kang v. Violante*, 60 AD3d 991 (2d Dept. 2009); CPLR §4518(c)].

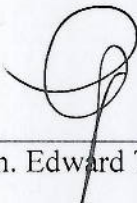
Because the plaintiff has failed to make the requisite *prima facie* showing as to defendant Paniagua Rodriguez, her motion for summary judgment on the issue of liability is denied as to that defendant, regardless of the sufficiency of the opposing papers [*Winegrad v. New York University Medical Center*, 64 NY2d 851 (1985)]. It is therefore

ORDERED that the plaintiff's motion for partial summary judgment on the issue of liability is granted as against defendant Jose A. Amezquita-Florent; and it is further

ORDERED that the plaintiff's motion for partial summary judgment on the issue of liability is denied as against defendant Richard Paniagua Rodriguez.

The foregoing constitutes the Decision and Order of the Court.

Dated: January 12, 2021  
Poughkeepsie, New York

  
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Hon. Edward T. McLoughlin, AJSC

To: All counsel of record via NYSCEF