Lassiter v Munjuk

2021 NY Slip Op 33840(U)

January 13, 2021

Supreme Court, Kings County

Docket Number: Index No. 521426/2017

Judge: Lara J. Genovesi

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At an IAS Term, Part 34 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse thereof at 360 Adams St., Brooklyn, New York on the 13th day of January 2021.

P R E S E N T:

HON. LARA J. GENOVESI,
J.S.C.

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GLADYS LASSITER and DEIDRA WINDS, Index No.: 521426/2017

Plaintiffs,

DECISION & ORDER

-against-

KATHARINA M. MUNJUK,

Defendant.

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Recitation, as required by CPLR §2219(a), of the papers considered in the review of this motion:

	NYSCEF Doc. No.:
Notice of Motion/Cross Motion/Order to Show Cause and Affidavits (Affirmations) Annexed	13-23
Opposing Affidavits (Affirmations)	24
Reply Affidavits (Affirmations)	26

Introduction

Plaintiffs, Gladys Lassiter and Deidra Winds, move by notice of motion, sequence number one, pursuant to CPLR § 3212, for summary judgment on the issue of liability and for such other relief as the Court deems proper. Defendant, Katharina Munjuk, opposes this motion.

Background

This action involves a rear-end collision that occurred on October 3, 2017 on Rockaway Boulevard near the intersection of 182 Street, Queens, New York. Plaintiff Gladys Lassiter (Lassiter) was driving vehicle one, in which plaintiff Deidra Winds (Winds) was a passenger in the front seat. The vehicle was stopped at the red traffic signal. Lassiter and Winds testified that, while waiting at a red light at a complete stop, the front of a vehicle operated by the defendant, Katharina Munjuk (Munjuk), struck Lassiter's vehicle in the rear (*see* NYSCEF Doc. #18, Exhibit 4, Lassiter EBT at 14, 20; NYSCEF Doc. #19, Exhibit 5, Winds EBT at 12). Both plaintiffs were wearing seat belts at the time (*see* NYSCEF Doc. #18, Exhibit 4, Lassiter EBT at 12; NYSCEF Doc. #19, Exhibit 5, Winds EBT at 14).

Munjuk testified that she recalls being involved in an automobile accident on October 3, 2017 (*see* NYSCEF Doc. #20, Exhibit 6, Defendant EBT at 11). She was traveling in the center lane on Rockaway Boulevard for about two minutes (*see id.* at 21, 22). While looking at the traffic ahead of her, she saw the Lassiter's vehicle about thirty to thirty-five seconds before the front part of her vehicle came into contact with the rear of the plaintiff's vehicle (*see id.* at 23-25). Before the collision her view of Lassiter's vehicle in front of her was unobstructed, and at the time of the collision her right foot was on the gas pedal (*see id.* at 26, 27).

The plaintiffs annexed the certified police accident report wherein the defendant, vehicle 2, stated "SHE WAS TRAVELING IN THE SAME DIRECTION IN STOP

AND GO TRAFFIC WHEN SHE REAR ENDED V1" (*see* NYSCEF Doc. #22, Exhibit 8, Certified Police Accident Report).

This action was commenced by the filing of the summons and complaint on November 3, 2017 (*see* NYSCEF Doc. # 1).

Discussion

Summary Judgment

"[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" (*Stonehill Capital Mgmt., LLC v. Bank of the W.,* 28 N.Y.3d 439, 68 N.E.3d 683 [2016], citing *Alvarez v. Prospect Hospital*, 68 N.Y.2d 320, 501 N.E.2d 572 [1986]). Failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers (*see Chiara v. Town of New Castle*, 126 A.D.3d 111, 2 N.Y.S.3d 132 [2 Dept., 2015], citing *Vega v. Restani Const. Corp.,* 18 N.Y.3d 499, 965 N.E.2d 240 [2012]; *see also Lee v. Nassau Health Care Corp.*, 162 A.D.3d 628, 78 N.Y.S.3d 239 [2 Dept., 2018]). Once a moving party has made a prima facie showing of its entitlement to summary judgment, the burden shifts to the opposing party to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action (*see Fairlane Fin. Corp. v. Longspaugh,* 144 A.D.3d 858, 41 N.Y.S.3d 284 [2 Dept., 2016], citing *Alvarez v. Prospect Hospital*, 68 N.Y.2d 320, *supra; see also Hoover v. New Holland N. Am., Inc.,* 23 N.Y.3d 41, 11 N.E.3d 693 [2014]).

"A rear-end collision with a stopped or stopping vehicle 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" (*Xin Fang Xia v. Saft*, 177 A.D.3d 823, 113 N.Y.S.3d 249 [2 Dept., 2019]; *see also Ordonez v. Lee*, 177 A.D.3d 756, 110 N.Y.S.3d 339 [2 Dept., 2019]). A plaintiff does not need to demonstrate the absence of their own comparative negligence to be entitled to partial summary judgment as to a defendant's liability (*see Rodriguez v City of New York*, 31 N.Y.3d 312, 76 N.Y.S.3d 898 [2018 N.Y. Slip Op. 02287]). However, the issue of a plaintiff's comparative negligence may be decided in the context of a summary judgment motion where the plaintiff moved for summary judgment dismissing a defendant's affirmative defense of comparative negligence (*see Poon v. Nisanov*, 162 A.D.3d 804, 808, 79 N.Y.S.3d 227 [2 Dept., 2018]).

In the case at bar, the plaintiffs met their prima facie burden. The testimonies of the plaintiffs and the defendant show that the Lassiter vehicle, in which Winds was a passenger, was struck in the rear by the vehicle operated by Munjuk. Both plaintiffs testified that their vehicle was at a complete stop at the time of the accident, and Munjuk testified that she had an unobstructed view of the plaintiff's vehicle thirty to thirty-five seconds before the front of her vehicle struck the rear of the plaintiff's vehicle. The plaintiffs also provided the certified police accident report which contained defendant's admission that she rear-ended the plaintiffs (*see* NYSEF Doc # 22, Exhibit 8, Certified Police Accident Report*; see also Yassin v. Blackman*, 188 A.D.3d 62, 131 N.Y.S.3d 53 [2 Dept., 2020]). Since Lassiter's vehicle was at a complete stop at a red traffic signal on

Rockaway Boulevard, the plaintiffs demonstrated that they were not negligent in the happening of the accident, and the actions of Munjuk were the sole proximate cause of the accident (*see generally Poon v. Nisanov*, 162 A.D.3d 804, *supra*; *see also Ortiz v Welna,* 152 A.D.3d 709, 58 N.Y.S.3d 556 [2 Dept., 2017]).

In opposition, Munjuk failed to provide a non-negligent explanation for her rear-end collision sufficient to rebut the inference of negligence. Munjuk simply contends that the question of whether a sudden stop was made by the plaintiffs creates a non-negligent explanation for her rear-end collision with the plaintiffs. This does not rebut the inference of negligence, because a defendant's allegation that a plaintiff's car stopped suddenly is insufficient to raise a triable issue of fact (*see Baron v. Murray*, 268 A.D.2d 495, 702 N.Y.S.2d 354 [2 Dept., 2000]). Munjuk was "under a duty to maintain a safe distance" between her vehicle and the Lassiter's vehicle, and the "failure to do so, in the absence of an adequate, nonnegligent explanation, constituted negligence as a matter of law" (*see Silberman v. Surrey Cadillac Limousine Serv.*, 109 A.D.2d 833, 486 N.Y.S.2d 357 [2 Dept., 1985]).

Conclusion

Accordingly, plaintiff's motion for summary judgment as to liability is granted.

This constitutes the decision and order of this case.

ENTER:

Hon. Lara J. Genovesi
J.S.C.

FILED
JAN 21 2021
KINGS COUNTY CLERK'S OFFICE

To:

Yuliya Gonikman, Esq.
Rubenstein & Rynecki, Esqs.
Attorneys for Plaintiffs
16 Court Street, Suite 1717
Brooklyn, New York 11241

Eric Greenberg, Esq.
James G. Bilello & Associates
Attorneys for Defendant
100 Duffy Avenue, Suite 500
Hicksville, New York 11801