CITY COURT : CITY OF RYE
WESTCHESTER COUNTY

GARY DRAGO, SC-000382-11/RY

Plaintiff,

-against- DECISION AND ORDER

SUSAN M. TULLGREEN,

Defendant.

Appearances:
Plaintiff *Pro Se*
Defendant by *Law Office of Bryan M. Kulak, Suzanne Konunchuk, Esq., Middletown, New York*

This is a small claims action to recover damages caused by an automobile collision. This matter was tried before the Court on June 6, 2012.

The automobile collision occurred on October 18, 2011 in the parking lot of the Westchester Community College. The parties dispute the particular facts which caused the collision; however, there is no dispute that the defendant's rear passenger side bumper collided with the plaintiff's front passenger side hood and wheel. The plaintiff's daughter, Jennifer Drago (hereinafter "Jennifer"), was the operator of the plaintiff's motor vehicle at the time of the accident; the defendant's son, Colin Tullgreen (hereinafter "Colin"), was the operator of the defendant's motor vehicle at the time of the accident.

Jennifer testified that the accident occurred as she was at a complete stop behind the defendant's car waiting to exit the parking lot. Jennifer stated she was parked in the first parking space, closest to the exit/entrance, when she pulled out approximately one foot into a one way exit lane and sat behind the defendant's car

waiting to exit. Jennifer then stated that the defendant's car began to suddenly reverse, collided with her vehicle and caused damage to the front passenger side of the car. Jennifer testified that immediately following the collision the driver of the other vehicle left the scene. Jennifer stated that she proceeded to follow the other driver two parking lots over from the collision site to speak with him regarding the incident. Jennifer stated that when she asked the driver of the other vehicle, who was later identified as Colin, why he left the scene of the accident he stated that he wanted to check his car for damages. Defendant's counsel asked Jennifer if she "beeped" prior to the impact to which Jennifer replied she had no time to "beep". The plaintiff's car was subsequently repaired and sold.

Colin's version of the events are slightly different from Jennifer's. Colin testified that he was stopped in the parking lot of Westchester Community College in the area where the plaintiff says the collision occurred, however, he was not waiting in line to exit the parking lot. Colin stated that he noticed a parking space available and proceeded to reverse the vehicle to obtain the space. Colin testified that he used the vehicle's mirrors and his line of sight [by looking over his shoulder] to check whether or not there were any other vehicles behind him. Colin testified that there was no one behind him. When asked if he [Colin] saw the plaintiff's car at any time, Colin stated that he saw the plaintiff's car parked in the third parking space in the same parking lot with the front of the car facing outward. Colin further testified that he proceeded to reverse and suddenly collided with the plaintiff's car. Colin stated that he left the site of the collision and proceeded to another lot approximately 100 feet away because he did not feel safe exiting his vehicle at the collision site. In agreement with the plaintiff's version of events, Colin stated that he met with Jennifer in a parking lot other than the lot where the accident occurred to discuss the incident.

The parties have stipulated to an amount of one thousand two hundred eighty-seven ($1,287.69) dollars and sixty-nine cents representing the amount of damages caused by the accident. The defendant's defense is that the Plaintiff is unable to prove that the Defendant negligently caused the accident and requests that the case be dismissed.

When a vehicle is rear-ended in an automobile collision, to find a defendant driver liable, a court must find that the driver of the moving vehicle was negligent. Unless the driver of the moving vehicle can provide an adequate explanation that does not involve any negligence on his or her part, the driver of the moving vehicle is held liable. *Gaeta v. Carter*, 6 AD3d 576, 775 NYS2d 86 [2nd Dept

2004]; *Chepel v. Meyers*, 306 AD2d 235, 762 NYS2d 95 [2nd Dept 2003], *Danner v. Campbell*, 302 AD2d 859, 754 NYS2d 484 [4th Dept 2003]. For example, the moving vehicle driver can dispute negligence by claims that he/she was hit by a third vehicle causing his/her vehicle to impact the vehicle in front of it, that the roads were icy or perhaps a brake failure, just to name a few. A court must first decide whether or not the collision happened as the moving driver explained, and then, based on that explanation, whether or not the moving driver was in fact negligent.

Negligence is defined as the failure to use that degree of care that a reasonably prudent person would have used under the same circumstances. If a court finds that the moving vehicle's driver failed to use reasonable care, then the court must find that he or she was negligent and therefore caused the collision. However, if the Court accepts the moving vehicle driver's version of the events and further finds that the driver did use reasonable care under the circumstances, then the Court will find that the moving vehicle's driver was not negligent.

Under the case law applicable to rear-end collisions, a prima facie case of negligence is established by proof that a stopped car was hit in the rear, *Briceno v. Milbry*, 16 AD3d 448, 791 NYS2d 622 [2nd Dept 2005], *Gaeta v. Carter*, supra; *Gubala v. Gee*, 302 AD2d 911, 754 NYS2d 504 [4th Dept 2003]; *Leonard v. New York*, 273 AD2d 205, 708 NYS2d 467 [2nd Dept 2000]; *Shamah v. Richmond County Ambulance Service, Inc.*, 279 AD2d 564, 719 NYS2d 287 [2nd Dept 2001]; *Hurley v. Cavitolo*, 239 AD2d 559, 658 NYS2d 90 [2nd Dept 1997]; *Leal v. Wolff*, 224 AD2d 392, 638 NYS2d 110 [2nd Dept 1996]; *Mead v. Marino*, 205 AD2d 669, 613 NYS2d 650 [2nd Dept 1994]; *Conyers v. Vinti*, 107 AD2d 787, 484 NYS2d 620 [2nd Dept 1985]. Here, it is not disputed that the plaintiff's car was at a stop at the time of the accident; although the plaintiff in this case was hit from the front, the law is still applicable here because the driver of the moving vehicle was reversing instead of driving forward. In cases involving rear-end collisions, the Fourth Department has referred to a "presumption of negligence," *Bender v. Rodriguez*, 302 AD2d 882, 754 NYS2d 475 [4th Dept 2003]; *Di Cesare v. Glasgow*, 295 AD2d 1007, 743 NYS2d 646 [4th Dept 2002]. A duty of explanation is imposed on the operator of a moving vehicle that has hit a stopped vehicle because that operator is in the best position to explain whether or not the accident was due to a reasonable and non-negligent cause, *Higgins v. Ridgewood Savings Bank*, 262 AD2d 357, 691 NYS2d 175 [2nd Dept 1999]; *Reid v. Courtesy Bus Co.*, 234 AD2d 531, 651 NYS2d 612 [2nd Dept 1996]. Absent a sufficient non-negligence excuse, colliding with the rear of a stopped vehicle is negligence as a

matter of law, see *Danza v. Longieliere*, 256 AD2d 434, 681 NYS2d 603 [2nd Dept 1998]; *Corbly v. Butler*, 226 AD2d 418, 641 NYS2d 71 [2nd Dept 1996]; *Barile v. Lazzarini*, 222 AD2d 635, 635 NYS2d 694 [2nd Dept 1995]; *Mead v. Marino*, supra; *Countermine v. Galka*, 189 AD2d 1043, 593 NYS2d 113 [3rd Dept 1993].

Here, the Plaintiff has established a prima facie case of negligence by virtue of the Plaintiff's car being stopped at the time of the accident. As such, a presumption of negligence is applied to the Defendant. Colin testified that his explanation for reversing his vehicle was for the purpose of obtaining a vacant parking space. The court does not find this explanation to be reasonable nor non-negligent. The Court finds that a reasonably prudent driver in the same or similar circumstances as the defendant in this case would have used his line of sight, by turning his entire head around as many times as possible, during the entire time of reversing the vehicle. It is the Court's opinion that if Colin had used his line of sight, as he testified he had, while reversing, there would have been no way that Colin would not have seen the plaintiff's car stopped behind him. For the foregoing reasons, it is hereby

ORDERED and ADJUDGED that the plaintiff have judgment against the defendant in the sum of One Thousand Two Hundred Eighty-Seven ($1,287.69) dollars and sixty-nine cents and that plaintiff have execution therefor.

June 14, 2012

_____
JOSEPH L. LATWIN
Rye City Court Judge

ENTERED

_____
Mary Jo Garrity

The Court gratefully acknowledges the assistance of its Intern Jacqueline Boone, NY Law School, Class of 2013 in the preparation of this decision.

Appeals

--An appeal shall be taken by serving on the adverse party a notice of appeal and filing it in the Rye City Court Clerk's office. A notice shall designate the party taking the appeal, the judgment or order or specific part of the judgment or order appealed from and the court to which the appeal is taken. CPLR § 5515.

--Pursuant to UCCA § 1701 "Appeals in civil causes shall be taken to" the appellate term of the supreme court, 9th Judicial District.

-- An appeal as of right from a judgment entered in a small claim or a commercial claim must be taken within thirty days of the following, whichever first occurs:

1. service by the court of a copy of the judgment appealed from upon the appellant.

2. service by a party of a copy of the judgment appealed from upon the appellant.

3. service by the appellant of a copy of the judgment appealed from upon a party.

Where service as provided in paragraphs one through three of this subdivision is by mail, five days shall be added to the thirty day period prescribed in this section. UCCA § 1703(b).