

**Choflet v Karp**

2017 NY Slip Op 33356(U)

October 23, 2017

Supreme Court, Westchester County

Docket Number: Index No. 55559/17

Judge: David F. Everett

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This opinion is uncorrected and not selected for official publication.

To commence the 30-day statutory time period for appeals as of right under 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  
COUNTY OF WESTCHESTER

-----X  
ROBERT CHOFLET,

Plaintiff,

-against-

WENDY WEINSTEIN KARP and JANETTE  
WEINSTEIN KARP,

Defendants.  
-----X

EVERETT, J.

Index No. 55559/17  
Motion Sequence No. 001  
Decision and Order

The following papers were read on this motion:  
Notice of Motion/Affirmation in Supp/Exhibits A-C  
Affirmation in Opp  
Reply Affirmation

Upon the forgoing papers, the motion is granted.

Plaintiff Robert Choflet (Choflet) moves for an order, pursuant to CPLR 3212, granting summary judgment against defendants Wendy Weinstein Karp (Wendy Karp) and Janette Weinstein Karp (Janette Karp) on the issue of liability. Defendants oppose the motion.

Upon the foregoing papers, the motion is granted.

The following facts are taken from the motion papers, pleadings, affidavit, and the record, and are undisputed unless otherwise indicated.

Choflet commenced this action by filing a summons and complaint in the Office of the Westchester County Clerk on April 19, 2017, to recover damages for the serious physical injuries he allegedly sustained as a result of an automobile accident that occurred on February 21, 2016. According to Choflet, the accident occurred when, while stopped at a red light at or near the

intersection of the Post Road and Stephenson Boulevard in New Rochelle, New York, his motor vehicle was struck from behind by the motor vehicle owned by Wendy Karp and operated by Janette Karp, causing him to sustain physical injuries. The complaint sounds in negligence.

Issue was joined by service of defendants' joint answer with affirmative defenses on or about June 9, 2017. Without completing discovery, and prior to party depositions, Choflet served the instant motion for summary judgment.

As the proponent of the motion for summary judgment, plaintiff must tender evidentiary proof in admissible form sufficient to warrant the court to direct judgment in her favor as a matter of law (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; CPLR 3212 [b]). To make this showing, plaintiff submits copies of the pleadings, and his sworn affidavit attesting to the facts underlying the complaint. In his affidavit, Choflet avers, in relevant part, that, at approximately 6:00 p.m., while heading eastbound on the Post Road, he brought his vehicle to a complete stop at a red light at the intersection of the Post Road and Stephenson Boulevard. He asserts that he "was stopped for at least five seconds" when his vehicle "was struck in the rear by another motor vehicle," and that "given the information exchanged at the accident scene, the vehicle that struck [his vehicle] was registered to Wendy Weinstein and operated by her daughter, Janette" (Choflet aff, ¶¶ 2-4).

It is well settled that, with respect to collisions between moving vehicles, or between a moving vehicle and a stopped vehicle, "[w]hen the driver of an automobile approaches another automobile 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" (*Taing v Drewery*, 100 AD3d 740, 741 [2d Dept 2012]). Furthermore, "vehicle stops

which are foreseeable under the prevailing traffic conditions, even if sudden and frequent, must be anticipated by the driver who follows, since he or she is under a duty to maintain a safe distance between his or her car and the car ahead” (*Robayo v Aghaabdul*, 109 AD3d 892, 893 [2d Dept 2013] [internal quotation marks and citation omitted]).

It is also well settled law that “[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 non-negligent explanation for the collision” (*Chioĳ v Kouridakis*, 57 AD3d 706, 706 [2d Dept 2008] [internal quotation marks and citations omitted]). Finally, Vehicle and Traffic Law § 1129 provides, at subsection (a), that “[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.”

Here, Choflet has satisfied his prima facie burden of establishing negligence on the part of defendants as a matter of law on the issue of liability, and the burden shifts to defendants to submit, in admissible form, a non negligent explanation either for the collision, or for Janette Karp’s failure to maintain a reasonably safe distance under the prevailing traffic conditions between her vehicle and the vehicle in front of her (*Robayo v Aghaabdul*, 109 AD3d at 893; *Taing v Drewery*, 100 AD3d at 741).

In response, defendants submit an attorney’s affirmation in which it is argued that Choflet’s motion is premature, because there have been on depositions, and because, it is expected that defendants will provide a different version of what occurred at the time of the accident. Defendants offer no evidence, via sworn affidavits or otherwise, that the accident

occurred in any manner other than that sworn to by Choflet, nor do they offer a non negligent explanation for failing to leave a reasonably safe distance between Janette Karp's motor vehicle and the vehicle in front of her under the prevailing traffic conditions that evening (*Zuckerman v City of New York*, 49 NY2d at 562; *Chiok v Kouridakis*, 57 AD3d at 706; *Robayo v Aghaabdul*, 109 AD3d at 893).

Accordingly, it appearing to the Court that plaintiff is entitled to judgment on liability, it is

ORDERED that the motion for summary judgment is granted as to liability; and it is further

ORDERED that the parties are directed to appear with counsel at the Preliminary Conference Part, courtroom 811 of the Westchester County Courthouse, 111 Dr. Martin Luther King, Jr. Blvd., White Plains, New York, on Monday, November 20, 2017, to schedule discovery as to damages.

This constitutes the decision and order of the Court.

Dated: White Plains, New York  
October 23, 2017

ENTER:

  
HON. DAVID F. EVERETT, A.J.S.C.

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