Neale v Gusler
2017 NY Slip Op 33418(U)
June 16, 2017
Supreme Court, Nassau County
Docket Number: Index No. 607394/16
Judge: Randy Sue Marber

SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

Present: **HON. RANDY SUE MARBER**
JUSTICE TRIAL/IAS PART 10

X

VERA NEALE,

Plaintiff,

-against-

Index No.: 607394/16
Motion Seq...01
Motion Date...04/18/17

KAREN S. GUSLER and JAHTIEF S. BURNETT,

Defendants.

X

Papers Submitted:
Notice of Motion.....x
Affirmation in Opposition.....x
Affirmation in Opposition.....x
Reply Affirmation.....x

Upon the foregoing papers, the motion by the Defendant, KAREN GUSLER ("Gusler"), seeking an Order pursuant to CPLR § 3212, granting her summary judgment on the issue of liability and dismissing any and all cross-claims and counterclaims against her, on the grounds that she bears no liability for the subject accident, is decided as provided herein.

The action arises out of a motor vehicle accident that occurred on October 19, 2015 at approximately 9:15 a.m. on the Meadowbrook State Parkway, one half of a mile south of Exit M6, in the town of Hempstead, County of Nassau.

This action was commenced by the filing of a Summons and Verified Complaint on September 23, 2016 (*See* Summons and Verified Complaint, attached to the Notice of Motion as Exhibit "A"). The Defendant, Gusler, interposed her Verified Answer and Affirmative

Defenses on October 12, 2016 (*See* Verified Answer attached to Notice of Motion as Exhibit "B"). The Defendant, JAHTIEF S. BURNETT ("Burnett"), interposed his Verified Answer on October 27, 2016 (*See* the Defendant, Burnett's, Verified Answer attached to Notice of Motion as Exhibit "C").

In support of her motion, the Defendant, Gusler, proffers an Affidavit wherein she states she was involved in a two-car motor vehicle accident on the Meadowbrook State Parkway at approximately 9:55 a.m. on October 19, 2015 (*See* the Affidavit of Gusler, sworn to January 5, 2017, attached to the Notice of Motion as Exhibit "D"). Ms. Gusler attests that she was traveling in the center lane of a three lane road at a speed of approximately thirty-five (35) to forty (40) miles per hour when she felt a heavy impact to the rear of her vehicle. She further attests that she heard no horns or screeching tires, had no opportunity to avoid the accident or take evasive action, and had no warning that she was about to be struck in the rear. She additionally attests that, after the accident, the driver of the striking vehicle apologized and told her that he had looked down for a moment prior to the impact. Ms. Gusler notes that the roads were dry at the time of the subject accident (*Id.*).

In opposition the Plaintiff submits an Affidavit wherein she attests that she was a passenger in a motor vehicle operated by the Defendant, Burnett, at the time of the subject accident (*See* Affidavit of the Plaintiff, sworn to February 21, 2017, attached to the Plaintiff's Affirmation in Opposition as Exhibit "B"). Ms. Neale attests that the vehicle operated by Burnett was traveling northbound in the left lane when the vehicle in front of them, driven by Gusler, came to a sudden and abrupt stop, resulting in contact between the front bumper of Burnett's motor vehicle and the rear of Gusler's motor vehicle.

The Defendant, Burnett, also submits an Affidavit in opposition, wherein he attests that while he was travelling northbound on the Meadowbrook Parkway when the vehicle in front of his, operated by Gusler, came to an abrupt and unexpected stop. Burnett attests that he applied his brakes, but could not avoid striking the rear of Gusler's vehicle. (*See* Affidavit of Jahtief S. Burnett, sworn to February 14, 2017, attached to the Defendant's Affirmation in Opposition as Exhibit "B").

Summary judgement should only be granted where there are no triable issues of fact (*See Andre v. Pomery*, 35 N.Y.2d 361 [1974]). The goal of summary judgment is to issue find, rather than issue determine (*See Hantz v. Fleischman*, 155 A.D.2d 415 [2d Dept. 1989]). In the instant matter, neither party denies that the front of Burnett's vehicle struck the rear of Gusler's vehicle.

Rear end collision cases create a *prima facie* case of liability with respect to the party who collides with the vehicle in front of it. This *prima facie* liability imposes a duty of explanation upon the operator of the rear vehicle to rebut the inferences of negligence by providing some non-negligent explanation for the collision (*See Crisano v. Comp Tools Corp.*, 295 A.D.2d 393 [2d Dept. 2002]). A rear end collision with a stopped or stopping vehicle creates a *prima facie* case of liability with respect to the operator of the rearmost vehicle, imposing a duty of explanation on that operator to excuse the collision either through a mechanical failure, a sudden stop of the vehicle ahead, an unavoidable skidding on a wet pavement, or any other reasonable cause (*Filipaazzo v. Santiago*, 277 A.D.2d 419 [2d Dept. 2000]; *Singh v. Avis Rent A Car System, Inc.*, 119 A.D.3d 768 [2d Dept. 2014]).

When a 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 (*Id.; see also* Vehicle and Traffic Law ["VTL"] § 1129 [a]). This rule imposes upon drivers the duty to be aware of traffic conditions, including vehicle stoppages (*Johnson v. Phillips*, 261 A.D.2d 269 [1st Dept. 1999]). It has also been applied even when the front vehicle stops suddenly (*See Mascitti v. Greene*, 250 A.D.2d 821 [2d Dept. 1998]; *Barba v. Best Sec. Corp.*, 235 A.D.2d 381 [2d Dept. 1997]; *Leal v. Wolff*, 244 A.D.2d [2d Dept. 1996]). Further, "drivers have a duty to see what should be seen and to exercise reasonable care under the circumstances to avoid an accident" (*Johnson v. Phillips*, 261 A.D.2d 269 [1st Dept. 1999]).

The Defendant, Burnett, cites a series of cases where courts held that a sudden stop may constitute a non-negligent explanation for a vehicle rear-ending a vehicle in front of it. However, all of the cases cited are factually distinguished from the instant matter. In *Hurley v. Izzo*, 248 A.D.2d 674 (2d Dept. 1998) evidence was submitted to raise the issue of whether the front car's brake lights were working and whether the front car was following vehicle ahead of it too closely. In *Bender v. Rodriguez*, 302 A.D.2d 882 (4th Dept. 2003) and *Maisonet v. Kelly*, 228 A.D.2d 780 (3d Dept. 1996) the Defendant testified that brake lights of the front vehicle were not working. Similarly, the courts in *Niemiec v. Jones*, 237 A.D.2d 267 (2d Dept. 1997), *Drake v. Drakoulis*, 304 A.D.2d 522 (2d Dept. 2003), and *Chepel v. Meyers*, 306 A.D.2d 235 (2d Dept. 2002) affirmed the duty of a driver to properly signal when coming to a stop or suddenly decreasing speed, pursuant to VTL § 1163.

Here, the Defendant, Burnett, has failed to provide any evidence in support of a claim that the Defendant, Gusler, failed to signal properly before slowing down. The suggestion that Gusler's brake lights were not operational appears only in Burnett's counsel's affirmation, not in Burnett's sworn Affidavit, and thus is not supported by any admissible proffered herein.

While the Plaintiff contends that the Defendant, Gusler, caused or contributed to the accident by stopping short, under the facts of this case, this is not a non-negligent explanation sufficient to avoid summary judgment on liability. It is well settled that in a rear end collision, the abrupt or sudden stop of the front vehicle, standing alone, is insufficient to rebut the inference of negligence on the part of the rear vehicle (*See Jumandeo v. Franks*, 56 A.D.3d 614 [2d Dept. 2008]; *Russ v. Investech Sec., Inc.*, 6 A.D.3d 602 [2d Dept. 2004]; *Arias v. Rosario*, 52 A.D.3d 551 [2d Dept. 2008]). Here, Burnett was under a duty to maintain a safe distance between his vehicle and Gusler's vehicle and has failed to rebut the presumption of negligence arising from the rear end collision. As such, the Defendant, Burnett, fails to provide a non-negligent explanation for the rear end collision sufficient to rebut the presumption of negligence.

Accordingly, it is hereby

ORDERED, that the Defendant, Gusler's, motion seeking an Order awarding it summary judgement, pursuant to CPLR § 3212, on the issue of liability, is **GRANTED.**

This decision constitutes the Order of the Court.

DATED: Mineola, New York
June 16, 2017

HON. RANDY SUE MARBER, J.S.C.

HON. RANDY SUE MARBER

ENTERED

JUN 16 2017

NASSAU COUNTY
COUNTY CLERK'S OFFICE