Gute v Grease Kleeners, Inc
2018 NY Slip Op 30230(U)
January 30, 2018
Supreme Court, Suffolk County
Docket Number: 15-1666
Judge: Peter H. Mayer
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SHORT FORM ORDER

INDEX No. 15-1666
CAL. No. 16-02322MV

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 17 - SUFFOLK COUNTY

PRESENT:

Hon. PETER H. MAYER
Justice of the Supreme Court

MOTION DATE 4-5-17 (004 & 005)
MOTION DATE 5-15-17 (006)
ADJ. DATE 6-16-17
Mot. Seq. # 004 - MD
Mot. Seq. # 005 - MD
Mot. Seq. # 006 - MD

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PATRICIA GUTE and RICHARD GUTE,

Plaintiffs,

- against -

GREASE KLEENERS, INC, ROBERT A, FLYNN and CHRISTOPHER ROMANO,

Defendants.

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Upon the reading and filing of the following papers in this matter: (1) Notices of Motion/Order to Show Cause by the plaintiffs, dated March 7, 2017and the motion by the defendants Greene Kleeners, Inc. and Robert A. Flynn, dated April 25, 2017, and supporting papers (including Memorandum of Law dated ____); (2) Notice of Cross Motion by the , dated , supporting papers; (3) Affirmations in Opposition by the defendants Grease Kleeners, Inc. and Robert A. Flynn, dated April 24, 2017, and by Christopher Romano, dated April 28, 2017 and June 8, 2017, and supporting papers; (4) Reply Affirmations by the plaintiffs, dated April 5, 2017 and May 24, 2017, and by defendants Grease Kleeners and Robert A. Flynn, dated May 24, 2017 and June 15, 2017, and supporting papers; (5) Other ___ (~~and after hearing counsels' oral arguments in support of and opposed to the motion~~); and now

UPON DUE DELIBERATION AND CONSIDERATION BY THE COURT of the foregoing papers, the motion is decided as follows: it is

ORDERED that pending motions 004, 005 and 006 are combined herein for disposition; and

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ORDERED that the motion by plaintiffs for partial summary judgment in their favor on the issue of liability as against defendant Christopher Romano is denied; and it is

ORDERED that the motion by plaintiffs for partial summary judgment in their favor on the issue of liability as against defendants Grease Kleeners, Inc. and Robert A. Flynn is denied; and it is

ORDERED that the motion by defendants Grease Kleeners, Inc. and Robert A. Flynn for summary judgment dismissing the complaint is denied.

Plaintiffs Patricia Gute ("Gute") and her husband, derivatively, commenced this action seeking to recover damages for personal injuries she sustained on December 8, 2014 in a multi-vehicle accident. Gute was traveling north on Patchogue-Holbrook Road and defendant Robert A. Flynn ("Flynn"), operating the vehicle owned by defendant Grease Kleeners, Inc. (hereinafter "defendants" when referred to collectively), was traveling behind her. Defendant Christopher Romano ("Romano") was operating his vehicle southbound on Patchogue-Holbrook Road. In the area where the accident occurred, Patchogue-Holbrook road has two lanes in each direction of travel separated by a median painted on the roadway and a double-yellow line.

Issue has been joined, discovery completed and the note of issue filed. The instant motions for summary judgment ensued. Plaintiffs move for summary judgment on the issue of liability against Romano on the grounds that he violated section 1126 (a) of the Vehicle and Traffic Law by crossing over the double-yellow line and into Gute's lane of travel. Plaintiffs move for summary judgment on the issue of liability against defendants on the ground that Flynn rear-ended plaintiffs' vehicle, which creates a prima facie case of negligence. Defendants move for summary judgment dismissing plaintiffs' complaint on the ground that Romano's conduct was the sole proximate cause of this three-vehicle accident, and that the emergency doctrine applies to Flynn's action, thereby relieving them of liability.

On the day of the accident, there had been a dusting of snow, but the weather turned warmer and the precipitation changed to rain, then to a light drizzle and mist, which had stopped shortly before the accident occurred at 5:30 p.m. Plaintiff, Romano and Flynn each left work close to 5:00 p.m; plaintiff was working in Sayville, Romano at Stony Brook Hospital and Flynn in East Patchogue. Plaintiff testified the roads were icy when she left work; Romano and Flynn testified that the roads were not icy.

Gute testified that she had been driving for approximately 20 minutes in the left lane of Patchogue-Holbrook Road on her way to the Long Island Expressway. Shortly before the accident occurred, she looked in her rear-view mirror and saw what she described as a truck-like vehicle, later identified as a full sized van operated by Flynn, which made her uncomfortable because it was driving too close for the road conditions. After stopping for a red light at an intersection, she proceeded forward, eventually accelerating to about 40 miles per hour. Romano's vehicle then crossed over the median and the double-yellow line into her lane of travel, hitting the front left side of her vehicle. As a result of the impact, the back of her vehicle shifted to the left and she immediately felt a second impact. She testified that both impacts were extremely hard and that the first impact happened so fast she did not have time to do anything. Gute described seeing the blur of headlights on Romano's vehicle coming

towards her from the opposite direction and instantaneously the collision occurred, her car spun and then she felt the second impact. The steering wheel airbag deployed and she lost consciousness, which she did not regain until December 22 at Stony Brook Hospital.

Romano admits that he lost control of his vehicle on icy road conditions but testified he did not realize the roads were icy until it was too late. Romano testified that he stopped at a supermarket on his way home and did not encounter any icy conditions. He testified that the roadway from the supermarket to the Long Island Expressway ("LIE") overpass on Patchogue-Holbrook Road also not slippery or icy. However, as he was crossing the LIE overpass at the point the roadway curves to the right, his Jeep started to slide on ice. He took his foot off the gas and attempted to stay in the southbound lane away from oncoming traffic, but was unable to do so. His Jeep continued to slide forward and in an easterly direction, cross the median and double-yellow line into oncoming traffic and hit plaintiffs' vehicle head-on. After the impact, Romano's vehicle spun around back to a southerly direction on the median. Plaintiffs' vehicle went from the left-hand northbound lane to facing southbound on the right shoulder of the southbound lane. At the time of the accident, Romano was unaware that a third vehicle was involved; he was informed after being transported by ambulance to Stony Brook Hospital. Although he testified he was familiar with and traveled on Patchogue-Holbrook Road regularly, he was not sure if the warning sign on the overpass, "Bridge May Ice Before Roadway," was posted prior to the subject accident.

Flynn testified that he was approximately 40 to 50 feet behind plaintiffs' vehicle when he saw the Jeep coming across the median at an angle from the southbound side towards the northbound side of Patchogue-Holbrook Road. Flynn testified the impact between Romano's and plaintiffs' vehicle happened so quick he did not know what action plaintiff took. According to Flynn, when he saw the Jeep entering the northbound lane, he applied his brakes and steered towards the right but was unable to avoid colliding with plaintiffs' vehicle as the road in that area was icy. The front of his van hit the driver's side fender and door of plaintiffs' vehicle. He testified that after the impact his van continued to slide on the ice 60 to 70 feet across the double-yellow line and into the southbound lane, as did plaintiffs' vehicle. Flynn stated that he was wearing work boots and as he exited his vehicle after the collision, he immediately slipped and noticed that the overpass was covered with a sheet of ice. After his accident, he also noticed other cars skidding.

The emergency doctrine provides that "when an actor is faced with a sudden and unexpected circumstance which leaves little or no time for thought, deliberation, or consideration, or causes the actor to be so reasonably disturbed that the actor must make a speedy decision without weighing alternative courses of conduct, the actor may not be negligent if the actions taken are reasonable and prudent in the emergency context" (***Ardila v Cox***, 88 AD3d 829, 830, 931 NYS2d 120 [2d Dept 2011]; *see* ***Wade v Knight Transp., Inc.***, 151 AD3d 1107, 58 NYS3d 458 [2d Dept 2017;]; ***Honold v Karwowski***, 124 AD3d 724, 998 NYS2d 666 [2d Dept 2015]; *see* ***Caristo v Sanzone***, 96 NY2d 172, 726 NYS2d 324 [2001]; ***Vitale v Levine***, 44 AD3d 935, 936 [2007]; ***Rivera v New York City Tr. Auth.***, 77 NY2d 322, 327, 567 NYS2d 627 [1991]; ***Bello v Transit Auth. of N.Y. City***, 12 AD3d 58, 60, 783 NYS2d 648 [2d Dept 2004]). "'This is not to say that an emergency automatically absolves one from liability for his or her conduct . . . as the standard remains that of a reasonable person under the circumstances'" (***Honold v***

Karwowski, *supra* at 725, quoting ***Ferrer v Harris***, 55 NY2d 285, 293, 449 NYS2d 162 [1982]; ***Lopez v Wook Ko Young***, 96 AD3d 724, 724-725, 945 NYS2d 728 [2d Dept 2012]). "Although the existence of an emergency and the reasonableness of the response to it generally present issues of fact, those issues may in appropriate circumstances may be determined as a matter of law" (***Lopez v Wook Ko Young***, *supra* at 725).

It has been held that crossing a double-yellow lane into the opposing lane of traffic, a violation of Vehicle and Traffic Law § 1126 (a), is a classic emergency situation, implicating the emergency and that such conduct constitutes negligence as a matter of law (*see* ***Wade v Knight Transp., Inc.***, 151 AD3d 1107, 58 NYS3d 458 [2d Dept 2017]; ***Graci v Kingsley***, 146 AD3d 864, 45 NYS3d 187 [2d Dep 2017]; ***Honold v Karwowski***, *supra*; ***Ardila v Cox***, *supra*). Here, based on the evidence submitted, plaintiff has established her prima facie entitlement to judgment on the issue of Romano's liability by demonstrating that he violated Vehicle and Traffic Law § 1126 (a) by crossing over a double yellow line into her lane of travel, thereby causing the head-on collision.

In opposition, Romano argues that Gute has failed to establish she was free from comparative fault, or took any reasonable precautions to avoid the impact, therefore, the motion should be denied. Romano's argument is not persuasive as a driver is not required to anticipate that a vehicle will cross over a double yellow line into oncoming traffic (*see* ***Wade v Knight Transp., Inc.***, *supra*; ***Graci v Kingsley***, *supra*; ***Ardila v Cox***, *supra*; ***Guevara v Zaharakis***, 303 AD2d 555, 756 NYS2d 465 [2d Dept 2003]; ***Velez v Diaz***, 227 AD2d 615, 643 NYS2d 614 [2d Dept 1996]; ***Williams v Econ***, 221 AD2d 429, 633 NYS2d 392 [2d Dept 1995]; ***Greifer v Schneider***, 215 AD2d 354, 626 NYS2d 218 [2d Dept1995]). A cross-over scenario presents an emergency situation and the actions of a driver confronted with such a situation must be judged in that context (*see* ***Williams v Econ***, *supra*; ***Greifer v Schneider***, *supra*).

Here, Gute was presented with an instantaneous cross-over emergency, not of her own making. Based on the deposition testimony, Romano's cross-over into the injured plaintiff's lane of traffic and the impact occurred instantaneously. Under such circumstances, the injured plaintiff had no obligation to exercise her best judgment and any error in her judgment is not sufficient to constitute negligence (*see*, ***Guevara v Zaharakis***, *supra*; ***Velez v Diaz***, *supra*; ***Williams v Econ***, *supra*). Speculation that Gute may have failed to take evasive action or in some other way contributed to the collision with Romano's vehicle is insufficient to defeat plaintiffs' prima facie showing (*see* ***Wade v Knight Transp., Inc.***, *supra*; ***Snemyr v Morales-Aparicio***, 47 AD3d 702, 850 NYS2d 489 [2d Dept 2008]; ***Gadon v Oliva***, *supra*; ***Williams v Econ***, *supra*).

Nevertheless, a violation of Vehicle and Traffic Law § 1126 (a) "may be excused if it is established that the driver exercised reasonable care in an effort to comply with [the statute]" (***Clarke v Condon***, 52 AD3d 764, 765, 862 NYS2d 65 [2d Dept 2008]); *see* ***Espinal v Sureau***, 262 AD2d 523, 524, 691 NYS2d 335 [2d Dept 1999]). Here, a triable issue of fact exists for the jury to decide as to whether Romano's conduct was reasonable under the circumstances (*see* ***Youssef v Siringo***, 151 AD3d 911, 57 NYS3d 505 [2d Dept 2017]; ***Clarke v Condon***, *supra*; ***Arricale v Leo***, 295 AD2d 920, 744 NYS2d 109 [4th Dept 2002]). Therefore, plaintiffs' motion for partial summary judgment in their favor against Romano must be denied.

Plaintiffs' motion for partial summary judgment against defendants and defendants' motion for summary judgment dismissing the complaint must also be denied. Although Flynn testified that he had not experienced or observed any icy or slippery road conditions until the accident, it is for the jury to determine whether he was following too closely behind plaintiffs' vehicle considering the weather and road conditions, and whether he had a reasonable opportunity to avoid the collision given the interval of seconds between the cross-over and his impact with plaintiffs' vehicle or was he in fact confronted with an emergency situation not of his own making (*see* ***Frutchey v Felicita***, 11 NY3d 764, 866 NYS2d 594 [2008]; ***Youssef v Siringo***, *supra*; ***Raposo v Raposo***, 250 AD2d 420, 673 NYS2d 92 [1st Dept 1998]).

Accordingly, the motions are denied.

Dated: January 30, 2018

PETER H. MAYER, J.S.C.