

**Williams v Jewish Bd. of Family**

2020 NY Slip Op 30887(U)

February 3, 2020

Supreme Court, Bronx County

Docket Number: Index No. 26418/2018E

Judge: Mary Ann Brigantti

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX, PART 15



WILLIAMS, FELECIA

Index No. 26418/2018E

-against-

Hon. MARY ANN BRIGANTTI

JEWISH BOARD OF FAMILY

Justice Supreme Court

The following papers numbered 1 to 3 were read on this motion ( Seq. No. 3 )  
for Summary Judgment noticed on November 04, 2019.

Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed	No(s). 1, 2
Answering Affidavit and Exhibits	No(s). 3, 4, 5, 6, 7, 8
Replying Affidavit and Exhibits	No(s). 9

Motion is Respectfully Referred to Justice:  
Dated:

Upon the foregoing papers, the plaintiff Felecia Williams ("Williams") moves (motion seq. #003) for summary judgment on the issue of liability against the defendants and third-party plaintiffs Jewish Board of Family and Children's Services, Inc., and Andre Bryan ("Bryan") (collectively, "the Jewish Board Defendants"), and an order dismissing the Jewish Board Defendants' affirmative defenses alleging comparative negligence, contributory negligence, and culpable conduct. The Jewish Board Defendants oppose the motion. Separately, third-party defendant, and plaintiff in the consolidated action (Index #31486/2018), Colyn Bent ("Bent") moves (motion seq. #002) by way of two motions: the first as Third-Party Defendant (hereinafter referred to as, "Bent as Third-Party Defendant's motion") for summary judgment dismissing the Jewish Board Defendants' complaint asserted against her, and the second as a cross-motion as plaintiff (hereinafter referred to as, "Bent as Plaintiff's motion") for summary judgment on the issue of her liability against the Jewish Board Defendants. The Jewish Board Defendants oppose both of Bent's motions.

*I. William's Motion*

"It is well settled that a rear-end collision with a stopped or stopping vehicle establishes a prima facie case of negligence on the part of the driver of the rear vehicle, and imposes a duty on the part of the operator of the moving vehicle to come forward with an adequate non-negligent explanation for the accident" (*Cabrera v Rodriguez*, 72 A.D.3d 553 [1st Dept 2010], citing *Tutrani v County of Suffolk*, 10 N.Y.3d 906, 908 [2008]; see also *Dattilo v Best Transp. Inc* 79 A.D.3d 432 [1st Dept 2010]; *Agramonte v City of New York*, 288 A.D.2d 75, 76 [1st Dept 2001]).

In this case, Williams established a prima facie case of negligence on the part of the Jewish Board

Defendants, as she testified at her deposition that she was a passenger in a vehicle operated by Bent when it was struck from the rear by the Jewish Board Defendants' vehicle. Williams stated that prior to this accident she and Bent were traveling on the Whitestone Bridge when they she observed an accident ahead and Bent started to brake and came to a complete stop before being hit from behind. Williams also provided an affidavit from Bent, in which he stated that he applied his vehicle's brakes to avoid contact with vehicles that were stopped ahead of him due to an observed accident ahead, before being struck in the rear by the Jewish Board Defendants' vehicle. In light of this prima facie showing, the burden shifted to the Jewish Board Defendants to provide evidence of a "non-negligent explanation for the accident, or a nonnegligent reason" for their "failure to maintain a safe distance" between their car and the lead car (*Mullen v Rigor*, 8 A.D.3d 104 [1st Dept 2004], citing *Jean v Xu*, 288 A.D.2d 62 [1st Dept 2001]).

In opposition to the motion, the Jewish Board Defendants failed to raise a triable issue of fact. William's motion is not premature, since both drivers submitted affidavits, thus the Jewish Board Defendants were "able to submit facts 'essential to justify opposition' [to the motion]" (*Jeffrey v Dejesus*, 116 A.D.3d 574 [1st Dept 2014] [internal citations and quotations marks omitted]). The Jewish Board Defendants submitted the affidavit of Bryan who alleged that at the time of this accident, William's vehicle "came to an abrupt stop" and that "[d]ue to excessive rain" Bryan was "unable to come to a complete stop." Bryan's bare contention that William's vehicle stopped suddenly in front of him is not a sufficient "non-negligent explanation" for a rear-end collision (*Ly Giap v. Hathi Son Pham*, 159 A.D.3d 484 [1st Dept 2018]; *Bajrami v Twinkle Cab Corp.*, 147 A.D.3d 649 [1st Dept 2017]; *Morgan v Browner*, 138 A.D.3d 560 [1st Dept 2016]). A driver is expected to maintain enough distance between himself and cars ahead of him so as to avoid collisions with stopped vehicles (*see Francisco v Schoepfer*, 30 A.D.3d 275 [1st Dept 2006]). Bryan's assertion that he maintained a "one and a half" car length behind William's vehicle does not change this result because Bryan was obligated to "make reasonable use of his [] senses, drive at a safe rate of speed under existing conditions, and maintain a safe distance from other motor vehicles, which was not done in this case" (*Miller v DeSouza*, 165 A.D.3d 550 [1st Dept 2018]). Accordingly, the Court grants William's motion on the issue of the Jewish Defendants' liability.

With regard to any alleged comparative negligence, contributory negligence, and culpable conduct by Williams, William's testimony evidencing that she was an innocent passenger in the lead vehicle and struck from the rear by the Jewish Board Defendants' vehicle is not refuted. Therefore, the Jewish Board Defendants' affirmative defenses relating to comparative negligence, contributory negligence, and culpable conduct are stricken (*see Garcia v Tri- County Ambulette Service Inc.*, 282 A.D.2d 206 [1st Dept 2014], citing CPLR 3212 [g]).

Finally, the above conclusions are reached without considering the police accident report as "it recites hearsay and was prepared by an officer who had not observed the accident" (*Roman v Cabrera*, 113

A.D.3d 541, 542 [1st Dept 2014], citing *Singh v Stair*, 106 A.D.3d 632, 633 [1st Dept 2013]).

## II. Bent's Motions

At the outset, the Court addresses together the two separate motions filed on behalf of Bent — the first being Bent as Plaintiff's motion seeking summary judgment on the issue of the Jewish Board Defendants' liability, and the second being Bent as Third-Party Defendant's motion seeking summary judgment dismissing the Jewish Board Defendants' Third-Party complaint asserted against her. Although the Bent as Third-Party Defendant's motion was correctly filed under Index #26418/2018, the Bent as Plaintiff's motion was incorrectly filed under this index number as well. On April 9, 2019, this Court ordered Action No. 1 (Index #26418/2018) to be consolidated with Action No. 2 (Index #31486/2018) for purposes of joint trial.

The Jewish Board Defendants argue that the motion should not be considered because it was filed under the incorrect Index number. However, the Jewish Board Defendants do not allege any resulting prejudice, and they were able to submit substantive opposition to the motion. Since there is no indication that a substantial right of the Jewish Board Defendants was prejudiced, and so as not to delay the resolution of this proceeding further, the Court "disregard[s]" this filing mistake with regard to Bent as Plaintiff's motion, and addresses both motions below (CPLR § 2001).

The Court also points out that although Bent as Plaintiff's motion is not supported by an affidavit, William's motion and Bent as Third Party Defendant's motions were both supported with an affidavit from Bent, and thus, the Court takes judicial notice of those affidavits in support of Bent as Plaintiff's motion (*see Leary v Bendow*, 161 A.D.3d 420, 421 [1st Dept 2018]).

### A. Bent as Plaintiff's Motion

As previously discussed, "[i]t is well settled that a rear-end collision with a stopped or stopping vehicle establishes a prima facie case of negligence on the part of the driver of the rear vehicle, and imposes a duty on the part of the operator of the moving vehicle to come forward with an adequate non-negligent explanation for the accident" (*Cabrera*, 72 A.D.3d 553, citing *Tutrani*, 10 N.Y.3d at 908).

In this case, Bent established a prima facie case of negligence on the part of the Jewish Board Defendants, as he stated in an affidavit that while traveling on the Whitestone Bridge he applied his vehicle's brakes to avoid contact with vehicles that were stopped ahead of him due to an observed accident ahead, before being struck in the rear by the Jewish Board Defendants' vehicle. In light of this prima facie showing, the burden shifted to the Jewish Board Defendants to provide evidence of a "non-negligent

explanation for the accident, or a nonnegligent reason" for their "failure to maintain a safe distance" between their car and the lead car (*Mullen v Rigor*, 8 A.D.3d 104 [1st Dept 2004], citing *Jean v Xu*, 288 A.D.2d 62 [1st Dept 2001]).

In opposition to the motion, the Jewish Board Defendants failed to raise a triable issue of fact. The Jewish Board Defendants submitted the affidavit of Bryan who alleges that at the time of this accident Bent's vehicle "came to an abrupt stop" and that "[d]ue to excessive rain" Bryan was "unable to come to a complete stop." Bryan's bare contention that Bent's vehicle stopped suddenly in front of him is not a sufficient "non-negligent explanation" for a rear-end collision (*Ly Giap*, 159 A.D.3d 484; *Bajrami*, 147 A.D.3d 649; *Morgan*, 138 A.D.3d 560). A driver is expected to maintain enough distance between himself and cars ahead of him so as to avoid collisions with stopped vehicles (*see Francisco*, 30 A.D.3d 275). Bryan's assertion that he maintained a "one and a half" car length behind Bent's vehicle does not change this result because Bryan was obligated to "make reasonable use of his [] senses, drive at a safe rate of speed under existing conditions, and maintain a safe distance from other motor vehicles, which was not done in this case" (*Miller*, 165 A.D.3d 550). Accordingly, the Court grants Bent as Plaintiff's motion on the issue of the Jewish Board Defendants' liability.

*B. Bent as Third-Party Defendant's Motion*

For the reasons discussed above in Section II.A., the Court also grants the motion for summary judgment by Bent as Third-Party Defendant against the Jewish Board Defendants.

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III. Conclusion

Accordingly, it is hereby,

ORDERED, that William's motion for summary judgment on the issue of the Jewish Board Defendants' liability is granted, and it is further,

ORDERED, that William's motion to strike the Jewish Board Defendants' affirmative defenses relating to William's comparative negligence, contributory negligence, and culpable conduct, is granted, and those affirmative defenses are dismissed, and it is further,

ORDERED, that Bent as Third-Party Defendant's motion to dismiss the Jewish Board Defendants' Third-Party complaint asserted against him is granted, and it is further,

ORDERED, that Bent as Plaintiff's motion, in the consolidated Action No. 2 (Index #31486/2018), for summary judgment on the issue of the Jewish Board Defendants' liability is granted, and it is further,

ORDERED, that the Clerk of the Court is directed to enter judgment accordingly.

This constitutes the Decision and Order of this Court.

Dated: 2/3/20

Hon. Mary Ann Briganti  
Hon. Mary Ann Briganti J.S.C.

- 1. CHECK ONE.....  CASE DISPOSED IN ITS ENTIRETY  CASE STILL ACTIVE
- 2. MOTION IS.....  GRANTED  DENIED  GRANTED IN PART  OTHER
- 3. CHECK IF APPROPRIATE.....  SETTLE ORDER  SUBMIT ORDER  SCHEDULE APPEARANCE
- FIDUCIARY APPOINTMENT  REFEREE APPOINTMENT