Connelly v Witte
2020 NY Slip Op 34889(U)
February 4, 2020
Supreme Court, Orange County
Docket Number: Index No. EF006309-2018
Judge: Catherine M. Bartlett
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT-STATE OF NEW YORK
IAS PART-ORANGE COUNTY

Present: HON. CATHERINE M. BARTLETT, A.J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

----------x

DONNA M. CONNELLY,

Plaintiff,

-against-

ROBERT G. WITTE,

Defendant.

----------x

To commence the statutory time period for appeals as of right (CPLR 5513 [a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

Index No. EF006309-2018
Motion Date: January 30, 2020

The following papers numbered 1 to 5 were read on Plaintiff's motion for partial summary judgment on the issue of liability:

Notice of Motion - Affirmation / Exhibits - Affidavit 1-3

Affirmation in Opposition / Exhibits 4

Reply Affirmation 5

Upon the foregoing papers it is ORDERED that the motion is disposed of as follows:

This is a personal injury action stemming from a rear-end motor vehicle accident that occurred on January 12, 2017 on the Exit 15A exit ramp from Interstate 87 in the Village of Hillburn, New York. Plaintiff Donna M. Connelly moves against defendant Robert G. Witte for an order granting partial summary judgment on all issues of liability.

A. Plaintiff's Testimony

Plaintiff testified that she was driving home in normal evening rush hour traffic. She exited Interstate 87, whereupon traffic slowed and she came to a stop after traveling about 100 feet on the Exit 15A exit ramp. When traffic started moving again, she traveled another 200 yards, reaching a speed of 25-30 miles per hour before slowing and stopping behind five other cars for the red light at the end of the exit ramp. She had just come to a full stop when she was rear-ended by Defendant's vehicle.

B. Defendant's Testimony

Defendant testified that he was traveling about two and one-half car lengths behind Plaintiff on the approach to the Exit 15A exit ramp. Attempting to move right and change lanes, he looked to his passenger side mirror and then rear-ended Plaintiff's vehicle. He testified that his speed was under 15 miles per hour, and that the accident occurred approximately 10 vehicles short of the traffic light.

Although Defendant claimed that Plaintiff's vehicle "stopped short", he admitted that he was looking away toward the right lane during the three seconds before impact, did not know how long Plaintiff's vehicle had been stopped before contact occurred, and did not see the impact take place. Defendant acknowledged that he told the responding State Trooper that he did not notice that Plaintiff's vehicle had stopped. He also acknowledged that he pleaded guilty to a traffic violation for making an unsafe lane change.

C. On The Record Before The Court, Defendant's Negligence In Making An Unsafe Lane Change, Failing To Keep A Proper Lookout, And Rear Ending Plaintiff's Vehicle Was The Sole Proximate Cause Of The Accident

1. Unsafe Lane Change And Failure To Keep Proper Lookout

Vehicle and Traffic Law §1128(a) provides:

> Whenever any roadway has been divided into two or more clearly marked lanes for traffic... (a) [a] vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety.

"[A] driver is negligent if he makes an unsafe lane change (*see* Vehicle and Traffic Law §1128[a]), or fails to see that which, through the proper use of one's senses, should have been seen..." *Fogel v. Rizzo,* 91 AD3d 706, 707 (2d Dept. 2012). Indeed, a driver's inattentiveness in not looking in the direction he is driving is in itself negligence. *See, Hauswirth v. Transcare New York, Inc.,* 97 AD3d 792, 793 (2d Dept. 2012); *Giangrasso v. Callahan,* 87 AD3d 521, 522 (2d Dept. 2011). Accordingly, Defendant's acknowledgment that the rear end accident occurred when he took his eyes off the road ahead to attempt an unsafe lane change established *prima facie* Plaintiff's entitlement to summary judgment. *See, e.g., Cascante v. Kakay,* 88 AD3d 588, 589 (1st Dept. 2011). *See also, Leonard v. Pomarico,* 137 AD3d 1085, 1086 (2d Dept. 2016); *Raza v. Gunik,* 129 AD3d 700 (2d Dept. 2015).

2. Failing To Maintain A Reasonably Safe Distance And Causing A Rear End Collision

Vehicle and Traffic Law §1129(a) provides:

> The 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.

Section 1129(a) requires that "[a] driver of a vehicle approaching another vehicle from the

rear is required to maintain a reasonably safe distance and rate of speed under the prevailing conditions to avoid colliding with the other vehicle." *Xin Fang Xia v. Saft,* 177 AD3d 823 (2d Dept. 2019); *Batashvili v. Veliz-Palacios,* 170 AD3d 791, 792 (2d Dept. 2019). *See, Cajas-Romero v. Ward,* 106 AD3d 850, 851 (2d Dept. 2013). Hence, the Second Department has consistently held that "[a] rear-end collision with a stopped or stopping vehicle establishes a prima facie case of negligence on the part of the operator of the rear vehicle, thereby requiring that operator to rebut the inference of negligence by providing a non-negligent explanation for the collision." *Xin Fang Xia v. Saft, supra. See, Batashvili v. Veliz-Palacios, supra; Arslan v. Costello,* 164 AD3d 1408, 1409 (2d Dept. 2018); *Nikolic v. City-Wide Sewer & Drain Service Corp.,* 150 AD3d 754, 755 (2d Dept. 2017); *Tumminello v. City of New York,* 148 AD3d 1084, 1084-85 (2d Dept. 2017); *Le Grand v. Silberstein,* 123 AD3d 773 (2d Dept. 2014); *Amador v. City of New York,* 120 AD3d 526 (2d Dept. 2014); *Rodriguez v. Farrell,* 115 AD3d 929, 930 (2d Dept. 2014).

"While a nonnegligent explanation for a rear-end collision may include evidence of a sudden stop of the lead vehicle, vehicle stops which are foreseeable under the prevailing traffic conditions must be anticipated by the driver who follows, since he is under a duty to maintain a safe distance between his vehicle and the vehicle ahead." *Arslan v. Costello, supra. See, Xin Fang Xia v. Saft, supra; Tumminello v. City of New York, supra,* 148 AD3d at 1085; *Volpe v. Limoncelli,* 74 AD3d 795, 795-796 (2d Dept. 2010).

Since it is eminently foreseeable, and must be anticipated, that motorists may come to a sudden stop for a traffic light, an averment like Mr. Witte's here that Plaintiff's vehicle stopped short for a traffic light does not constitute a non-negligent explanation for an ensuing rear-end

collision, and is insufficient to raise a triable issue of fact whether Plaintiff's actions contributed to the happening of the accident. *See, Nikolic v. City-Wide Sewer & Drain Service Corp., supra*; *Tumminello v. City of New York, supra*; *Parshina v. Celestin,* 146 AD3d 791, 792 (2d Dept. 2017); *Hakakian v. McCabe,* 38 AD3d 493, 494 (2d Dept. 2007); *David v. New York City Board of Education,* 19 AD3d 639 (2d Dept. 2005).

In any event, Defendant has failed to adduce competent evidence that Plaintiff stopped short. Defendant's conclusory assertion in the face of Plaintiff's testimony to the contrary that she stopped short just before he rear ended her is belied by his testimony that he was looking away toward the right lane during the three seconds before impact, did not know how long Plaintiff's vehicle had been stopped before contact occurred, and did not see the impact take place. Defense counsel suggests without any evidentiary basis that a sudden stop may be inferred from Plaintiff's testimony that she reached a speed of 25-30 miles per hour on the exit ramp before stopping. 25-30 miles per hour equals 36-44 feet per second, a speed which Plaintiff attained while traveling 200 yards, i.e., 600 feet, before stopping for the red light. Over a distance of 600 feet, Plaintiff might readily have accelerated to 36-44 feet per second and then decelerated for the light without having to stop short. Hence, Defendant has failed to adduce any evidence of (1) a non-negligent explanation for his rear-ending Plaintiff, or (2) negligence on the part of Plaintiff contributing to the accident.

On the record before the Court, then, Plaintiff established *prima facie* that she was not negligent and that Defendant's negligence in making an unsafe lane change, failing to keep a proper lookout and rear-ending Plaintiff's vehicle was the sole proximate cause of the accident. In opposition, Defendant has failed to demonstrate the existence of any triable issues of fact.

Consequently, Plaintiff is entitled to partial summary judgment against Defendant on all issues of liability.

It is therefore

ORDERED, that Plaintiff's motion for partial summary judgment is granted, and Plaintiff is awarded partial summary judgment against Defendant on all issues of liability.

The foregoing constitutes the decision and order of the Court.

Dated: February 4, 2020 ENTER
Goshen, New York

HON. CATHERINE M. BARTLETT, A.J.S.C.

HON. C. M. BARTLETT
JUDGE NY STATE COURT OF CLAIMS
ACTING SUPREME COURT JUSTICE

* DAMAGES ONLY
TRIAL AUGUST 10, 2020.