Moody v Chestnut Ridge Transp.
2021 NY Slip Op 33061(U)
December 1, 2021
Supreme Court, Bronx County
Docket Number: Index No. 32921/2020E
Judge: Ben R. Barbato
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

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RACHEL MOODY,

Plaintiff,

-against- Index No.: 32921/2020E

CHESTNUT RIDGE TRANSPORT, GREGORY GILLEY JR., and JENNIFER CURRIE,

Defendants.

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HON. BEN R. BARBATO:

Defendants, GREGORY GILLEY, JR., and CHESTNUT RIDGE TRANSPORTATION, INC., s/h/a CHESTNUT RIDGE TRANSPORT, move for summary judgment dismissing the complaint and any cross claims as against them, and for related relief; and Plaintiff, RACHEL MOODY, cross moves for partial summary judgment in her favor, as against all Defendants, GILLEY/CHESTNUT, and JENNIFER CURRIE, on the issue of liability, and for related relief.

This is an action to recover damages for alleged personal injuries sustained by Plaintiff in multi-vehicle car accident, which occurred on or about April 10, 2019, at about 4:15 pm, on the Eastbound Cross Bronx Expressway, in the Bronx, New York. There were three vehicles involved in the accident. Plaintiff's vehicle was the front-most vehicle, followed by that of Defendants GILLEY/CHESTNUT; and Defendant CURRIE was the rear-most vehicle.

In support of the motion and cross motion, the submissions include the pleadings, the Police Accident Report, photographs; and the Affidavits of Defendant GILLEY, Defendant CURRIE, and Plaintiff MOODY.

Alleged Facts

--Plaintiff MOODY's version of the accident

According to Plaintiff MOODY, her vehicle, a bus, was stopped in traffic when it was rear-ended. She further describes the accident as follows:

> "From the service road of the Cross Bronx Expressway near the Rosedale Avenue overpass I slowly moved the bus into the eastbound first lane of the Expressway, and gradually came to a full stop for about a minute because a line of cars ahead of me had stopped. I then felt an impact to the rear of the bus".

(Plaintiff's Affidavit, dated August 4, 2021).

--Defendant GILLEY's version of the accident

Defendant GILLEY states that, while fully stopped one-car length behind Plaintiff's bus, GILLEY was rear-ended by Defendant CURRIE's vehicle; and that impact pushed his vehicle into Plaintiff's bus ahead of him. At the time of the accident, GILLEY was working as a driver in the course of his employment with CHESTNUT. He describes the accident as follows:

> "While proceeding slowly and cautiously, merging onto the Cross Bronx Expressway, I observed the bus that was traveling in front of me come to a stop. I immediately put my foot on the brake to bring my vehicle to a stop. My vehicle came to a full and complete stop behind the bus with at least

one full car length between the stopped vehicles. After I was stopped, a Volkswagen Jetta that was travelling behind me suddenly, and without warning, impacted my vehicle at the rear. The rear-end impact to my vehicle pushed my vehicle into the bus in front of me. There was no action I could have taken to avoid my vehicle being pushed into the bus in front of me. Co-defendant's vehicle was the sole cause of this multi-vehicle rear-end accident".

(Defendant GILLEY's Affidavit, dated June 28, 2021).

--Defendant CURRIE's version of the accident

Defendant CURRIE admits that her vehicle rear-ended Defendant GILLEY's vehicle. However, she alleges that this collision occurred after GILLEY's vehicle suddenly cut in front of her and brought his vehicle to an abrupt stop. She describes the incident as follows:

"While merging onto the Cross Bronx Expressway, suddenly and without warning, a yellow Chevrolet SUV came from the left and came into the merging lane directly in front of me and then brought his vehicle to an abrupt stop less than five (5) seconds before this accident happened...

My vehicle was traveling under 20 miles per hour when the defendant, Gregory Gilley Jr's, vehicle entered the merging lane and came to a sudden and unexpected stop.

I did not have any time to brake or take any evasive action before this accident happened as defendant, Gregory Gilley Jr's vehicle came to a full stop unexpectedly.

As a result, my vehicle's front bumper made contact with the rear bumper of the defendant, Gregory Gilley Jr's vehicle... I should not be held solely responsible for this accident".

(Defendant CURRIE's Affidavit, dated July 27, 2021).

In the Police Accident Report, the accident is described as follows:

> "OFFICER WAS INFORMED BY DRIVER OF V1 [MOODY] THAT SHE WAS SLOWING IN TRAFFIC AND WAS STRUCK FROM BEHIND. DRIVER OF V2 [GILLEY] STATES HE STOPPED ABRUPTLY JUST PRIOR TO CONTACT WITH V1 [MOODY] AND WAS REAR- ENDED BY V3 [CURRIE] PUSHING HIS VEHICLE FORWARD INTO V1 [MOODY]. DRIVER OF V3 [CURRIE] SAW V2 [GILLEY] COME TO AN ABRUPT STOP AND COULD NOT STOP IN TIME REAR-ENDING V2 [GILLEY]".

Applicable Law/ Analysis

Accordingly, Plaintiff MOODY made a *prima facie* showing of her entitlement to partial summary judgment on the issue of Defendants' negligence by her testimony, including that Plaintiff's bus was rear-ended.

Vehicle and Traffic Law § 1129(a) "Following too closely", provides that: "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". In this regard, it has been established 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, nonnegligent explanation for the accident" (Matos v Sanchez, 147 AD3d 585, 586, 47 NYS3d 307 [1st Dept 2017]). Here, defendant driver's assertion that plaintiffs' vehicle stopped abruptly does not explain why defendant driver failed to maintain a safe distance, and is insufficient to constitute a nonnegligent explanation" (*Urena v GVC Ltd.*, 160 AD3d 467, 467 [1st Dept 2018]).

Also, in "a chain-reaction collision, responsibility presumptively rests with

the rearmost driver" (*Mustafaj v Driscoll*, 5 AD3d 138, 138 [1st Dept 2004]; *see Chang v Rodriguez*, 57 AD3d 295 [1st Dept 2008]).

Thus, the burden shifted to Defendants to advance non-negligent explanations for the accident.

As far as Defendant GILLEY/CHESTNUT, they made a *prima facie* showing of their entitlement to summary judgment in their favor, as well as advancing a non-negligent explanation for the happening of the accident, by GILLEY's allegation that his stopped vehicle was pushed into Plaintiff's bus after Defendant CURRIE rear-ended him.

However, in opposition to both motions, Defendant CURRIE raises issues of fact, alleging that the collision occurred because Defendant GILLEY's vehicle suddenly cut in front of her and brought his vehicle to an abrupt stop. In this regard, Vehicle and Traffic Law § 1128(a), "Driving on roadways laned for traffic" provides that a vehicle shall not change lanes when it is unsafe to do so:

> "Whenever any roadway has been divided into two or more clearly marked lanes for traffic the following rules in addition to all others consistent herewith shall apply: (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".

Courts have held that, "on the merits, an issue of fact as to [the other driver's] ... fault is raised by defendant's assertion that the accident occurred

when [the other driver's] ... vehicle cut in front of his vehicle" (*Matos v Scoppetta*, 6 AD3d 329, 330 [1st Dept 2004]).

In another similar case, a motion for summary judgment on the issue of liability was properly denied, where a defendant "driver's affidavit raises issues of fact as to whether [the other driver] ... swerved her vehicle in front of his vehicle and abruptly stopped short, leaving him too little space to safely react and avert a collision" (*Lebron v IESI NY Corp.*, 6 AD3d 215, 215-216 [1st Dept 2004]; see *Evans v Fox Trucking Inc.*, 309 AD2d 618, 618 [1st Dept 2003]).

Accordingly, "[t]hese competing versions of the accident demonstrate the existence of material issues of fact precluding summary judgment in favor of the moving" parties. (*Myers v Crestwood Metals Corp.*, 40 AD3d 376, 376 [1st Dept2007]). In *Myers*, also, there was an issue of fact as to whether one of the vehicles abruptly cut in front of the other.

Further, in a multiple-vehicle accident, where there is a question of fact as to the sequence, and number, of collisions, "it cannot be said as a matter of law there was only one proximate cause of plaintiffs' injuries" (*Passos v MTA Bus Co.*, 129 AD3d 481, 482 [1st Dept 2015]; *see Liburd v Lulgjuraj*, 156 AD3d 532, 532 [1st Dept 2017]).

Thus, where the record contains evidence from which a jury could find that more than one party was negligent, "it cannot be said as a matter of law that the negligence of the operator of the last vehicle in the line of vehicles was a proximate cause of the injuries to an occupant of the lead vehicle ... If that finding [that more than one party was negligent] is made, the jury would then have to determine whether both acts of negligence were concurrent proximate causes of the plaintiff's injuries, or only one or the other was the proximate cause" (*Vavoulis v Adler*, 43 AD3d 1154, 1156 [2d Dept 2007]).

"In either event, our role on these motions is limited to issue finding, not issue determination" (*Passos v MTA Bus Co.*, 129 AD3d 481, 483 [1st Dept 2015]).

Conclusion

Accordingly, the Motion by Defendants, GILLEY/CHESTNUT, for summary judgment dismissing the complaint and any cross claims as against them, and for related relief; and Plaintiff MOODY's Cross motion for partial summary judgment in her favor, as against all Defendants, GILLEY/CHESTNUT, and CURRIE, on the issue of liability, and for related relief, are both denied. This constitutes the decision and order of this Court.

Dated: 12/1 2021

Hon. _____
HON. BEN R. BARBATO, JSC