Connor v Suffolk County Transp. Serv., Inc.
2021 NY Slip Op 33797(U)
April 28, 2021
Supreme Court, Suffolk County
Docket Number: Index No. 604826/2020
Judge: Paul J. Baisley, Jr.
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SHORT FORM ORDER **INDEX NO. 604826/2020**

SUPREME COURT - STATE OF NEW YORK
DCM-J - SUFFOLK COUNTY

PRESENT:
Hon. Paul J. Baisley, Jr., J.S.C.

MELISSA CONNOR,

Plaintiff,

-against-

SUFFOLK COUNTY TRANSPORTATION SERVICE, INC., ERIC HOLLWEG, WEST BABYLON UNION FREE SCHOOL DISTRICT, EASTERN SUFFOLK BOCES, WEST BABYLON JUNIOR HIGH SCHOOL, MICHAEL STETSON, CRAIG SCOTT and TAWANA SCOTT,

Defendants.

ORIG. RETURN DATE: December 17, 2020 (#001)
ORIG. RETURN DATE: January 19, 2021 (#002)
ORIG. RETURN DATE: January 19, 2021 (#003)
FINAL RETURN DATE: February 16, 2021
MOT. SEQ. #: 001 MD
MOT. SEQ. #: 002 MG
MOT. SEQ. #: 003 MG

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Upon the following papers read on these motions for summary judgment: Notice of Motion and supporting papers by defendant Michael Stetson, dated November 7, 2020; Notice of Motion and supporting papers by defendants Craig Scott and Tawana Scott, dated December 8, 2020; Notice of Motion and supporting papers by plaintiff, dated January 11, 2021; Answering Affidavits and supporting papers by defendants Suffolk County Transportation Service, Inc., Eric Hollweg, West Babylon Union Free School District and Eastern Suffolk BOCES, dated January 6, 2021 and February 3, 2021; Answering Affidavits and supporting papers by defendant Michael Stetson, dated December 8, 2020; Answering Affidavits and supporting papers by plaintiff, dated January 11, 2021; Answering Affidavits and supporting papers by defendants Craig Scott and Tawana Scott, dated January 13, 2021; Replying Affidavits and supporting papers by defendant Michael Stetson, dated January 6, 2021, January 13, 2021, and February 3, 2021; Replying Affidavits and supporting papers by defendants Craig Scott and Tawana Scott, dated January 4, 2021 and January 13, 2021; Replying Affidavits and supporting papers by plaintiff, dated February 15, 2021; Other Memorandum of Law; it is

ORDERED that the motion by defendant Michael Stetson (001), the motion by defendants Craig

Scott and Tawana Scott (002), and the motion by plaintiff (003) are consolidated for the purpose of this determination; and it is further

ORDERED that the motion by defendant Michael Stetson for summary judgment is denied; and it is further

ORDERED that the motion by defendants Craig Scott and Tawana Scott for summary judgment is granted; and it is further

ORDERED that the motion by plaintiff for summary judgment against defendants Suffolk Transportation Service, Inc. and Eric Hollweg on the issue of liability is granted; and it is further

ORDERED that a preliminary conference will be held on May 19, 2021.

This is an action to recover damages for personal injuries allegedly sustained by plaintiff as a result of a multiple-vehicle collision which occurred on the morning of December 14, 2018. At the time of the accident, plaintiff was operating a motor vehicle northbound on William Floyd Parkway. She alleges that, while her vehicle was stopped in traffic for a red traffic signal at McGraw Street, it was struck in the rear by a vehicle operated by defendant Michael Stetson, which had been struck in the rear by a vehicle operated by defendant Eric Hollweg and owned by defendant Suffolk Transportation Service, Inc. s/h/a Suffolk County Transportation Service, Inc. ("Suffolk Transportation"). Plaintiff further alleges that, as a result of the impact to her vehicle, it was propelled forward into the vehicle operated by defendant Craig Scott and owned by defendant Tawana Scott.

Defendant Stetson now moves for summary judgment dismissing the complaint and all cross claims against him on the grounds that he bears no liability for the accident, and that the accident was due to the negligence of Hollweg in hitting his vehicle in the rear and propelling it into plaintiff's vehicle. In support of his motion, Stetson submits, inter alia, copies of the pleadings, his affidavit, and a copy of the police accident report. The court notes that, although Stetson initially submitted an uncertified copy of the police report, which was inadmissible, he later submitted a certified copy of the report, which has been considered in determining the instant motions. Defendants Craig and Tawana Scott also move for summary judgment dismissing the complaint and all cross claims against them, and submit, inter alia, copies of the pleadings and an affidavit by Craig Scott. Plaintiff moves for partial summary judgment on the issue of liability against Suffolk Transportation and Hollweg, and submits, inter alia, the affidavits of Stetson, Scott and Hollweg, as well as the police accident report.

The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law by tendering evidence in admissible form sufficient to eliminate any material issues of fact from the case (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 508 NYS2d 923 [1986]; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 487 NYS2d 316 [1985]). The movant has the initial burden of proving entitlement to summary judgment (*see Winegrad v New York Univ. Med. Ctr.*, *supra*). Failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers (*see Winegrad v New York Univ. Med. Ctr.*, *supra*). Once such proof has been offered, the burden then shifts to the opposing party who must proffer evidence in admissible form and

must show facts sufficient to require a trial of any issue of fact to defeat the motion for summary judgment (*see* CPLR 3212 [b]; *Alvarez v Prospect Hosp.*, *supra*; *Zuckerman v City of New York*, 49 NY2d 557, 427 NYS2d 595 [1980]).

A rear-end collision with a stopped or stopping vehicle creates a prima facie case of negligence on the part of the driver of the rear vehicle, and imposes a duty on that driver to proffer a non-negligent explanation for the collision (*see Tsyganash v Auto Mall Fleet Mgt., Inc.*, 163 AD3d 1033, 83 NYS3d 74 [2d Dept 2018]; *Edgerton v City of New York*, 160 AD3d 809, 74 NYS3d 617 [2d Dept 2018]; *Binkowitz v Kolb*, 135 AD3d 884, 24 NYS3d 186 [2d Dept 2016]; *Grimm v Bailey*, 105 AD3d 703, 963 NYS2d 277 [2d Dept 2013]). "Evidence that a vehicle was struck in the rear and propelled into the vehicle in front of it may provide a non-negligent explanation" (*Woodridge-Solano v Dick*, 143 AD3d 698, 699, 39 NYS3d 41 [2d Dept 2016], quoting *Ortiz v Haidar*, 68 AD3d 953, 954, 892 NYS2d 122 [2d Dept 2009]). In addition, responsibility for a chain-reaction motor vehicle accident presumptively rests with the rearmost driver (*see De La Cruz v Ock Wee Leong*, 16 AD3d 199, 791 NYS2d 102 [1st Dept 2005]; *Mustafaj v Driscoll*, 5 AD3d 138, 773 NYS2d 26 [1st Dept 2004]). However, conflicting evidence regarding the sequence of collisions in a rear-end, chain-reaction accident raises triable issues of fact (*see Swinton v Kamiyama*, 147 AD3d 803, 45 NYS3d 578 [2d Dept 2017]; *Mullen v Street Cowboy Taxi, Inc.*, 118 AD3d 681, 986 NYS2d 850 [2d Dept 2014]; *Vavoulis v Adler*, 43 AD3d 1154, 842 NYS2d 526 [2d Dept 2007]; *Hudson v Cole*, 264 AD2d 439, 694 NYS2d 692 [2d Dept 1999]; *Viggiano v Camara*, 250 AD2d 836, 673 NYS2d 714 [2d Dept 1998]; *Omrami v Socrates*, 227 AD2d 459, 642 NYS2d 932 [2d Dept 1996]; *Confrancesco v Murino*, 225 AD2d 648, 639 NYS2d 471 [2d Dept 1996]).

As reflected in the police accident report, Scott's vehicle was the lead vehicle in the line of vehicles involved in the subject accident. Scott's vehicle was struck in the rear by plaintiff's vehicle, which was struck in the rear by Stetson's vehicle. Hollweg's vehicle, which struck Stetson's vehicle, was the rear-most vehicle involved in the accident. In his affidavit, Stetson states that, prior to the accident, his vehicle was stopped in traffic on William Floyd Parkway northbound, for a red light at McGraw Street. Stetson further states that his vehicle was stopped for five to ten seconds before it was struck in the rear by the minibus operated by defendant Hollweg, which caused it to be propelled forward into the vehicle in front of him. Stetson's affidavit additionally states that his vehicle did not come into contact with the vehicle in front of him until it was propelled forward as the result of the impact from the minibus to the rear of his vehicle.

In opposition to Stetson's motion, Suffolk Transportation and Hollweg argue that there are issues of fact regarding the number and sequence of collisions between the vehicles, and specifically, whether Stetson's vehicle struck plaintiff's vehicle prior to being struck by their vehicle. They submit an affidavit by Hollweg which states that "shortly after crossing over Montauk Highway, I saw the brake lights of [Stetson's vehicle] illuminate and simultaneously heard the sound of a collision. At that moment, Mr. Stetson's pick-up truck came to an abrupt and immediate stop." Hollweg further states that he applied his brakes and attempted to navigate his minibus to the left, but was unable to avoid colliding with Stetson's vehicle, causing the pick-up truck to move six inches forward. Hollweg states that he did not hear the sound of any additional collisions after the impact between his vehicle and Stetson's pick-up truck. Suffolk Transportation and Hollweg also submit an affidavit by Craig Scott in opposition to Stetson's motion. Scott's affidavit states that he was the first vehicle in the line of vehicles

involved in the accident, and that he was completely stopped prior to the accident. Scott further states that, after the initial impact to the rear of his vehicle, he felt two more impacts. He later learned that the vehicle which struck his vehicle in the rear "multiple times" was operated by plaintiff. In addition to the party affidavits, Suffolk Transportation and Hollweg submit a digital video disc containing footage from the interior of the minibus at the time of the accident. However, as the video depicts the interior of the bus, rather than the roadway, it is not probative regarding the number and sequence of collisions between the vehicles involved in the accident.

Although Stetson established prima facie entitlement to summary judgment through his affidavit stating that he was stopped at the time of the accident, and was pushed into plaintiff's vehicle as the result of the impact to the rear of his vehicle, the evidence submitted in opposition to his motion raises triable issues of fact requiring denial of his motion (*see Alvarez v Prospect Hosp.*, *supra*; *Hudson v Cole*, *supra*; *Viggiano v Camara*, *supra*). The discrepancies between the affidavits by Scott, Stetson and Hollweg raise issues of fact regarding the sequence of the impacts between the vehicles, and whether Stetson's vehicle impacted plaintiff's vehicle prior to the impact between Hollweg's vehicle and the rear of Stetson's vehicle, precluding the granting of summary judgment in favor of Stetson (*see Sooklall v Morisseav-Lafague*, 185 AD3d 1079, 128 NYS3d 266 [2d Dept 2020]; *Hudson v Cole*, *supra*; *Viggiano v Camara*, *supra*). Accordingly, Stetson's motion for summary judgment is denied.

Craig and Tawana Scott's motion for summary judgment is granted. According to the police accident report, the Scott vehicle was the first vehicle in the line of vehicles involved in the accident. As noted above, Craig Scott's affidavit states that he was the first vehicle in the line of vehicles involved in the accident, and that he was completely stopped prior to the accident. Scott further states that, after the initial impact to the rear of his vehicle, he felt two more impacts, and that he later learned that the vehicle which struck his vehicle in the rear "multiple times" was operated by plaintiff. Craig and Tawana Scott have established prima facie entitlement to summary judgment dismissing plaintiff's claims and the cross claims against them through the evidence showing that Craig Scott brought his vehicle to a complete stop prior to the accident, and that there was no negligence on his part which proximately caused the collision or the alleged injuries (*see Ianello v O'Connor*, 58 AD3d 684, 871 NYS2d 667 [2d Dept 2009]; *Hyeon Hee Park v Hi Taek Kim*, 37 AD3d 416, 831 NYS2d 422 [2d Dept 2007]; *Calabrese v Kennedy*, 28 AD3d 505, 813 NYS2d 202 [2d Dept 2006]). In opposition to Scotts' motion, no party raised a triable issue of fact.

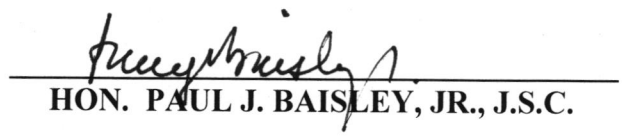
Plaintiff's motion for partial summary judgment against Suffolk Transportation and Hollweg is granted. As discussed above, Stetson's affidavit states that he was stopped in traffic when Hollweg's vehicle struck his vehicle from behind, pushing it into plaintiff's vehicle. Hollweg admits in his affidavit that he was traveling approximately two car lengths behind Stetson's vehicle when he observed the vehicle come to an abrupt stop. Hollweg states that he immediately applied his brakes, but was unable to avoid colliding with the rear of Stetson's vehicle, causing it to move forward approximately six inches.

"When the 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" (*Williams v Spencer-Hall*, 113 AD3d 759, 759-

60, 979 NYS2d 157 [2d Dept 2014]; *see also Bloechle v Heritage Catering, Ltd.*, 172 AD3d 1294, 101 NYS3d 424 [2d Dept 2019]; Vehicle and Traffic Law § 1129 [a]). In addition, "drivers have a duty to see what should be seen, and to exercise reasonable care under the circumstances to avoid an accident" (*Williams v Spencer-Hall*, 113 AD3d at 760). 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, requiring that operator to come forward with evidence of a non-negligent explanation for the collision to rebut the inference of negligence (*see Buchanan v Keller*, 169 AD3d 989, 95 NYS3d 252 [2d Dept 2019]; *Auguste v Jeter*, 167 AD3d 560, 88 NYS3d 509 [2d Dept 2018]; *Odetalla v Santana*, 165 AD3d 826, 85 NYS3d 560 [2d Dept 2018]; *Nikolic v City-Wide Sewer & Drain Serv. Corp.*, 150 AD3d 754, 53 NYS3d 684 [2d Dept 2017]).

Here, the evidence submitted by plaintiff, including the parties' affidavits and the police accident report, is sufficient to demonstrate her prima facie entitlement to judgment as a matter of law against Suffolk Transportation and Hollweg on the issue of negligence (*see Montalvo v Cedeno*, 170 AD3d 1166, 96 NYS3d 638 [2d Dept 2019]; *Binkowitz v Kolb*, *supra*). Regardless of whether Stetson's vehicle initially struck plaintiff's vehicle prior to being struck by Hollweg's vehicle, it is undisputed that an impact occurred between Stetson's vehicle and the rear of plaintiff's vehicle after it was struck by the minibus driven by Hollweg. Thus, the burden shifted to Suffolk Transportation and Hollweg to provide a non-negligent explanation for the collision (*see Auguste v Jeter*, *supra*; *Tsyganash v Auto Mall Fleet Mgt., Inc.*, *supra*). In opposition to plaintiff's motion, Suffolk Transportation and Hollweg have failed to raise an issue of fact. A contention that a vehicle made a sudden stop, standing alone, is insufficient to rebut the presumption of negligence (*see Perez v Persad*, 183 AD3d 771, 123 NYS3d 683 [2d Dept 2020]; *Edgerton v City of New York*, *supra*; *Hackney v Monge*, 103 AD3d 844, 960 NYS2d 176 [2d Dept 2013]; *Plummer v Nourddine*, 82 AD3d 1069, 919 NYS2d 187 [2d Dept 2011]). Even if Stetson had suddenly stopped, that would not explain Hollweg's failure to maintain a safe distance and speed behind the vehicle in front of him (*see* Vehicle and Traffic Law § 1129 [a]; *Hackney v Monge*, *supra*; *Shirman v Lawal*, 69 AD3d 838, 894 NYS2d 458 [2d Dept 2010]; *Lampkin v Chan*, 68 AD3d 727, 891 NYS2d 113 [2d Dept 2009]). As Suffolk Transportation and Hollweg have failed to submit evidence in opposition to plaintiff's motion offering a nonnegligent explanation for the collision (*see Perez v Persad*, *supra*; *Edgerton v City of New York*, *supra*), plaintiff's motion for summary judgment against them on the issue of liability is granted.

Dated: 4/28/21



HON. PAUL J. BAISLEY, JR., J.S.C.