

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D31731
Y/prt

_____AD3d_____

Argued - May 31, 2011

MARK C. DILLON, J.P.
JOHN M. LEVENTHAL
L. PRISCILLA HALL
PLUMMER E. LOTT, JJ.

2010-12060

DECISION & ORDER

Gina Napolitano, plaintiff-respondent, v Julia Galletta, defendant third-party plaintiff-appellant, Angelina Napolitano, et al., defendants third-party defendants-respondents.

(Index No. 40098/08)

Shayne, Dachs, Corker, Sauer & Dachs, LLP, Mineola, N.Y. (Norman H. Dachs and Jonathan A. Dachs of counsel), for defendant third-party plaintiff-appellant.

Russo, Apoznanski & Tambasco, Westbury, N.Y. (Susan J. Mitola and John A. Asta of counsel), for defendants third-party defendants-respondents.

In an action to recover damages for personal injuries, the defendant third-party plaintiff appeals from an order of the Supreme Court, Suffolk County (Farneti, J.), dated October 8, 2010, which granted the motion of the defendants third-party defendants for summary judgment, in effect, dismissing the complaint and the third-party complaint insofar as asserted against them.

ORDERED that the appeal from so much of the order as granted that branch of the motion of the defendant third-party defendants which was for summary judgment dismissing the complaint insofar as asserted against them is dismissed, as the defendant third-party plaintiff is not aggrieved by that portion of the order (*see* CPLR 5511; *Mixon v TBV, Inc.*, 76 AD3d 144); and it is further,

ORDERED that the order is reversed insofar as reviewed, on the law, and that branch of the motion of the defendants third-party defendants which was for summary judgment dismissing the third-party complaint is denied; and it is further,

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ORDERED that one bill of costs is awarded to the defendant third-party plaintiff.

The instant action arises out of a four-vehicle, chain-reaction accident that occurred on the William Floyd Parkway in Shirley on September 1, 2007. On that date, the plaintiff, Gina Napolitano, was a passenger in a vehicle owned by the defendant John Napolitano and operated by the defendant Angelina Napolitano (hereinafter the Napolitano defendants), when that vehicle was struck from behind by another vehicle owned and operated by the defendant third-party plaintiff, Julia Galletta (hereinafter the appellant).

“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” (*Nsiah-Ababio v Hunter*, 78 AD3d 672, 672; see Vehicle and Traffic Law § 1129[a]). Accordingly, a rear-end collision 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 (see *Tutrani v County of Suffolk*, 10 NY3d 906, 908; *Klopchin v Masri*, 45 AD3d 737; *Starace v Inner Circle Qonexions*, 198 AD2d 493; *Edney v Metropolitan Suburban Bus Auth.*, 178 AD2d 398, 399). A non-negligent explanation may include evidence of a mechanical failure, a sudden stop of the vehicle ahead, an unavoidable skidding on wet pavement, or any other reasonable cause (see *DeLouise v S.K.I. Wholesale Beer Corp.*, 75 AD3d 489, 490).

Here, the Napolitano defendants demonstrated their prima facie entitlement to judgment as a matter of law dismissing the third-party complaint by submitting evidence that their vehicle (the plaintiff’s host-vehicle) was either stopped or in the process of stopping when it was struck from behind by the appellant’s vehicle. In opposition, the appellant submitted, inter alia, her affidavit in which she stated that, prior to the impact of her vehicle with the rear of the plaintiff’s host-vehicle, the plaintiff’s host-vehicle stopped short and collided with the rear of a truck directly in front of it. Contrary to the Supreme Court’s determination, the appellant came forward with a non-negligent explanation for the rear-end collision into the plaintiff’s host-vehicle. Since a triable issue of fact exists as to whether the Napolitano defendants caused or contributed to the subject accident, the Supreme Court erred in granting that branch of their motion which was for summary judgment dismissing the third-party complaint.

DILLON, J.P., LEVENTHAL, HALL and LOTT, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court