

Kocisz v Bennett

2007 NY Slip Op 30500(U)

March 31, 2007

Supreme Court, Richmond County

Docket Number: 0011139/2004

Judge: Robert J. Gigante

Republished from New York State Unified Court System's E-Courts Service.
Search E-Courts (<http://www.nycourts.gov/ecourts>) for any additional information on this case.

This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND**

-----X
BEATA KOCISZ,

Plaintiff,

-against-

JOHN BENNETT, KAREN BENNETT, CYNTHIA
ARCHER, MARIA ROSAS, GINA MARIE PANTANO,
BRETT ALHERICI, and JENNIFER BONIVA,

Defendants.

-----X
BRETT ALHERICI and JENNIFER BONIVA,

Third-Party Plaintiffs,

-against-

GINA MARIE PANTANO,

Third-Party Defendant.
-----X

DCM PART 4

Present:

Hon. Robert J. Gigante

Decision and Order

Index No. 11139/04

Motion Nos. 2822-003

3379-004

3413-005

3488-006

The following papers numbered 1 to 8 were used on these motions on this 1ST day of December, 2006:

| Papers | Numbered |
|---|----------|
| Notice of Motion with Supporting Papers and Exhibits (dated August 25, 2006) | 1 |
| Notice of Motion with Supporting Papers and Exhibits (dated October 17, 2006)..... | 2 |
| Notice of Cross Motion with Supporting Papers and Exhibits (dated October 23, 2006).... | 3 |
| Affirmation in Opposition with Exhibits (dated October 30, 2006)..... | 4 |
| Notice of Motion with Supporting Papers and Exhibits (dated November 2, 2006)..... | 5 |
| Reply Affirmation (dated November 21, 2006)..... | 6 |
| Reply Affirmation (dated November 27, 2006)..... | 7 |
| Reply Affirmation (dated November 30, 2006)..... | 8 |

This is an action to recover compensatory damages for personal injuries allegedly sustained as the result of a multi-vehicle collision that occurred in Brooklyn, New York on April 21, 2001. Defendant John Bennett was the operator of Vehicle No. 1; defendant Archer operated defendant Rosas' vehicle (Vehicle No. 2); third-party defendant Pantano was the operator of Vehicle No. 3; defendant Alherici operated Vehicle No. 4, which was owned by defendant Boniva;

Plaintiff commenced this action against each of the owners and operators of the four vehicles that were in front of her when she came into contact with Vehicle No. 4. Her complaint against defendant Pantano subsequently was dismissed. Defendants Alherici and Boniva then commenced a third-party action against Pantano, seeking common-law and contractual indemnification.

Plaintiff has testified that as she drove east on the Belt Parkway, she came to the crest of a short incline and as she descended at approximately forty miles an hour she saw a vehicle in front of her at a distance of approximately five car-lengths. She stated that she did not initially realize that the vehicle was stopped because neither its brake lights nor its emergency blinkers were illuminated. She further stated that when she applied her brakes her car skidded into the rear of the stopped car, identified as Vehicle No. 4). The incident took approximately ten seconds.

Each of the defendants moves for summary judgment dismissing any and all claims and cross claims.

In Motion No. 3413, defendant John Bennet, the operator of Vehicle No. 1 says that he came to a complete stop when the car in front of him stopped, and that he then was struck in the rear by Vehicle No. 2. Therefore, he contends, he was not negligent as a matter of law.

In Motion No. 3379, defendants Archer and Rosas, while not acknowledging contact with the Bennett vehicle, allege that their vehicle (Vehicle No. 2) was completely stopped when it was struck in the rear by Vehicle No. 3. Thus, they argue, they may not be held liable *vis á vis* plaintiff.

In Motion No. 3488, third-party defendant Pantano, the owner/operator of Vehicle No. 3, says that she came to a complete stop three feet behind Vehicle No. 2 and was struck from

behind approximately ten seconds later by Vehicle No. 4 and pushed into the rear of Vehicle No.

2. She argues that she is not negligent as a matter of law and moves for summary judgment dismissing the Third-Party Complaint.

In Motion No. 2822, defendants Alherici and Boniva allege that Vehicle No. 4 had come to a complete stop behind Vehicle No. 3, when it was struck from behind by plaintiff's vehicle and propelled into Vehicle No. 3. Mr. Alherici, the operator, testified at his deposition that he did not know whether the brake lights on Vehicle No. 4 were operational at the time of the accident.

“As a general rule, a rear-end collision with a stopped vehicle creates a prima facie case of negligence against the operator of the following vehicle, imposing a duty [on that operator]. . . to provide a non-negligent explanation for the accident” (*Pampris v. Egnasher*, 20 AD3d 746, 747 [3rd Dept 2005]). However, a “driver of a motor vehicle has a duty to keep proper control of that vehicle, and to not stop suddenly or slow down without proper signaling so as to avoid a collision (*Maschka v. Newman*, 262 AD2d 615 (2d Dept.), quoting *Niemiec v Jones*, 237 AD2d 267, 268). Here, there are bona fide questions as to whether defendant Brett Alherici properly applied his brake lights and gave a proper signal in compliance with Vehicle and Traffic Law Sec. 1163(c)), and whether such failure caused or contributed to the accident in question (see also, *Drake v. Drakoulis*, 304 AD2d 522 (2d. Dept.)). Where, as here, there is at least one genuine issue of fact, a summary judgment motion should be denied in its' entirety (see,

Cunningham v. General Electric Credit Corp., 96 AD2d 502 (2d Dept.)).

Accordingly, the motions and cross-motions are denied..

Dated: March 31, 2007

ENTER

Robert J. Gigante, J.S.C.