Gitman v Martinez
2014 NY Slip Op 34031(U)
December 3, 2014
Supreme Court, Ulster County
Docket Number: 13-4087
Judge: Michael H. Melkonian
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STATE OF NEW YORK
SUPREME COURT COUNTY OF ULSTER

CATHY GITMAN,

Plaintiff,

-against-

DECISION AND ORDER

RUBEN MARTINEZ, CRETE CARRIER CORP., HERBERT BENNER and ZOOK TRUCKING, LLC,

Defendantw.

(Supreme Court, Ulster County, Motion Term, September 22, 2014)
Index No. 13-4087
(RJI No. 55-14-00344)

(Acting Justice Michael H. Melkonian, Presiding)

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MELKONIAN, J.:

This is an action for damages for personal injuries arising out of a multi-vehicle accident which took place on September 19, 2013, between the vehicle operated by plaintiff Cathy Gitman ("plaintiff"), the vehicle owned Zook Trucking, LLC and operated by defendant Herbert Benner ("defendant Benner"), and the vehicle owned defendant Crete Carrier Corp. and operated by defendant Ruben Martinez ("defendant Martinez"). The accident occurred on Interstate 87 in the Town of Rosendale.

Plaintiff moves for partial summary judgment on the ground that her vehicle was struck from behind when defendant Martinez's vehicle initiated the chain reaction collision when it struck defendant Brenner's vehicle in the rear causing defendant Brenner's vehicle to be propelled into the plaintiff's vehicle.

On a motion for summary judgment, the proponent bears the initial burden of setting forth evidentiary facts to prove a prima facie case that would entitle it to judgment in its favor without the need for a trial (CPLR § 3212; Winegrad v NYU Medical Center, 64 NY2d 851 [1985]; Zuckerman v City of New York, 49 NY2d 557[1980]).

It is well established that 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 of explanation (Tripp v Gelco Corp., 260 AD2d 925, 925-926 [3rd Dept. 1999]; Riley v County of Broome, 256 AD2d 899 [3rd Dept. 1998]; Jones v Egan, 252 AD2d 909, 911[3rd Dept.

1998]). "A nonnegligent explanation for a collision is sufficient to overcome the inference of negligence." Riley v County of Broome, 256 AD2d 899 [3rd Dept. 1998]; *see,* De Vito v Silvernail, 239 AD2d 824, 825 [3rd Dept. 1997].

In a multiple-vehicle, chain reaction accident, the Third Department has recognized that the operator of a vehicle is propelled into the vehicle in front of it as a result of being struck from behind, is not negligent in as much as the operator's actions cannot be said to be the proximate cause of the injuries resulting from the collision (Mohamed v Town of Niskayuna, 267 AD2d 909 [3rd Dept. 1999]).

In support of the instant motion for summary judgment, plaintiff submits a copy of the pleadings, a copy of the police accident report, and the affidavit of plaintiff dated July 23, 2014.

The accident description contained in the police report states: "All 3 vehicles NB on I87 approaching a work zone where only 1 lane is open. V1 fails to observe both V2 and V3 (which are in front of him) slowing in traffic and rear-ends V2. V2 then rear-ends V3, causing V3 to spin out and run off the roadway onto the east shoulder. V2, which was transporting sheds, had a shed fall from the trailer into the roadway, and break apart."

In her affidavit, plaintiff states that on September 19, 2013, she was the "operator of a motor vehicle that was traveling northbound in the right hand lane of I87...That while slowing for traffic, my vehicle was struck in the rear by two (2) tractor trailers. That the tractor trailers were owned by defendant Crete Carrier Corp., and operated by defendant

Ruben Martinez and owned by defendant, Zook Trucking, LLC, and operated by defendant, Herbert Brenner. My vehicle was struck in the rear by these two vehicles causing me to spin and end up off the highway."

Plaintiff has satisfied her prima facie burden of establishing entitlement to judgment as a matter of law by demonstrating that her vehicle was either stopped or slowing down at the time she was struck in the rear in a chain reaction which was initiated by defendant Martinez thereby shifting the burden to defendants.

Defendant Martinez has opposed plaintiff's motion on the ground that summary judgment is premature as depositions have not yet been conducted. Counsel for defendant Martinez states that depositions of the plaintiff and defendant Benner may relive his client of some of the liability for the accident. He states that plaintiff's affidavit has "fail[ed] to eliminate her own culpability for the rapid deceleration of her vehicle and it also fails to establish that she was maintaining proper and appropriate control of her motor vehicle in the relevant moments prior to the collision." In an affidavit, defendant Martinez states that immediately prior to the collision "[defendant Benner"] then suddenly and unexpectedly decelerated."

This Court finds that defendant Martinez failed to submit evidence as to any negligence on the part of defendant Benner or plaintiff or to provide a non-negligent explanation for the accident sufficient to raise a triable question of fact. Although defendant Martinez maintains that the accident was the result of defendant Benner or plaintiff braking

or suddenly decelerating while proceeding on the interstate, this does not explain his failure to maintain a safe distance from the vehicle in front of him or to safely stop prior to rear-ending the Benner vehicle. Vehicle stops which are foreseeable under the prevailing traffic conditions must be anticipated by the driver who follows since he or she is under a duty to maintain a safe distance between his or her vehicle and the vehicle ahead (see, Vehicle & Traffic Law § 1129; see, Taing v Brewery, 100 AD3d 740 [2nd Dept. 2012]). Thus, drivers must maintain safe distances between their cars and the cars in front of them and be aware of the traffic conditions (Toure v Harrison, 6 AD3d 270 [1st Dept. 2004].

Defendant Martinez's contention that plaintiff's motion for summary judgment is premature is without merit. Defendant Martinez failed to offer any evidentiary basis to suggest that discovery may lead to relevant evidence. The mere hope and speculation that evidence sufficient to defeat the motion might be uncovered during discovery is an insufficient basis upon which to deny the motion (see, CPLR § 3212[f];).

Upon searching the record (CPLR § 3212[b], [e]), this Court grants summary judgment to defendants Bemmer and Zook Trucking, LLC dismissing the complaint and all cross-claims insofar as asserted against them.

Accordingly, plaintiff's motion is granted on the issue of liability against defendants Martinez and Crete Carrier Corp. and, in searching the record, the complaint as asserted against defendants Bemmer and Zook Trucking, LLC and any cross-claims asserted by defendants Martinez and Crete Carrier Corp. are dismissed.

This Memorandum constitutes the Decision and Order of the Court. This Decision and Order is returned to the attorneys for the plaintiff. All other papers are delivered to the County Clerk. The signing of this Decision and Order shall not constitute entry or filing under CPLR Rule 2220. Counsel is not relieved from the applicable provisions of CPLR Rule 2220 respecting filing, entry and Notice of Entry.

SO ORDERED.
ENTER.

Dated: Troy, New York
December 3, 2014

MICHAEL H. MELKONIAN
Acting Supreme Court Justice

Papers Considered:

(1) Notice of Motion dated July 25, 2015;
(2) Affirmation of James S. McCarthy, Esq., dated July 14, 2014, with exhibits annexed;
(3) Affirmation of John F. Pfeiffer, Esq., dated September 5, 2014, with exhibits annexed;
(4) Affirmation of Brian D. Carr, Esq., dated September 14, 2014, with exhibits annexed;
(5) Memorandum of Law;
(6) Memorandum of Law;
(7) Affidavit of Herbert H. Benner dated September 3, 2014;
(8) Affidavit of Ruben Martinez dated September 5, 2014;
(9) Affirmation of James S. McCarthy, Esq., dated September 10, 2014.