

Goodman v Meszaros
2016 NY Slip Op 32795(U)
May 10, 2016
Supreme Court, Suffolk County
Docket Number: 60129/2014
Judge: James Hudson
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Short Form Order

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Supreme Court of the County of Suffolk
State of New York - Part XL

PRESENT:
HON. JAMES HUDSON
Acting Justice of the Supreme Court

x-----x
EVELYNE GOODMAN,

Plaintiff,

- against -

KRISTEN MESZAROS,
as Fiduciary of the Estate of
CARL R. SALMINEN,
PARAMITA WEGEIN, and
JENNIFER M. MULVIHILL,

Defendants.

x-----x

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SEQ. NO.001-MD
002-MG
003-MG

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Upon the following papers numbered 1 to 53 read on this motion to Strike and for Summary Judgment; Notice of Motion/Order to Show Cause and supporting papers 1-17; 18-29; Notice of Cross Motion and supporting papers 30-47; Answering Affidavits and supporting papers 48-49; 50-51; Replying Affidavits and supporting papers 52-53; Other 0; (and after hearing counsel in support and opposed to the motion) it is,

ORDERED that Plaintiff's motions for an order striking Defendants' answers and for partial summary judgment, and Defendant Jennifer Mulvihill's cross motion for summary judgment are consolidated for the purposes of this determination; and it is

ORDERED that the motion by Plaintiff for an order striking the answers of Defendants Jennifer Mulvihill and Paramita Wegein is denied; and it is

ORDERED that the motion by Plaintiff for partial summary judgment on the issue of liability is granted; and it is further

ORDERED that the cross motion by Defendant Jennifer Mulvihill for summary judgment dismissing the complaint against her is granted.

This action arises as the result of a chain reaction collision that occurred near the intersection of County Road 92 and West Ruguss Path in the Town of Huntington on January 14, 2013. The accident allegedly occurred when a vehicle driven by Carl Salminen struck the rear of the vehicle operated by Defendant Paramita Wegein. The impact of that collision allegedly caused the Wegein vehicle to strike the rear of the vehicle operated by Defendant Jennifer Mulvihill, and that impact caused the Mulvihill vehicle to strike the rear of Plaintiff's vehicle.

Plaintiff now moves for an order striking the answers of Defendants Mulvihill and Wegein for failure to comply with discovery demands. In support of her motion, Plaintiff submits, among other things, copies of the pleadings, correspondence between the parties' attorneys, and the transcripts of the deposition testimony of Defendants Mulvihill and Wegein. Plaintiff also moves for partial summary judgment on the issue of liability against Defendant Kristen Meszaros, as fiduciary of the estate of Carl Salminen, arguing there is no triable issue of fact with respect to the liability of Salminen for the subject accident. In support of the motion, Plaintiff submits copies of the pleadings, the police accident report, and transcripts of the parties' deposition testimony.

Defendant Mulvihill cross-moves for summary judgment dismissing the complaint against her on the ground that she is not liable for the subject accident as her vehicle was rear-ended, which caused her to come into contact with Plaintiff's vehicle. In support of her cross motion, Defendant Mulvihill submits copies of the pleadings, a transcript of her deposition testimony, and a certified copy of the police accident report.

With regard to Plaintiff's motion for partial summary judgment, when a driver approaches another vehicle from the rear, he or she is bound to maintain a reasonably safe rate of speed, to maintain control of his or her vehicle, and to use reasonable care to avoid colliding with the other vehicle (see *Martinez v Martinez*, 93 AD3d 767, 941 NYS2d 189 [2d Dept 2012]; *Tutrani v County of Suffolk*, 64 AD3d 53, 878 NYS2d 412 [2d Dept 2009]; *Gaeta v Carter*, 6 AD3d 576, 775 NYS2d 86 [2d Dept 2004]). Thus, the occurrence of a

rear-end collision with a stopped or stopping vehicle creates a *prima facie* case of negligence on the part of the operator of the following vehicle and imposes a duty on that operator to come forward with a non-negligent explanation for the collision (see *Giangrasso v Callahan*, 87 AD3d 521, 928 NYS2d 68 [2d Dept 2011]; *Hauser v Adamov*, 74 AD3d 1024, 904 NYS2d 102 [2d Dept 2010]; *Arias v Rosario*, 52 AD3d 551, 860 NYS2d 168 [2d Dept 2008]). This burden is placed on the driver of the offending vehicle, as he or she is in the best position to explain whether the collision was due to a mechanical failure, a sudden stop of the vehicle ahead, unavoidable skidding on wet pavement, or some other reasonable cause (see *Abbott v Picture Cars E., Inc.*, 78 AD3d 869, 911 NYS2d 449 [2d Dept 2010]; *DeLouise v S.K.I. Wholesale Beer Corp.*, 75 AD3d 489, 904 NYS2d 761 [2d Dept 2010]; *Moran v Singh*, 10 AD3d 707, 782 NYS2d 284 [2d Dept 2004]).

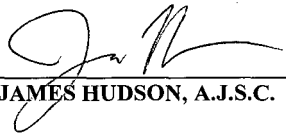
Here, Plaintiff's submissions are sufficient to make a *prima facie* showing of entitlement to summary judgment on the issue of liability (see *Kastritsios v Marcello*, 84 AD3d 1174, 923 NYS2d 863 [2d Dept 2011]; *Bernier v Torres*, 79 AD3d 776, 913 NYS2d 299 [2d Dept 2010]; *Mandel v Benn*, 67 AD3d 746, 889 NYS2d 81 [2d Dept 2009]). Here, the evidence submitted by Plaintiff demonstrates that her vehicle was stopped when it was struck in the rear, and that the Salminen vehicle caused the multiple-car chain reaction accident. The burden, then, shifted to Defendant Meszaros, to offer a non-negligent explanation for the subject accident sufficient to raise a triable issue of fact (see *Emil Norsic & Son, Inc. v L.P. Transp., Inc.*, 30 AD3d 368, 815 NYS2d 736 [2d Dept 2006]; *Rainford v Han*, 18 AD3d 638, 795 NYS2d 645 [2d Dept 2005]). No papers were filed in opposition to this motion. Thus, Plaintiff's motion for partial summary judgment in her favor on the issue of liability is granted.

As to Defendant Mulvihill's motion for summary judgment, in a multiple-car, chain-reaction accident, the operator of a vehicle which has come to a complete stop and is propelled into the vehicle in front of it as a result of being struck from behind is not negligent inasmuch as the operator's actions cannot be said to be the proximate cause of the injuries resulting from the collision (see *Raimondo v Plunkitt*, 102 AD3d 851, 958 NYS2d 460 [2d Dept 2013]; *Ianello v O'Connor*, 58 AD3d 684, 871 NYS2d 667 [2d Dept 2009]). Here, the deposition testimony of the parties and the certified police accident report demonstrates that the Salminen vehicle caused the multi-vehicle accident, and that the Mulvihill vehicle, which was stopped, was propelled into Plaintiff's vehicle when it was rear-ended. Thus, Defendant Mulvihill has demonstrated a *prima facie* case that her actions were not a proximate cause of the accident, thereby entitling her to summary judgment dismissing the complaint and all cross claims against her (see *Raimondo v Plunkitt*, *supra*; *Strickland v Tirino*, *supra*; *Ianello v O'Connor*, *supra*).

Finally, as to Plaintiff's motion to strike the answers of Defendants Mulvihill and Wegein, the Uniform Rules for Trial Courts (22 NYCRR) §202.7 (c) provides that a motion relating to disclosure must be supported by an affirmation that counsel "has conferred with counsel for the opposing party in a good faith effort to resolve the issues raised by the motion." Further, the affirmation of good-faith effort "shall indicate the time, place, and nature of the consultation and the issues discussed and any resolutions, or shall indicate good cause why no such conferral with counsel for opposing parties was held" (Uniform Rules for Trial Courts [22 NYCRR] §202.7 [c]). Here, Plaintiff failed to include an affirmation of good faith with the moving papers. Thus, her motion to strike Defendant Mulvihill's and Defendant Wegein's answers is denied.

The foregoing constitutes the decision and Order of the Court.

DATED: MAY 10, 2016
RIVERHEAD, NY



HON. JAMES HUDSON, A.J.S.C.

___ **FINAL DISPOSITION** **NON-FINAL DISPOSITION**