

Gerisma v Fearon

2017 NY Slip Op 33424(U)

June 26, 2017

Supreme Court, Nassau County

Docket Number: Index No. 607400/2016

Judge: Anthony L. Parga

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SHORT FORM ORDER
SUPREME COURT - STATE OF NEW YORK - NASSAU COUNTY

Present:

HON. ANTHONY L. PARGA

Justice

HUBERT GERISMA,
Plaintiff,

-against-

GARY FEARON, ANDREEN FEARON,
and YAJAIRA SANTOS,
Defendants.

INDEX NO.: 607400/2016

MOTION DATE: 5/2/2017
SEQUENCE NO: 001, 002

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Upon the foregoing papers, the motion by defendant, Yajaira Santos (hereinafter "Santos") which seeks an Order pursuant to CPLR Rule 3212 for summary judgment dismissing plaintiff's complaint and any and all cross-claims; and the cross-motion of plaintiff, Hubert Gerisma (hereinafter "Gerisma") which seeks an Order pursuant to CPLR Rule 3212 for summary judgment on the issue of liability against the defendants, Gary and Andreen Fearon are determined as follows.

This is an action to recover damages for personal injuries allegedly sustained by plaintiff as the result of a motor vehicle accident which occurred on September 28, 2013, on the Southern State Parkway in the Town of Hempstead, County of Nassau, State of New York. It is alleged that at the time of the accident, the motor vehicle operated by Santos, the motor vehicle operated by Gerisma and the motor vehicle operated by Andreen Fearon (hereinafter as "Fearon") were all heading westbound when they collided and came into contact with each other. It is further alleged in plaintiff's complaint that the Fearon vehicle came into contact with the rear-end of the

Gerisma vehicle causing plaintiff to sustain serious personal injuries. It appears from all the papers and pleadings herein that the defendant Fearon vehicle came into contact with the rear-end of plaintiff Gerisma's vehicle which then came into contact with the rear-end of defendant Santos' vehicle. Fearon interposed their answer with affirmative defenses and defendant Santos interposed her answer with affirmative defenses and a cross-complaint against the Fearon defendants.

In support of her motion for summary judgment, Santos submits, *inter alia*, her affidavit and a certified copy of the Police Accident Report regarding the accident. In her affidavit, Santos attests that she was operating her vehicle westbound on the Southern State Parkway in the left lane. She states that traffic conditions were very heavy and she had been completely stopped for approximately one minute prior to the impact from the vehicle behind her (the Gerisma vehicle) which struck her vehicle in the rear. The certified police report indicates that the Santos vehicle (vehicle #1) was travelling in the left lane followed by the Gerisma vehicle (vehicle #2) and the Fearon vehicle (vehicle #3). The report indicates that the Santos and Gerisma vehicles were stopped when the Fearon vehicle, following too closely, struck the Gerisma vehicle in the rear causing it to strike the Santos vehicle.

In support of the cross-motion, plaintiff submits, *inter alia*, his own affidavit and also a certified copy of the Police Accident Report. Gerisma attests that on the date of the incident he was driving in the left lane of the parkway behind a red Volkswagen (the Santos vehicle) for approximately five (5) minutes. He attests that traffic was heavy, the Volkswagen stopped and he stopped approximately 3-4 feet behind the Volkswagen. Gerisma states that he was fully stopped for approximately 45 seconds to a minute when he was suddenly struck in the rear by a red Nissan (the Fearon vehicle). Gerisma further attests that the force of the rear-end impact propelled his vehicle forward striking the rear of the Volkswagen.

In opposition to both motions, defendant Fearon submits Andreen Fearon's affidavit attesting that she was travelling in the left lane of the Southern State Parkway in light traffic when an unidentified vehicle in front of her moved to the middle lane and the motor vehicle driven by Gerisma (which was directly in front of the Fearon vehicle) came to a sudden and unexplained stop for an unknown reason causing her to make medium contact with the rear of the

Gerisma vehicle.

Defendant Santos and Plaintiff Gersima have made a prima facie showing of entitlement to summary judgment on liability grounds. The evidence indicates that the Santos vehicle was struck in the rear by plaintiff Gerisma while the Santos vehicle was stopped and the Gerisma vehicle was struck in the rear by defendant Fearon's vehicle while the plaintiff's vehicle was stopped. A rear-end collision with a stopped or stopping vehicle creates a prima facie case of negligence with respect to the operator of the rearmost vehicle, and imposes a duty on the operator of the rearmost vehicle to come forward with an adequate non-negligent explanation for the accident. (*Carman v. Arthur J. Edwards Mason Contracting Co., Inc.*, 71 A.D.3d 813 (2d Dep't 2010)(emphasis added); *Maynard v. Vandyke*, 69 A.D.3d 515 (2d Dep't 2010); *Trombetta v. Cathone*, 59 A.D.3d 526 (2d Dep't 2009); *Ramirez v. Konstanzer*, 61 A.D.3d 837 (2d Dep't 2009); *Garner v. Chevalier Transportation Corp.*, 58 A.D.3d 802 (2d Dep't 2009); *Jumandeo v. Franks*, 56 A.D.3d 614 (2d Dep't 2008); *Johnston v. Spoto*, 47 A.D.3d 888 (2d Dep't 2008); *Harrington v. Kern*, 52 A.D.3d 473 (2d Dep't 2008); *Woods v. Johnson*, 44 A.D.3d 1201 (2d Dep't 2007)). A driver traveling behind another driver has a duty to maintain a safe distance behind the front vehicle, whether it is moving or stopped, to avoid a rear end collision in the event the front vehicle slows down or stops, even suddenly. (N.Y. Veh. & Traf. Law (VTL) §1129(a); *Dicturel v. Dukureh*, 71 A.D. 3d 588 (1st Dep't 2010); *Woodley v. Ramirez*, 25 A.D.3d 451 (1st Dep't 2006); *Arias v. Rosario*, 52 A.D. 3d 551 (2d Dep't 2008); *Jumandeo v. Franks*, 56 A.D.3d 614 (2d Dep't 2008)). This includes the "duty to see what should be seen and to exercise reasonable care under the circumstance to avoid an accident." (*DeAngelis v. Kirschner*, 171 A.D.2d 593, 595, 567 N.Y.S.2d 457, 458-59 (1st Dep't 1991); *Kachuba v. A & G Cleaning Service, Inc.*, 273 A.D.2d 277 (2d Dep't 2000)). Further, the operator of a motor vehicle does not have a duty to anticipate a rear-end collision due to the negligence of another. (*See, Fiscella v. Gibbs*, 261 A.D.2d 572, 690 N.Y.S.2d 713 (2d Dept. 1999); *Murphy v. Spickler*, 224 A.D.2d 814, 638 N.Y.S.2d 188 (3d Dept. 1996)).

Additionally, the sudden stopping by the front driver is an insufficient explanation to rebut the inference of negligence against the operator of the rear-most vehicle. (*Volpe v. Limoncelli*, 74 A.D.3d 795 (2d Dep't 2010)(court found driver of rearmost vehicle negligent

where the front vehicle made an abrupt stop and rearmost driver was unable to stop due to a wet roadway); *Ramirez v. Konstanzer*, 61 A.D.3d 837 (2d Dep't 2009)(defendant's contention that plaintiff proceeded at a green light then suddenly stopped did not rebut the inference of negligence); *Johnston v. Spoto*, 47 A.D.3d 888 (2d Dep't 2008)(defendant driver's explanation that plaintiff's vehicle stopped short was insufficient to raise a triable issue of fact).

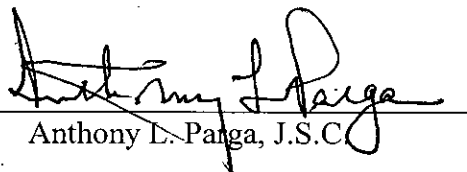
Lastly, it is well settled that the "mere hope or speculation that evidence sufficient to defeat a motion for summary judgment may be uncovered" by further discovery is an insufficient basis for denying the motion. (*Woodard v. Thomas*, 77 A.D.3d 738, 913 N.Y.S.2d 103 (2d Dept. 2010); *Simpson v. New York City Transit Authority*, 44 A.D.3d 930, 844 N.Y.S.2d 108 (2d Dept. 2007); *Lightfoot v. City of New York*, 279 A.D.2d 457, 719 N.Y.S.2d 99 (2d Dept. 2001); *Lopez v. WS Distribution, Inc.*, 34 A.D.3d 759, 825 N.Y.S.2d 516 (2d Dept. 2006)).

Where there are no genuine issues of fact, an action should be summarily decided. (*Andre v. Pomeroy*, 35 N.Y.2d 361, 364, 320 N.E.2d 853, 854, 362 N.Y.S.2d 131, 133 (1974)).

Accordingly, the motion by defendant Yajaira Santos dismissing the complaint and any cross-claims against her is GRANTED. The cross-motion by plaintiff Hubert Gerisma for summary judgment on the issue of liability, is also GRANTED.

This constitutes the decision and Order of this Court. Any request for relief not expressly granted herein is denied.

Dated: June 26, 2017


Anthony L. Panga, J.S.C.

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