

**Kimiecik v Yoo**

2018 NY Slip Op 34315(U)

September 5, 2018

Supreme Court, Orange County

Docket Number: Index No. EF006868/16

Judge: Robert A. Onofry

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT-STATE OF NEW YORK  
IAS PART-ORANGE COUNTY

Present: HON. ROBERT A. ONOFRY, A.J.S.C.

SUPREME COURT : ORANGE COUNTY

PETER D. KIMIECIK,

Plaintiff,

- against -

STEVE S. YOO,

Defendant.

To commence the statutory time period for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

Index No. EF006868/16

**DECISION and ORDER**

Motion Date: August 22, 2018

The following papers numbered 1 to 4 were read and considered on a motion by the Plaintiff, pursuant to CPLR § 3212, for summary judgment on the issue of liability.

Notice of Motion- Orloff Affirmation- KIMIECIK Affidavit- Exhibits A-F ..... 1-4

Upon the foregoing papers, it is hereby,

ORDERED, that the motion is granted.

**Introduction**

The Plaintiff Peter Kimiecik commenced this action to recover damages arising from a motor vehicle accident. He moves for summary judgment on the issue of liability. The motion is granted.

**Factual/Procedural Background**

In an affidavit, Kimiecik avers as follows.

On March 11, 2016, he was driving his Chevrolet pickup truck eastbound on York State

Route 94. While stopped at the intersection of Durland Road, with his left directional signal on waiting to make a turn, his vehicle was struck in the rear by a GMC SUV being driven by the Defendant Steve S. Yoo. The area in question is level and, at the time of the accident, it was daylight, visibility was good, and the roadways were dry. He was stopped approximately 30 seconds before impact.

At an examination before trial, the Defendant Steve S. Yoo testified as follows.

On March 11, 2016, while driving on State Route 94, his vehicle struck the rear of the Plaintiff's vehicle, which was stopped (T-13-15). Nothing obstructed his view (T-14). The traffic was not heavy, and the weather was partially sunny and dry (T-13-14). His vehicle sustained more than \$20,000.00 damage in the accident, and both drivers left the scene in an ambulance (T-24).

#### Discussion/Legal Analysis

A party seeking summary judgment bears the initial burden of establishing a *prima facie* entitlement to judgment as a matter of law by tendering competent evidence in admissible form sufficient to eliminate any triable, material issues of fact from the case. If the moving party fails to meet this burden, the papers submitted in opposition need not be considered. If the moving party makes such a *prima facie* showing, the burden shifts to the opposing party to demonstrate the existence of an issue of fact requiring a trial. *Phillip v. D & D Carting Co., Inc.*, 136 A.D.3d 18 [2<sup>nd</sup> Dept. 2015]; *Dempster v. Liotti*, 86 A.D.3d 169 [2<sup>nd</sup> Dept. 2011].

To prevail on a motion for summary judgment on the issue of liability in a negligence case, the plaintiff must establish, *prima facie*, not only that the opposing party was negligent, but also that he or she was free from comparative fault. *Nikolic v. City-Wide Sewer & Drain Service*

*Corp.*, 150 A.D.3d 754 [2<sup>nd</sup> Dept. 2017].

Relevant to the case at bar, a rear-end collision with a stopped or stopping vehicle establishes a *prima facie* case of negligence on the part of the operator of the rear vehicle, requiring that operator to come forward with evidence of a nonnegligent explanation for the collision in order to rebut the inference of negligence. *Nikolic v. City-Wide Sewer & Drain Service Corp.*, 150 A.D.3d 754 [2<sup>nd</sup> Dept. 2017]; *Tumminello v. City of New York*, 148 A.D.3d 1084 [2<sup>nd</sup> Dept. 2017]. A nonnegligent explanation may include a mechanical failure, a sudden, unexplained stop of the vehicle ahead, an unavoidable skidding on wet pavement, or any other reasonable cause. *Tumminello v. City of New York*, 148 A.D.3d 1084 [2<sup>nd</sup> Dept. 2017]. However, while a nonnegligent explanation for a rear-end collision may include evidence of a sudden stop of the lead vehicle, vehicle stops which are foreseeable under the prevailing traffic conditions, even if sudden and frequent, 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 car and the car ahead. *Tumminello v. City of New York*, 148 A.D.3d 1084 [2<sup>nd</sup> Dept. 2017].

Here, the Plaintiff submitted competent evidence in admissible form sufficient to demonstrate, *prima facie*, that the Defendant was negligent in the happening of the accident, and that he was free from contributory negligence.

The Defendant did not oppose the motion.

Thus, the Plaintiff is granted summary judgment on the issue of liability.

Accordingly, and for the reasons cited herein, it is hereby,

ORDERED, that the motion is granted; and it is further,

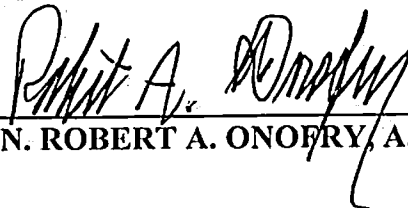
ORDERED that the parties, through respective counsel, are directed to appear for a Pre-

trial/Scheduling Conference on Tuesday, October 16, 2018, at 1:30 p.m., at the Orange County Surrogate's Court House, 30 Park Place, Goshen, New York, to determine how the matter shall proceed on the issue of damages.

The foregoing constitutes the decision and order of the court.

Dated: September 5, 2018  
Goshen, New York

ENTER

  
HON. ROBERT A. ONOFRY, A.J.S.C.

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