

Page-Smith v Goumas
2019 NY Slip Op 30165(U)
January 17, 2019
Supreme Court, New York County
Docket Number: 154829/2018
Judge: Adam Silvera
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ADAM SILVERA PART IAS MOTION 22

Justice

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INDEX NO. 154829/2018

GEORGIANNA PAGE-SMITH,

MOTION DATE 11/07/2018

Plaintiff,

MOTION SEQ. NO. 001

- v -

PATRICIA GOUMAS, JOSEPH GOUMAS

Defendant.

DECISION AND ORDER

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22

were read on this motion to/for JUDGMENT - SUMMARY

Upon the foregoing documents, it is ORDERED that plaintiff's motion for summary judgment pursuant to CPLR 3212 on the issue of liability as against defendants is granted. The accident at issue occurred on September 28, 2017, on the exit ramp from westbound Interstate 84 exit 13N, in the town of Fishkill, Dutchess County, State of New York, when plaintiff Georgianna Page-Smith was a passenger in a vehicle that was rear-ended by a vehicle operated by defendant Joseph P Goumas and owned by Patricia Goumas.

Plaintiff alleges that she was a passenger in a motor vehicle driven by non-party Mark Smith when the vehicle was fully stopped at an intersection while waiting to turn right onto Route 9 when it was rear-ended by defendants' vehicle. Plaintiff has made out a prima facie case of negligence, and the burden shifts to defendant to raise a triable issue of fact (See Winegrad v New York University Medical Center, 64 NY2d 851, 853 [1985]; see also Zuckerman v City of New York, 49 NY2d 557, 560 (1980).

“The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case” (*Winegrad v New York University Medical Center*, 64 NY2d 851, 853 [1985]). Once such entitlement has been demonstrated by the moving party, the burden shifts to the party opposing the motion to “demonstrate by admissible evidence the existence of a factual issue requiring a trial of the action or tender an acceptable excuse for his failure ... to do [so]” (*Zuckerman v City of New York*, 49 NY2d 557, 560 [1980]).

“A rear-end collision with a stopped vehicle, or a vehicle slowing down, establishes a prima facie case of negligence on the part of the operator of the rear-ending vehicle, which may be rebutted if that driver can provide a non-negligent explanation for the accident” (*Baez v MM Truck and Body Repair, Inc.*, 151 AD3d 473, 476 [1st Dep’t 2017]). An innocent passenger in one of the vehicles who cannot possibly be found at fault under either defendant’s version of the accident, is entitled to partial summary judgment and the right of said passenger is not in any way restricted by potential issues of comparative negligence as between the drivers of the two vehicle (*Garcia v Tri County Ambulette Serv.*, 282 AD2d 206 [1st Dep’t 2001]; *see also Mello v Narco Cab Corp* 105 Ad3d 634 [1st Dep’t 2013]).

In opposition defendants rely on the affidavit of defendant Joseph P Goumas to allege an issue of fact. Goumas asserts that this was not a simple rear-end accident, but rather a result of the plaintiff vehicle stopping short due to a third non-party vehicle which cut in front of plaintiff’s vehicle while it was attempting to turn right. Defendants claim that the existence of the third vehicle and the sudden stop of the vehicle transporting passenger plaintiff constitutes a non-negligent explanation for the accident. Defendant’s affidavit is an attempt to raise a feigned issue

of fact, as there is no mention in the police report of a third vehicle involved in the accident at issue.

Further, defendants assert that the case is in its infancy and that a motion for summary judgment is premature pending depositions and further discovery. Defendants' argument, that the vehicle transporting plaintiff stopped short, does not establish a non-negligent explanation for the accident. The law is clear: the claim that a vehicle stopped suddenly, standing alone, is insufficient to raise a triable issue of fact (*Cruz v Lise*, 123 AD3d 514 [1st Dep't 2014]). Defendants' vehicle should have kept a reasonable distance from the vehicle in front of it.

Vehicle and Traffic Law 1129(a) states that "[t]he driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon and the condition of the high way." Further, the First Department has held that drivers have "a duty to be aware of traffic conditions, including vehicle stoppages" (*Johnson v Phillips*, 261 AD2d 269, 271 [1st Dep't 1999]).

As to defendants' assertion that the instant case is premature for summary judgment, the Court has continuously held that summary judgment is permissible notwithstanding the fact that depositions have yet to be held (*Avant v Cepin Livery Corp.*, 74 AD3d 533 [1st Dep't 2010]; see also *Rosario v Vasquez* 93 AD3d 509 [1st Dep't 2012]). Thus, defendants have failed to raise an issue of fact or non-negligent explanation for the rear-end collision and plaintiff is entitled to summary judgment on the issue of liability as against defendants.

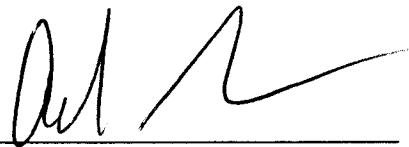
Accordingly, it is

ORDERED that plaintiff's motion for summary judgment is granted on the issue of liability as against defendants; and it is further

ORDERED that all parties appear for a compliance conference in Room 103 of 80 Centre Street on March 25, 2019 at 9:30 AM; and it is further

ORDERED that within 30 days of entry, plaintiff shall serve a copy of this decision/order upon defendant with notice of entry.

This constitutes the Decision/Order of the Court.



1/17/2019
DATE

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
APPLICATION:	<input checked="" type="checkbox"/> GRANTED	<input type="checkbox"/> GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT
	<input type="checkbox"/> DENIED	<input type="checkbox"/> OTHER
		<input type="checkbox"/> REFERENCE