

Barbella v Kennedy

2019 NY Slip Op 32552(U)

August 19, 2019

Supreme Court, Kings County

Docket Number: 509870/2018

Judge: Peter P. Sweeney

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

Index No.: 509870/2018
Motion Dates: 6-10-19
Mot. Cal. No.: 2

-----x
SARAH BARBELLA and DANIEL WILDER,

Plaintiffs,

-against-

DECISION/ORDER

ANTOINETTE KENNEDY, IDA DENNIS AND
MONIQUE ALSTON,

Defendants,

-----x

The following papers numbered 1 to 3 were read on this motion:

Papers:	Numbered
Notice of Motion/Order to Show Cause	
Affidavits/Affirmations/Exhibits.....	1
Answering Affirmations/Affidavits/Exhibits.....	2
Reply Affirmations/Affidavits/Exhibits.....	3
Other.....	

Upon the foregoing papers, the motion is decided as follows:

In this action to recover damages for personal injuries arising out of a motor vehicle accident, the plaintiff/defendant on the counterclaim, SARAH BARBELLA, moves for an order granting her summary judgment dismissing the counterclaim and granting her partial summary judgment on the issue of liability against defendants ANTOINETTE KENNEDY and IDA DENNIS,

In support of the motion, the plaintiff/counterclaim defendant submitted, *inter alia*, her own deposition transcript, the deposition transcripts of her front seat, Daniel Wilder and defendant, Antoinette Kennedy. Ms. Barbella testified that the accident occurred on January 16,

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2019 around early afternoon. She was operating a Nissan Sonata on Merrick Road, which she described as a two way street with two moving lanes in each direction. As it had snowed a few days earlier, the roads were still wet.

Just prior to the accident, Ms. Barbella testified that she was traveling in the right lane at a speed of approximately 25 mph when she observed a black pickup truck pulling out from the curb to her right. She applied her brakes with heavy pressure, "stopped short" and about a second later, her vehicle was struck in the rear by a motor vehicle operated by defendant Antoinette Kennedy.

Ms. Kennedy testified that at the time of the accident, she was operating a 2000 GMS Jimmy owned by her aunt, Ida Dennis, approximately 10-15 feet behind Ms. Barbella's vehicle. She maintains that she was traveling at the same speed as Ms. Barbella when she observed the taillights of Ms. Barbella's vehicle go on at which time she hit her brakes hard. She maintains that she could not avoid striking Ms. Barbella's accident and testified that the front of her vehicle slid into the rear of Ms. Barbella's vehicle. Importantly, Ms. Kennedy confirmed that Ms. Barbella's vehicle was stopped at the moment of impact. Mr. Wilder essentially confirmed Ms. Barbella's version of the accident.

The proponent of a motion for summary judgment has the initial burden of making a prima facie showing of entitlement to judgment as a matter of law by tendering sufficient proof eliminating any material issues of fact (see, *Winegrad v. New York Univ. Med. Ctr.*, 64 N.Y.2d 851, 853; *Zuckerman v. City of New York*, 49 N.Y.2d 557, 562; *Sillman v. Twentieth Century-Fox Film Corp.*, 3 N.Y.2d 395, 404). If the proponent meets this burden, the burden shifts to any party opposing the motion to come forward with proof in admissible form raising a triable issue

of fact (see *Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324; *Zuckerman*, 49 N.Y.2d at 562; *Friends of Animals v. Associated Fur Mfrs.*, 46 N.Y.2d at 1068).

“A driver of a vehicle approaching another vehicle from the rear is required to maintain a reasonably safe distance and rate of speed under the prevailing conditions to avoid colliding with the other vehicle” (*Jimenez v. Ramirez*, 171 A.D.3d 902, 903, 98 N.Y.S.3d 131, quoting *Nsiah–Ababio v. Hunter*, 78 A.D.3d 672, 672, 913 N.Y.S.2d 659; see Vehicle and Traffic Law § 1129[a]). “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 non-negligent explanation for the collision to rebut the inference of negligence” (*Jimenez v. Ramirez*, 171 A.D.3d at 903, 98 N.Y.S.3d 131; see *Williams v. Sala*, 152 A.D.3d 729, 59 N.Y.S.3d 108).

Here, Ms. Barbella, the plaintiff/counterclaim defendant, established her *prima facie* entitlement to judgment as a matter dismissing the counterclaim and for partial summary judgment against defendants Kennedy and Dennis on the issue of liability by demonstrating that her vehicle was stopped when the vehicle owned and operated by these defendants struck her vehicle in the rear. In opposition, defendants failed to raise a triable issue of fact. Defendants’ contention that the sudden stop of Ms. Barbella vehicle constitutes a non-negligent explanation for the rear end collision is without merit. A sudden, negligent, or unexplained stop of the lead vehicle can constitute a non-negligent explanation (see *Gaeta v. Carter*, 6 A.D.3d 576, 775 N.Y.S.2d 86; *Chepel v. Meyers*, 306 A.D.2d 235, 237, 762 N.Y.S.2d 95). Stated another way, the lead driver also has a duty “not to stop suddenly or slow down without proper signaling so as to avoid a collision” (*Id.* at 236, 762 N.Y.S.2d 95; see *Purcell v. Axelsen*, 286 A.D.2d 379, 380,

729 N.Y.S.2d 495). Here, however, since Ms. Barbella as the lead driver was forced to brake and stop suddenly without striking the vehicle in front due to that vehicle suddenly entering her lane , there is no basis for imposing liability against her (see *Carhuayano v. J & R Hacking*, 28 A.D.3d 413, 414, 813 N.Y.S.2d 162, 163–64; *Good v. Atkins*, 17 A.D.3d 315, 316, 793 N.Y.S.2d 82; *Lejkowski v. Siedlarz*, 2 A.D.3d 791, 769 N.Y.S.2d 748; *Sekuler v. Limnos Taxi*, 264 A.D.2d 389, 389–390, 694 N.Y.S.2d 100; *Escobar v. Rodriguez*, 243 A.D.2d 676, 664 N.Y.S.2d 568).

Finally, contrary to defendants’ contention, Ms. Barbella gave an appropriate signal before stopping. Ms. Kennedy confirmed that she saw the tail lights of Ms. Barbella vehicle go on when she stopped. While Vehicle & Traffic Law § 1163(c) of the Vehicle and Traffic Law, which provides that “No person shall stop or suddenly decrease the speed of a vehicle without first giving an appropriate signal ... to the driver of any vehicle immediately to the rear when there is opportunity to give such signal.” Such a signal may given by signal light (PJI § 2:83).

Accordingly, it is hereby

ORDERED that the motion of the plaintiff/counterclaim defendant, SARAH BARBELLA, for an order granting her summary judgment dismissing the counterclaim and granting her partial summary judgment on the issue of liability against defendants ANTOINETTE KENNEDY and IDA DENNIS is **GRANTED**.

This constitutes the decision and order of the Court.

Dated: August 19, 2019



PETER P. SWEENEY, J.S.C.

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FILED

NON PETER P. SWEENEY, J.S.C.