

Brennan v Hogan

2019 NY Slip Op 34426(U)

June 28, 2019

Supreme Court, Suffolk County

Docket Number: Index No. 003054/2018

Judge: Sanford Neil Berland

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SHORT FORM ORDER

INDEX NO.:003054/2018

**SUPREME COURT - STATE OF NEW YORK
PART 6- SUFFOLK COUNTY**

PRESENT:

Hon. Sanford Neil Berland, A.J.S.C.

MARI BRENNAN,

Plaintiff(s),

-against-

ELLEN E. HOGAN, WILLIAM HOGAN,
LAQUETA D. LEE and ROBERT W. BRENNAN,

Defendant(s).

ORIG. RETURN DATE: October 31, 2018
FINAL REURN DATE: March 5, 2019
MOT. SEQ. #: 001 MG

ORIG. RETURN DATE: October 31, 2018
FINAL REURN DATE: March 5, 2019
MOT. SEQ. #: 002 MG

ORIG. RETURN DATE: November 13, 2018
FINAL REURN DATE: March 5, 2019
MOT. SEQ. #: 003 MG

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Upon the reading and filing of the following papers in this matter: (1) Notice of Motion by defendant Laqueta D. Lee, filed October 2, 2018 and supporting papers; (2) Notice of Cross-Motion by defendant Robert W. Brennan, filed October 25, 2018 and supporting papers; (3) Notice of Cross-Motion by plaintiff Mari Brennan, filed October 31, 2018 and supporting papers; (4) Affirmation in Opposition by plaintiff Mari Brennan, filed October 31, 2018 and supporting papers; it is

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ORDERED that the motion for summary judgment (motion sequence #001) pursuant to CPLR 3212 by defendant Laqueta D. Lee seeking an order dismissing the plaintiff's complaint as asserted against her is granted; and it is further

ORDERED that the motion for summary judgment (motion sequence #002) pursuant to CPLR 3212 by defendant Robert W. Brennan seeking an order dismissing the plaintiff's complaint as asserted against him is granted; and it is further

ORDERED that plaintiff's cross-motion for summary judgment (motion sequence #003) pursuant to CPLR § 3212 on the issue of liability against defendants Ellen and William Hogan is granted.

This action arises from a motor vehicle accident that occurred on January 6, 2017, in Garden City, New York on Cathedral Avenue, near its intersection with 3rd Street, when a motor vehicle operated by defendant Ellen Hogan struck the rear of a vehicle owned and operated by defendant Laqueta Lee, which was pushed into the intersection, where it collided with a vehicle, operated by defendant Robert Brennan and in which plaintiff, Mari Brennan, was a passenger, which had been approaching the intersection from the opposite direction. Defendant Lee contends that her vehicle was stopped at a red traffic light in the southbound left-turn lane of Cathedral Avenue when the vehicle operated by Hogan struck her vehicle in the rear, causing it to spin into the intersection and to "make contact" with the Brennan vehicle.

Defendant Lee now moves for summary judgment in her favor (motion sequence #001) pursuant to CPLR 3212, dismissing the plaintiff's complaint as asserted against her on the grounds that no triable issue of fact exists and that she is entitled to judgment in her favor as a matter of law. In support of her motion, Lee proffers her Verified Answer and Cross-Claim, her own affidavit, and a decision dated March 2, 2018 (Baisley, J.) in a related action arising out of the same accident bearing index number 611292/2017 and entitled Robert Brennan v. Laqueta D. Lee, Ellen E. Hogan and William J. Hogan, awarding her summary judgment and dismissing the Complaint and crossclaim against her.

Defendant Brennan also moves for summary judgment (motion sequence #002) pursuant to CPLR 3212, dismissing the plaintiff's complaint as asserted against him on the grounds that no triable issue of fact exists and that he is entitled to judgment in his favor as a matter of law. In support of his motion, defendant Brennan proffers his Verified Answer and Cross-Claim and his Stipulation of Discontinuance executed by all parties except defendant Lee. Brennan's motion is unopposed.

Plaintiff cross-moves for an order granting summary judgment on the issue of liability (motion sequence #003) pursuant to CPLR 3212 against Ellen and William Hogan on the grounds that they are responsible for initiating a chain-reaction three-car collision. In support of her motion, plaintiff proffers copies of the pleadings and the affidavit of defendant Lee.

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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. Before summary judgment may be granted, it must clearly appear that no material and triable issue of fact is presented (*Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 165 NYS2d 498 [1957]). The movant has the initial burden of proving entitlement to summary judgment (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 487 NYS2d 316 [1985]). Failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers (*Winegrad v New York Univ. Med. Ctr.*, *supra*). Once such proof has been offered, the burden then shifts to the opposing party, who, in order to defeat the motion for summary judgment, must proffer evidence in admissible form...and must “show facts sufficient to require a trial of any issue of fact” (CPLR 3212 [b]; *see Zuckerman v City of New York*, 49 NY2d 557, 427 NYS2d 595 [1980]). As the court’s function on such a motion is to determine whether issues of fact exist, not to resolve issues of fact or to determine matters of credibility, the facts alleged by the opposing party and all inferences that may be drawn from them are to be accepted as true (*see Roth v Barreto*, 289 AD2d 557, 735 NYS2d 197 [2d Dept 2001]; *O’Neill v Fishkill*, 134 AD2d 487, 521 NYS2d 272 [2d Dept 1987]).

It is well settled that when a driver of a motor vehicle approaches another automobile from the rear, he or she is bound to maintain a safe rate of speed and has the duty to keep control over his or her vehicle and to exercise reasonable care to avoid colliding with the other vehicle (*Carhuayano v J & Rappaport Hacking*, 28 AD3d 413, 813 NYS2d 162 [2d Dept 2006]; *Gaeta v Carter*, 6 AD3d 576, 775 NYS.2d 86 [2d Dept 2004]; *Chepel v Meyers*, 306 AD2d 235, 762 NYS2d 95 [2d Dept 2003]; *Power v Hupart*, 260 AD2d 458, 688 NYS2d 194 [2d Dept 1999]; *see also* Vehicle and Traffic Law § 1129 [a]).

Moreover, a rear-end collision with a stopped or stopping vehicle creates a prima facie case of liability regarding the operator of the moving vehicle and imposes a duty of explanation on the operator of the moving vehicle to excuse the collision by providing a non-negligent explanation, such as a mechanical failure, a sudden stop of the vehicle ahead or unavoidable skidding on a wet pavement or some other reasonable excuse (*see Davidoff v Mullokandov*, 74 AD3d 862, 903 NYS2d 107 [2d Dept 2010]; *Carhuayano v J & Rappaport Hacking*, *supra*; *Rainford v Sung S. Han*, 18 AD3d 638; 795 NYS2d 645 [2d Dept 2005]; *Thoman v Rivera*, 16 AD3d 667, 792 NYS2d 558 [2d Dept 2005]; *Gaeta v Carter*, *supra*).

Here, plaintiff has established a prima facie case of entitlement to judgment as a matter of law by demonstrating, through her affidavit and through the affidavit of defendant Lee, that defendant Brennan was driving northbound when the Lee vehicle was pushed into the northbound lane by the Hogan vehicle, thereby causing the Brennan vehicle to come into contact with Lee’s vehicle. The burden then shifted to the defendants to “show facts sufficient to require a trial on any issued fact” (CPLR 3212[b]).

Defendant Lee’s and defendant Brennan’s submissions establish a prima facie case of entitlement to judgment as a matter of law for substantially the same reasons. The burden,

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therefore, shifts to the defendants Ellen and William Hogan to raise a triable issue of fact (*see Zuckerman v City of New York., supra.*)

In opposition, defendants Ellen and William Hogan have failed to respond in opposition to any of the above-referenced motions.

Accordingly, the motions by defendants Lee and Brennan for summary judgment dismissing the plaintiff's complaint as asserted against them is granted and plaintiff's cross-motion for summary judgment on the issue of liability against defendants Ellen and William Hogan is granted.

The foregoing constitutes the decision and Order of the court.

Dated: 6/28/2019

Riverhead, New York


HON. SANFORD NEIL BERLAND, A.J.S.C.