Huertas v Black
2019 NY Slip Op 34446(U)
July 21, 2019
Supreme Court, Westchester County
Docket Number: Index No.: 69165/16
Judge: Gerald E. Loehr

FILED
AND ENTERED
ON 7/23/2019
WESTCHESTER
COUNTY CLERK

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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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LUZ A CHIROQUE HUERTAS and
ANA GUTIERREZ BARZALLO,

Plaintiffs,

DECISION AND ORDER
Index No.: 69165/16

-against-

SARA T. BLACK and IRONWOOD FARM LLC,
PATRICK J. HARRISON and MARY HARRISON,

Defendants.

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SARA T. BLACK and IRONWOOD FARM LLC,

Third-Party Plaintiffs,

-against-

PATRICK J. HARRISON,

Third-party Defendant.

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SARA T. BLACK and IRONWOOD FARM LLC,

Third-Party Plaintiffs,

-against-

MARY HARRISON,

Third-Party Defendant.

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LOEHR, J.

The following papers numbered 1 to 5 were read on Plaintiffs' motion for summary judgment on the issue of liability against Defendants Sara Black and Ironwood Farm LLC, and the motion of Defendants/Third-Party Defendants Patrick and Mary Harrison for summary judgment dismissing the Amended Complaint and Third-Party Complaints as against them.

	Papers Numbered
Notice of Motion - Affirmation - Exhibits	1
Notice of Motion - Affirmation - Exhibits	2
Affirmation in Opposition (to both motions) - Exhibits	3
Reply Affirmation	4
Reply Affirmation	5

Upon the foregoing papers, it appears that on October 24, 2015, as Mary Harrison was driving a vehicle owned by her husband, Patrick Harrison, her stomach became upset. As the Harrisons were crossing the Tappan Zee Bridge, Mary Harrison determined that, due to her stomach distress, she could no longer drive and so moved into the right lane on the bridge and stopped so that Patrick Harrison could take over the driving. A vehicle being operated by Plaintiff Heuertas and owned by Plaintiff Barzello, and in which Plaintiff Barzello was a passenger, was behind the Harrison vehicle but was able to stop. Third in line was a truck owned by defendant Ironwood Farm LLC and being driven by Defendant Sara Black. Black collided with the Plaintiffs' vehicle causing it to hit the Harrison vehicle. Plaintiffs commenced this action on December 20, 2016 against Defendants Black and Ironwood Farm which impleaded the Harrisons. Plaintiffs then amended their Complaint to assert a direct claim against the Harrisons. The Plaintiffs and the Harrisons now timely move for summary judgment.

A rear-end collision with a stopped vehicle creates a prima facie case of liability with respect to the operator of the rearmost vehicle, thereby requiring that operator to rebut the inference of negligence by providing a non-negligent explanation for the collision (*Empire Ins. Co. v Lackoswitz*, 58 AD3d 797 [2d Dept 2009]). In response, Defendants Black and Ironwood assert the negligence of the Harrisons – in stopping on the bridge – which has to be apportioned. The Harrisons for their part oppose any apportionment and moved to dismiss based on Mary's

medical emergency.

Stopping on a bridge, without a legal justification, is a violation of VTL 1202(a)(1)(g) and therefore negligent. However, an operator of an automobile who experiences a sudden medical emergency will not be chargeable with negligence provided that the medical emergency was unforseen (*McGinn v New York City Transit Authority*, 240 AD2d 378, 379 [2d Dept 1997]). A party asserting a medical emergency must generally establish by competent evidence: a medical emergency, that was unforseen and that their reaction to the emergency was reasonable (*Pitt v Mroz*, 146 AD3d 913, 914 [2d Dept 2017]). Here, the Harrisons have neither submitted medical evidence to support their claimed medical emergency nor to explain why they could not have stopped before or after the bridge. Be that as it may, inasmuch as the Plaintiffs vehicle was able to stop without colliding with the Harrisons vehicle, the sole proximate cause of the collision was the negligence of Defendant Black (*Ali v Daily Pita Bakeries, Inc.*,35 AD3d 330, 331 [2d Dept 2006]).

Accordingly, both motions are granted. The remaining parties shall appear in the Settlement Conference Part, courtroom 1600, on September 10, 2019 at 9:15am. This constitutes the decision and order of this Court.

Dated: White Plains, New York
July 21, 2019

HON. GERALD E. LOEHR
J.S.C.

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