

Goldberg v Williams
2019 NY Slip Op 34632(U)
May 28, 2019
Supreme Court, Westchester County
Docket Number: Index No. 56180/2018
Judge: Lawrence H. Ecker
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To commence the statutory time 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.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
JUSTIN GOLDBERG,

Plaintiff,

-against-

JENNA L. WILLIAMS and MARK C. GALIOTTI,

Defendants.
-----X

ECKER, J.

Index No. 56180/2018
Decision/Order
Mot. Seqs. 1 & 2
Submission Date: 04/24/19

The following papers were read on the motion of defendant MARK C. GALIOTTI ("Galiotti"), [Mot. Seq. 1], made pursuant to CPLR 3212, for an order granting him summary judgment on liability dismissing the complaint as against JUSTIN GOLDBERG ("plaintiff"), and the motion of plaintiff [Mot. Seq. 2], for an order, pursuant to CPLR 3212, granting plaintiff summary judgment on the issue of liability and striking certain of defendants' affirmative defenses as against defendants JENNA L. WILLIAMS ("Williams") and Galiotti:

PAPERS

Mot. Seq. 1

Notice of Motion, Affirmation, Exhibits A-G

Affirmation in Opposition

Mot. Seq. 2

Notice of Motion, Affirmation, Exhibits A-H

Affirmation in Opposition

Upon the foregoing papers, the court determines as follows:

This action arises out of a three-vehicle rear-end accident that occurred on October 20, 2017, at 4:00 p.m. The vehicles were traveling southbound in the leftmost of three lanes on I-95 at or near the intersection with Exit 4 in the Town of Greenwich, Connecticut. Plaintiff was operating the first vehicle. Galiotti was the owner/operator of the second vehicle and Williams was the owner/operator of the third vehicle.

Plaintiff testified that he stopped his vehicle due to heavy traffic conditions. He stated that he had been stopped for five to ten seconds when his vehicle was struck in the rear by defendant Galiotti's vehicle. Plaintiff testified that he observed Galiotti's vehicle in his rear view mirror

immediately before impact, and it was moving slowly. He felt the impact to the rear of his vehicle, and prior to impact did not hear any noise such as horns or screeching.

Plaintiff also observed the third vehicle, driven by defendant Williams, which he stated was moving slowly like the Galiotti vehicle. The Williams vehicle struck the rear of the Galiotti vehicle, which in turn struck the rear of plaintiff's vehicle.

Galiotti testified in his deposition that he had come to a complete stop prior to being hit in the rear by the Williams vehicle (the third vehicle), and that the impact from the Williams vehicle pushed his vehicle forward into plaintiff's vehicle. Galiotti stated that he stopped approximately a car and half to two car lengths behind plaintiff's vehicle. He testified that, prior to being struck by the Williams car, he was looking in his mirror and observed the Williams vehicle coming up quickly behind him. He attempted to veer to the right to get out of the way of the Williams car, but was unable to avoid being hit in the rear and pushed into plaintiff's vehicle.

Williams testified that at the time of the accident, traffic was moderate to heavy, stop and go. She stated that Galiotti came to a hard, abrupt stop and she tried to avoid a collision. She stated she did not see Galiotti slow before he stopped, and that at the time of her attempting to stop, she was traveling at approximately forty miles per hour, keeping up with traffic. Williams testified that, at the moment that Galiotti stopped, she was less than a car length away, and was unable to stop before impacting the rear of Galiotti's car. The police issued Williams a ticket for following too closely, to which she pled guilty and paid a fine.

Mot. Seq. 1

In the present motion, Galiotti seeks an order granting summary judgment on liability dismissing the complaint. While Williams does not oppose Galiotti's motion, plaintiff submits opposition thereto.

Galiotti argues that he has made a *prima facie* showing warranting summary judgment dismissing him from the action and asserts that Williams' testimony as to the abrupt stop is insufficient to generate an issue of fact. In fact, Williams' testimony confirms that she was traveling too close to Galiotti's car, and driving too fast under the circumstances, a conclusion that is supported by her plea of guilty to the ticketed offense. Plaintiff counters that an issue of fact exists as to whether Galiotti was a proximate cause of the collision based on Williams' testimony that Galiotti made a hard stop.

The court finds that plaintiff, the only party to oppose the motion, fails to raise a triable issue of fact warranting the denial of Galiotti's motion for summary judgment. It is undisputed that Galiotti was at a full stop when he was hit in the rear by the Williams vehicle and forced forward into plaintiff's car. Moreover, Williams' testimony establishes that she was traveling too fast and too close to the vehicle in front of her car under the circumstances, and as such, was the sole proximate cause of the accident. This fact is proven by her plea of guilty to the ticketed offense. Furthermore, plaintiff's allegation to the contrary, that Galiotti may have been following too close to plaintiff's vehicle, is mere speculation and is insufficient to generate a question of fact as to the

issue. Simply put, plaintiff fails to submit competent testimony from a person with personal knowledge of the facts so as to raise a triable issue of fact as to whether any culpable conduct by Galiotti contributed to the happening of the subject accident (*Marinez v Kuhl*, 165 AD3d 774 [2d Dept 2018]). As such, there is no basis to ascribe negligence to Galiotti or to deny his motion for summary judgment (*See Fonteboa v Nugget Cab Corp.*, 123 AD3d 759 [2d Dept 2014]). In light of this finding, Galiotti's motion for summary judgment dismissing the complaint is granted and Williams' cross-claims against Galiotti are dismissed.

Mot. Seq. 2.

Plaintiff moves [Mot. Seq. 2], for an order, pursuant to CPLR 3212, granting plaintiff summary judgment on the issue of liability and striking certain of defendants' affirmative defenses as against defendants Williams and Galiotti. Williams does not oppose the motion. To the extent that Galiotti opposes the motion, the opposition is moot as Galiotti is herein dismissed from the action. As such, plaintiff's motion for an order pursuant to CPLR 3212 granting summary judgment on liability against Williams and striking William's first, second, ninth, and tenth affirmative defenses is granted on default.

The court has considered the additional contentions of the parties not specifically addressed herein. To the extent any relief requested by either party was not addressed by the court, it is hereby denied. Accordingly, it is hereby

ORDERED that the motion of defendant MARK C. GALIOTTI [Mot. Seq. 1], made pursuant to CPLR 3212, for an order granting him summary judgment on liability dismissing the complaint as against plaintiff JUSTIN GOLDBERG is granted, and the complaint and cross-claims asserted against defendant MARK C. GALIOTTI are dismissed; and it is further

ORDERED that the part of the motion of plaintiff JUSTIN GOLDBERG [Mot. Seq. 2], for an order, pursuant to CPLR 3212, granting plaintiff JUSTIN GOLDBERG summary judgment on the issue of liability and striking certain of defendant MARK C. GALIOTTI'S affirmative defenses as against defendant MARK C. GALIOTTI is denied as moot; and it is further

ORDERED that the part of the motion of plaintiff JUSTIN GOLDBERG [Mot. Seq. 2] for an order, pursuant to CPLR 3212, granting plaintiff JUSTIN GOLDBERG summary judgment on the issue of liability and striking defendant JENNA L. WILLIAMS' the first, second, ninth and tenth affirmative defenses as against defendant JENNA L. WILLIAMS is granted; and it is further

ORDERED that the caption of this action shall hereafter be amended to delete the name MARK C. GALIOTTI as a party in this action; and it is further

ORDERED that the remaining parties shall appear at the Settlement Conference Part of the Court, Room 1600, on July 23, 2019, at 9:15 a.m.

The foregoing constitutes the Decision/Order of the court.

Dated: White Plains, New York

May 28, 2019

ENTER,



HON. LAWRENCE H. ECKER, J.S.C.

To All Parties via NYSCEF