

Smith v Gordils

2019 NY Slip Op 35102(U)

October 28, 2019

Supreme Court, Bronx County

Docket Number: Index No. 27134/2017E

Judge: Mary Ann Brigantti

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: I.A.S. PART 15

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MARY SMITH,

Plaintiff,

DECISION AND ORDER

- against -

Index No. 27134/2017E

ERICK GORDILS II and ELBA TORRES,

Defendants.
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Mary Ann Brigantti, J.

Upon the foregoing, defendant Elba Torres (“Torres”) seeks summary judgment on the issue of liability in her favor dismissing all claims and cross claims asserted against her. Plaintiff cross-moves for summary judgment on the issue of liability against defendants Torres and Erick Gordils, II (“Gordils”).

This action arises from a three-car, hit-in-the-rear, chain reaction motor vehicle accident that occurred on or about January 20, 2016, on the Cross County Parkway. Plaintiff was the driver of the front-most vehicle. Defendant Torres was the driver of the middle car and defendant Gordils was the rear-most driver.

In support of her motion, Torres submitted a certified police accident report dated January 20, 2016 and Torres’s affidavit sworn to on December 3, 2018. The police accident report prepared by Police Officer Jessica Felix demonstrates that defendant Gordils was operating his vehicle in the right lane behind the vehicle operated by defendant Torres. Defendant Gordils stated to the police officer that defendant Torres slowed her vehicle down due to traffic conditions, but defendant Gordils was unable to stop his vehicle in time, striking defendant Torres’s vehicle in the rear (*see Liburd v Lulgjuraj*, 156 AD3d 532, 532 [1st Dept 2017] [court properly considered the police accident report containing statements attributable to plaintiff that would qualify as admissions]). Gordils further stated that the force of the impact pushed Torres’s vehicle into the rear of the vehicle in front of defendant Torres, which was the vehicle operated by plaintiff.

Defendant Torres avers that she was operating her sedan in the right lane behind the plaintiff’s vehicle. She contends that plaintiff’s vehicle began to slow down due to traffic conditions, causing defendant Torres to reduce her rate of speed. Defendant Torres asserts that as she was slowing down she felt a sudden impact to the rear of her vehicle and the force of the impact

pushed her vehicle forward into plaintiff's vehicle.

In support of her cross motion and in opposition to defendant Torres's motion, plaintiff submitted an affidavit averring that she was travelling 20 to 25 miles per hour when she felt a contact to the rear of her vehicle. Plaintiff asserts that approximately two to three seconds after the initial contact to the rear of her vehicle, she felt a second and stronger contact to the rear of her vehicle. Plaintiff argues that defendant Torres's affidavit fails to eliminate triable issues of fact as to why she failed to keep a safe distance and Torres's rate of speed.

Defendant Gordils opposes both motions on the grounds that issue of fact remain as to whether Torres was a proximate cause of plaintiff's injuries and that the motions are premature, because depositions have not been conducted. Defendant Gordils does not submit an affidavit.

"[A] rear-end collision with a stopped or stopping vehicle establishes a prima facie case of negligence on the part of the driver of the rear vehicle, and imposes a duty on the part of the operator of the moving vehicle to come forward with an adequate nonnegligent explanation for the accident" (*Cabrera v Rodriguez*, 72 AD3d 553 [1st Dept 2010]), or a nonnegligent reason for his or her failure to maintain a safe distance between his or her car and the lead car (*see Woodley v Ramirez*, 25 AD3d 451 [1st Dept 2006]).

"[T]he rearmost driver in a chain-reaction collision[, such as this,] bears a presumption of responsibility" (*De La Cruz v Ock Wee Leong*, 16 AD3d 199, 200, 791 NYS2d 102 [2005])" (*Ferguson v Honda Lease Trust*, 34 AD3d 356, 357 [1st Dept 2006]; *see Chang v Rodriguez*, 57 AD3d 295 [1st Dept 2008]). "This rule has been applied when the front vehicle stops suddenly in slow-moving traffic, even if the sudden stop is repetitive[;] when the front vehicle, although in stop-and-go traffic, stopped while crossing an intersection[;] and when the front car stopped after having changed lanes" (*Johnson v Phillips*, 261 AD2d at 271[citations omitted]; *see Torres v Kalmar*, 136 AD3d 457 [1st Dept 2016]; *Passos v MTA Bus Co.*, 129 AD3d at 483). Therefore, defendant Torres established her prima facie entitlement to summary judgment by presenting undisputed evidence she was slowing her vehicle down, when defendant Gordils' vehicle rear-ended her vehicle propelling it forward into plaintiff's vehicle (*see Rodriguez v Garcia*, 154 AD3d 581[1st Dept 2017]; *Padilla v Zulu Servs., Inc.*, 132 AD3d 522, 522 [1st Dept 2015]; *Passos v MTA Bus Co.*, 129 AD3d 481, 481 [1st Dept 2015]; *Santos v Booth*, 126 AD3d 506, 506 [1st Dept 2015]).

However, the plaintiff's affidavit raises triable issues of fact as to the sequence of the

collisions in this three-car accident. Although Torres affidavit and Gordils's admission demonstrates that defendant Gordils's vehicle struck defendant Torres in the rear and propelled defendant Torres's vehicle into plaintiff's vehicle, plaintiff avers that she felt a "second and stronger contact" to the rear of her vehicle. This raises an issue of fact as to whether Torres hit plaintiff's vehicle before being rear-ended. "In a multi vehicle accident, 'where, as here, there is a question of fact as to the sequence of the collisions,' it cannot be said as a matter of law there was only one proximate cause of plaintiff[s] injuries (*Passos v MTA Bus Co.*, 129 AD3d 481, 482 [1st Dept 2015] [citations omitted]). Viewing the record in the light most favorable to the non-moving parties the court cannot conclusively determine liability as a matter of law (*see Vega v Restani Constr. Corp.*, 18 NY3d 499, 503 [2012]).

Moreover, plaintiff, an innocent driver, is not entitled to summary judgment on liability against any defendant driver because, as the party moving for summary judgment, she failed to eliminate triable issues of fact as to how the accident happened and which defendant driver was responsible for the rear end collision (*see Oluwatayo v Dulinayan*, 142 AD3d 113, 115 [1st Dept 2016]). However, since it is not disputed that plaintiff did not cause or contribute to this accident, she is entitled to summary judgment on the issue of her lack of comparative fault (*id.*, CPLR 3212[g]). Plaintiff's motion on this issue is not premature. Torres submitted an affidavit in opposition, therefore she was "able to submit facts 'essential to justify opposition [to the motion]'" (*Jeffrey v DeJesus*, 116 A.D.3d 574 [1st Dept. 2014][internal citation omitted]). Gordils failed to submit any affidavit despite presumably having personal knowledge of the facts, therefore he "failed to meet [his] obligation of laying bare [his] proof and presenting evidence sufficient to raise a triable issue of fact" (*Avant v Cepin Livery Corp.*, 74 A.D.3d 533, 534 [1st Dept. 2010]).

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Accordingly, it is hereby,

ORDERED, that defendant Torres's motion for summary judgment on the issue of liability is denied, and it is further,

ORDERED, that plaintiff's cross-motion for summary judgment on the issue of liability is granted only to the extent of finding that she is free of comparative fault for this accident, and any such affirmative defenses are dismissed.

This constitutes the decision and order of the Court.

Dated: 10/28/19

ENTER,



MARYANN BRIGANTTI, J.S.C.