

**Gorden v O'Brien**

2020 NY Slip Op 34792(U)

December 4, 2020

Supreme Court, Ulster County

Docket Number: Index No. EF2019-1315

Judge: Christopher E. Cahill

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**STATE OF NEW YORK  
SUPREME COURT**

**ULSTER COUNTY**

SUSAN GORDEN,

Plaintiff,

-against-

**Decision & Order**

**Index No.: EF2019-1315**

JANICE A. O'BRIEN, ROBERT C. MEST,  
WILLIAM E. PLOSS AND JOYCE A. BRYANT,

Defendants.

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Supreme Court, Ulster County  
Motion Return Date: August 14, 2020  
RJI No. 55-19-00639

**Present: Christopher E. Cahill, JSC**

Appearances: DELL & DEAN, PLLC  
Attorneys for Plaintiff  
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By: Deborah Bookwalter, Esq.

DeSENA & SWEENEY, LLP  
Attorneys for Defendants Janice O'Brien and Robert Mest  
1500 Lakeland Avenue  
Bohemia, New York 11716  
By: Shawn P. O'Shaughnessy, Esq.

LITCHFIELD CAVO. LLP  
Attorneys for Defendant William Ploss  
420 Lexington Ave., Suite 2104

New York, New York 10170  
By: Anna M. Hadjitheodosiou, Esq.

**Cahill, J.:**

In this “chain reaction” accident which took place on the Long Island Expressway (LIE) on October 23, 2014, defendant Joyce Bryant, who now moves for summary judgment pursuant to CPLR § 3212, testified at her EBT that she was driving in the left lane of the LIE Westbound in heavy traffic. The vehicle in front of her stopped, so she brought her vehicle to a complete stop. Seconds later, she felt an impact from behind, which was the vehicle operated by defendant Ploss in which plaintiff, Susan Gorden, was a passenger. According to the plaintiff, the vehicle in which she was riding was struck from behind by a vehicle owned by defendant Robert C. Mest and operated by defendant Janice A. O’Brien. Ms. O’Brien testified that her vehicle struck the Ploss vehicle from behind because she had been struck from behind by a vehicle that subsequently fled the scene.

In support of her motion for summary judgment, defendant Bryant argues that she is entitled to summary judgment as a matter of law as it is undisputed that her vehicle was at a complete stop when it was struck from behind by the Ploss vehicle, and, therefore, Ms. Bryant’s operation of her vehicle was not the probable cause of the accident.

After reviewing the parties’ submissions, the court concludes that the motion must be granted. It is well established that a rear-end collision with a stopped vehicle establishes a prima facie case of negligence on the moving vehicle and requires the

operator of the moving vehicle to explain how the accident occurred (see Ng v Reid, 259 AD2d 601 [2d Dept 2010]). There is no evidence that Ms. Bryant came to an abrupt stop which could possibly provide Ploss with an excuse for striking the Bryant vehicle.

Indeed, defendant Ploss testified that he observed the Bryant vehicle come to a gradual stop and that he did not observe it move until he came into contact with it.

In reaching this conclusion, the court first finds that there is no prejudice to any of the other defendants or plaintiff in the moving defendant's failure to attach all the pleadings, and it is established that a court may disregard such a failure "if a substantial right of a party is not prejudiced" (CPLR § 2001; Sensible Choice Contracting, LLC v Rodgers, 164 3d 705 [2<sup>nd</sup> Dept 2018]). Second, the court agrees with defendant Bryant that the fact that the plaintiff testified that the accident occurred in the right lane while all of the defendants testified that it occurred in the left lane does not create a material issue of fact. Likewise, plaintiff's assertion that it was raining at that the time is totally immaterial to the issue of Ms. Bryant's liability. Third, Mr. Ploss testified that he had also brought his car to a complete stop behind Ms. Bryant. Fourth, with regard to plaintiff's attempt to characterize the traffic conditions at the time of the accident as "stop and go" based on Ms. Bryant's testimony that "traffic was moving at a slow pace," it does not change the fact that she was struck from behind when the Ploss vehicle was pushed into her vehicle.

In conclusion, there is no evidence that Ms. Bryant stopped suddenly. And as the plaintiff testified that she did not witness the impact with the Bryant vehicle as her eyes were closed, she is in no position to argue otherwise.

The court has considered the remaining arguments of the plaintiff, and of the co-defendants in opposition, and finds them to be without merit.

Accordingly, it is

ORDERED that defendant Bryant's motion is granted in all respects.

This shall constitute the Decision and Order of the court. The original Decision and Order and all other papers are being delivered to the Supreme Court Clerk for transmission to the Ulster County Clerk for filing. The signing of this Decision and Order shall not constitute entry or filing under CPLR § 2220. Counsel is not relieved from the applicable provisions of that rule regarding notice of entry.

**SO ORDERED.**

Dated: Kingston, New York  
December 4, 2020

ENTER,

  
CHRISTOPHER E. CAHILL, JSC

Papers considered:

Notice of Motion dated June 26, 2020 with Exhibits A-G, Affirmation in Support of Deborah J. Bookwalter, Esq. dated June 26, 2020;

Affirmation in Opposition of Antonio Marano, Esq. dated August 3, 2020;

Affirmation in Opposition of Shawn P. O'Shaughnessy, Esq. dated July 16, 2020;

Affirmation in Partial Opposition of Anna M. Hadjitheodosiou, Esq. dated September 11, 2020;

Reply Affirmation of Deborah J. Bookwalter, Esq. dated September 17, 2020