Cassanova v Woods
2020 NY Slip Op 34877(U)
May 1, 2020
Supreme Court, Westchester County
Docket Number: Index No. 58489/2018
Judge: Joan B. Lefkowitz
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SUPREME COURT : STATE OF NEW YORK IAS PART WESTCHESTER COUNTY PRESENT : HON. JOAN B. LEFKOWITZ, J.S.C. ----------X DELLAIRE E. CASSANOVA Plaintiff, -against- JEFFREY R. WOODS, AVIS RENT-A-CARSYSTEM, LLC, SEACOR HOLDINGS, INC., S. SONGVEERATHAM and KAWASAKI RAIL CAR, INC., Defendants. ----------X	DECISION AND ORDER Index No. 58489/2018 Motion Return Date: February 28, 2020 Motion Seq. #5 and #6

The following papers (e-file documents 105-115; 117-122; 133; 135) were read on (1) the motion by defendants, S. Songveeratham and Kawasaki Rail Car, Inc., for an order granting summary judgment dismissing so much of the complaint as asserts a cause of action against them (motion sequence #5); and (2) the cross-motion by plaintiff for an order granting partial summary judgment against all defendants[1] on the issue of liability (motion sequence #6).

Notice of Motion, Affirmation (Exhibits A- I)
Affirmation in Opposition (Exhibits A-C)
Reply Affirmation
Notice of Cross-Motion, Affirmation (Exhibits 1-9)
Affirmation in Opposition to Cross-Motion (Defendant Songveeratham)
Affirmation in Opposition to Cross-motion (Exhibits A-C) (Plaintiff)

Upon reading the foregoing papers it is

ORDERED the motion by the defendants, S. Songveeratham and Kawasaki Rail Car, Inc., is granted, and so much of the complaint as asserts a cause of action against the defendants, S. Songveeratham and Kawasaki Rail Car, Inc., is dismissed, and the action against the remaining defendants is severed; and it is further

ORDERED the branch of plaintiff's cross-motion seeking an order granting partial summary judgment on the issue of liability against the defendants, S. Songveeratham and Kawasaki Rail Car, Inc., is denied; and it is further

[1] The action against the defendant Avis Rent A Car Systems LLC, has been dismissed (see-file document #86)

ORDERED the branch of plaintiff's cross-motion seeking an order granting partial summary judgment on the issue of liability against the defendants, Jeffrey R. Woods and Seacor Holdings, Inc., is granted, and plaintiff is awarded partial summary judgment on the issue of liability against the defendants, Jeffrey R. Woods and Seacor Holdings, Inc., and the trial of the matter shall be on the issue of damages only; and it is further

ORDERED the matter is referred to the Settlement Conference Part. Due to the coronavirus health emergency the Clerk of the Settlement Conference Part shall notify the parties of the date, time and method of the settlement conference.

Plaintiff sues for injuries allegedly suffered in a four-car accident in the west bound lanes of the Cross County Parkway on February 17, 2017. A vehicle owned by the defendant, Seacor Holdings, Inc., and operated by the defendant, Jeffrey R. Woods, was driving in the left lane of the Cross County Parkway when the car in front of him "slowed suddenly." In an attempt to avoid a collision Woods swerved his car to the right where it struck the driver's side front bumper of a vehicle in the center lane owned by the defendant, Kawasaki Rail Car, Inc., and operated by the defendant, S. Songveeratham. Upon impact the Songveerathm vehicle was propelled into the right lane where it struck the rear driver's side door of the vehicle operated by the plaintiff. Upon this second collision plaintiff's vehicle was turned and forced across the three lanes of traffic and stopped when it struck the median.

Following the completion of discovery the defendants, S. Songveeratham and Kawasaki Rail Car, Inc., move for an order dismissing the complaint against them, and plaintiff cross-moves for an order granting partial summary judgment against defendants on the issue of liability.

Motion by Songveerathm and Kawasaki Rail Car Holdings (Sequence #5)

Defendants, Songveerathm and Kawasaki, established their prima facie entitlement to judgment as a matter of law. They claim Songveeratham was not negligent because he was confronted with an emergency situation, and nothing he did or didn't do was the proximate cause of the collision with plaintiff's vehicle.

"Under the emergency doctrine, when an actor is faced with a sudden and unexpected circumstance which leaves little or no time for thought, deliberation or consideration, or causes the actor to be reasonably so disturbed that the actor must make a speedy decision without weighing alternative courses of conduct, the actor may not be negligent if the actions taken are reasonable and prudent in the emergency context. Although the existence of an emergency and the reasonableness of the response to it generally present issues of fact, those issues may in appropriate circumstances be determined as a matter of law" (*Grasso v Nassau Cty.*, 180 AD3d 1008, 1010 [2d Dept 2020] [internal quotation marks and citations omitted]).

Here, Songveerathm and Kawasaki demonstrated that Songveeratham had no time within which to react to his vehicle being suddenly and unexpectedly struck by Woods' vehicle and propelled by the force of the collision into the vehicle operated by plaintiff.

In opposition, plaintiff and the defendants, Woods and Seacor Holdings, Inc., failed to raise a triable issue of fact.

Plaintiff's claim that summary judgment is precluded because Sonveeratham and Kawasaki failed to assert the emergency doctrine as an affirmative defense is without merit.

"CPLR 3018(b) provides that '[a] party shall plead all matters which if not pleaded would be likely to take the adverse party by surprise or would raise issues of fact not appearing on the face of a prior pleading.' Applying that rule, the question whether the emergency doctrine must be pleaded as an affirmative defense necessarily turns on the particular circumstances of each case. Where the facts relating to the existence of an emergency are presumptively known only to the party seeking to invoke the doctrine, it must be pleaded as an affirmative defense lest the adverse party be taken by surprise. Thus, for example, where the driver of a vehicle involved in a collision claims to have been reacting to a sudden and unforeseen medical emergency, the emergency doctrine would have to be pleaded as an affirmative defense. Conversely, where the facts relating to the existence of the emergency are known to the adverse party and would not raise new issues of fact not appearing on the face of the prior pleadings, the party seeking to rely on the emergency doctrine would not have to raise it as an affirmative defense" (*Bello v Transit Auth. of New York City*, 12 AD3d 58, 61 [2d Dept 2004]).

Based upon the pleadings, the police accident report and the deposition testimony, plaintiff can hardly claim to be surprised by Songveeratham's invocation of the emergency doctrine.

Motion by Plaintiff (Sequence #6)

Plaintiff established her prima facie entitlement to judgment as a matter of law by demonstrating that the defendant, Woods, failed to keep a safe distance between his vehicle and the vehicle in front of him causing him to suddenly swerve into another lane of traffic, hit another car and propelling it into plaintiff's car. In opposition, Woods failed to offer a non-negligent explanation for the collision.

Woods' claim that the emergency doctrine applies to him is without merit.

"[T]he emergency doctrine holds that those faced with a sudden and unexpected circumstance, *not of their own making*, that leaves them with little or no time for reflection or reasonably causes them to be so disturbed that they are compelled to make a quick decision without weighing alternative courses of conduct, may not be negligent if their actions are

reasonable and prudent in the context of the emergency" (*Bello, supra*, 12 AD3d at 60).

The circumstances Woods faced were of his own making since he failed to keep a safe distance between his vehicle and the vehicle in front of him.

E N T E R,

Dated: White Plains New York
May 1, 2020

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HON. JOAN B. LEFKOWITZ, J.S.C.