

**Cruz v Galvez**

2020 NY Slip Op 34955(U)

February 19, 2020

Supreme Court, Orange County

Docket Number: Index No. EF012032-2018

Judge: Catherine M. Bartlett

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT-STATE OF NEW YORK
IAS PART-ORANGE COUNTY

Present: HON. CATHERINE M. BARTLETT, A.J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

ALEYDA CRUZ,

Plaintiff,

-against-

MARLENE GALVEZ,

Defendant.

To commence the statutory time period 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.

Index No. EF012032-2018
Motion Date: February 5, 2020

The following papers numbered 1 to 5 were read on Defendant's motion for summary judgment:

Notice of Motion - Affirmation / Exhibits 1-2
Affirmation in Opposition - Affidavit / Exhibits 3-4
Reply Affirmation 5

Upon the foregoing papers it is ORDERED that the motion is disposed of as follows:

This is a personal injury action arising from a motor vehicle accident which occurred on May 16, 2016 in a parking lot in Newburgh, New York. Plaintiff Aleyda Cruz was a passenger in defendant Marlene Galvez' vehicle. Non-party Mario Retamozo backed his vehicle out of a parking space without looking and struck Ms. Galvez' vehicle in the right rear. Ms. Galvez swerved left but was unable to avoid a collision with Mr. Retamozo's vehicle. Ms. Cruz obtained a personal injury recovery from Mr. Retamozo in a prior action, and seeks recovery

from defendant Galvez here. Ms. Galvez moves for summary judgment, asserting that she was not negligent and that Mr. Retamozo's violation of Vehicle and Traffic Law ("VTL") §1211(a) was the sole proximate cause of the accident.

**A. The Parties' Deposition Testimony**

Plaintiff testified:

Q When the accident happened was the vehicle you were in moving or stopped?

A Moving.

Q When the accident happened was the other car moving or stopped?

A Moving.

Q At some point before the accident did you see the other car move from the parking spot it was in?

A Yes.

Q What did you see the other car do?

A He was backing up.

Q Out of the parking space?

A Yes.

Q In the position where the car was parked, was it fully in the parking spot?

A Yes.

Q How close were you to the other vehicle when it started backing out of the parking spot?

A Very close.

.....

Q What part of the vehicle your were in was involved in the accident?

A The...right side and the back.

Q How far back on the right side was the impact?

A In the back on the back door.

.....

Q What part of the other car was involved in the accident?

A The back. The back bumper.

Q Before the impact happened did you feel Marlene do anything with respect to the operation of the minivan?

A She tried to swerve. She tried to swerve out of the way to get into the other space but she didn't, she couldn't.

Q When you say tried to swerve, was that to the left?

A Yes.

.....

Q Is there anything that Marlene did to cause this accident?

A I don't think so. She just tried to swerve out of the way.

Q How would you characterize the force of the impact?

A For me it was strong.

Defendant's testimony was to the same effect.

Plaintiff in opposition proffers her deposition testimony from the prior action. However, that too was to the same effect:

Q When you first noticed that other vehicle, was it in the parking spot or was it backing out?

A I saw the other car when he was backing up.

Q What was his rate of speed at which he was backing up?

A I don't know. He was going fast because he never saw us.

Q Why do you say he was going fast?

A Because I saw him backing up and he never stopped?

Q But what was his rate of speed?

A Coming out of the parking, maybe 10 miles.

.....  
Q How far away were you from the vehicle when you saw I backing up?

A The distance of two cars.

.....  
Q Did Galvez see the car backing up?

A Yes, because we both of us said, oh my God.

Q What did Galvez do at that point, did she continue going?

A She was trying to evade the car and she was trying to go to the other parking area but still the other car hit us.

.....  
Q Did Galvez stop her vehicle at that point to allow the other car to back out or the parking space?

A It was no time because he was coming over.

Q But she's two car lengths away from the vehicle, don't you think she should have stopped?

A I knew that the car was too close. Probably she could have stopped, but I don't know.

.....  
Q ...Do you believe that Galvez is responsible for this accident?

A No.

.....  
Q Did you keep that car under your constant observation from the time you first saw it until the time of the accident, did you constantly look at it?

A It happened too fast. I remember seeing him and I saw him coming but it happened so fast.

.....

Q What parts of the two vehicles came into contact with each other?

A All the back area of his car and the backside of our car.

Q What side of your car?

A The right.

Q How would you describe the force of the contact?

A Was strong.

**B. Legal Analysis**

VTL §1211(a) provides that “the driver of a vehicle shall not back the same unless such movement can be made with safety and without interfering with other traffic.” Section 1211(a) is applicable to private parking lots available for public use as well as to public roadways. *See*, VTL §1100(a).

In *Pressler v. Serrano*, 260 AD2d 458 (2d Dept. 1999), the defendant negligently backed up his truck in violation of VTL §1211(a) and struck the plaintiff’s vehicle. The Second Department rejected the defendant’s claim that the plaintiff was negligent in failing to take evasive action, and held that his violation of VTL §1211(a) was the sole proximate cause of the accident. The Court wrote:

[G]iven the sudden and unexpected backing up of the truck, the short distance which it traveled before striking the plaintiff’s automobile, and the brief period of time which the plaintiff had to react, any purported error in judgment on her part did not constitute negligence under the circumstances of the emergency with which she was confronted and was not a proximate cause of the accident [cit.om.].

*Id.*, 260 AD2d at 459. *See, Garcia v. Verizon New York, Inc.*, 10 AD3d 339, 340 (1<sup>st</sup> Dept. 2004) (same). *See also, Ortiz v. Calavera*, 26 AD3d 319 (2d Dept. 2006).

Here, likewise, non-party Mario Retamozo's negligence in backing out of a parking space in violation of VTL §1211(a) was the sole proximate cause of his collision with defendant Marlene Galvez's vehicle. Mr. Retamozo backed up suddenly, unexpectedly and at considerable speed, given the force with which he struck Defendant's vehicle. Plaintiff herself made it perfectly clear that the incident happened very quickly, that Ms. Galvez had little time to react but still attempted, albeit without success, to swerve away and avoid the collision. Contrary to Plaintiff's counsel's assertion, the determination of this case requires no resolution of credibility issues. In both this action and the prior action, Plaintiff herself established by the substance of her testimony and by explicit admission that Ms. Galvez was not responsible for causing the accident. Ms. Galvez' error in judgment – if error there was – in attempting to swerve out of the way instead of stopping altogether – did not constitute negligence under the circumstances with which she was confronted and was not a proximate cause of the accident. *See, Pressler v. Serrano, supra; Garcia v. Verizon New York, Inc., supra.*

It is therefore

ORDERED, that Defendant's motion for summary judgment is granted, Defendant is awarded motion costs in the amount of \$100.00, and Plaintiff's complaint is dismissed.

The foregoing constitutes the decision and order of the Court.

Dated: February 19, 2020  
Goshen, New York

ENTER



HON. CATHERINE M. BARTLETT, A.J.S.C.

HON. C. M. BARTLETT  
JUDGE NY STATE COURT OF CLAIMS  
ACTING SUPREME COURT JUSTICE