

Giannotti v Alma

2020 NY Slip Op 35018(U)

August 24, 2020

Supreme Court, Ulster County

Docket Number: Index No. EF2019-211

Judge: Christopher E. Cahill

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This opinion is uncorrected and not selected for official publication.

**STATE OF NEW YORK
SUPREME COURT**

ULSTER COUNTY

SUSANNE M. GIANNOTTI,

Plaintiff,

-against-

Decision & Order

Index No.: EF2019-211

JOSEPH M. ALMA,

Defendant.

Supreme Court, Ulster County
Motion Return Date: July 24, 2020
RJ No. 55-19-01210

Present: Christopher E. Cahill, JSC

Appearances: O'CONNOR & PARTNERS, PLLC
Attorneys for Plaintiff
255 Wall Street
Kingston, New York 12401
By: Thomas C. Yatto, Esq.

NYS OFFICE OF THE ATTORNEY GENERAL
Attorneys for Defendant
The Capitol
Albany, New York 122224-0341
By: Douglas R. Kemp, Esq.

Cahill, J.:

This is a personal injury action arising from a rear-end motor vehicle accident which occurred on February 20, 2018. Both vehicles were traveling north on US Highway 9W in the Town of Cornwall, Orange County, New York in somewhat congested traffic (Exhibit D, p. 25). Plaintiff, Susanne M. Giannotti, testified that she was

slowing down because the vehicle directly in front of her was slowing down when she was struck in the rear by defendant's vehicle (*Id.*, at p. 26). Defendant testified that he did not see the plaintiff's vehicle slow down or see her hit her brakes (Exhibit E, p. 9). He further testified that he was "getting something down from my visor, papers, and I took my eyes off the road . . . and that is when impact took place" (*Id.*). Finally, the defendant testified that he did not notice anything plaintiff did to contribute to the collision (*Id.*, at p. 8).

Upon these facts, plaintiff has moved pursuant to CPLR § 3212 for summary judgment on the issue of liability and for an order striking all of defendant's thirteen affirmative defenses. In support of the motion, plaintiff has offered, *inter alia*, the pleadings, the police accident report and the parties' deposition testimony. Defendant has offered only the affirmation of Douglas R. Kemp, Esq., which withdraws the first and second affirmative defenses of comparative negligence and third-party negligence.

As a general rule, "[a] rear-end collision with a stopped or 'stopping vehicle' creates a *prima facie* case of liability with respect to the operator of the rearmost vehicle, thereby requiring that operator to rebut the inference of negligence by providing a nonnegligent explanation for the collision" (*Chepel v Meyers*, 306 AD2d 235, 237 [2d Dept 2003]; see also *Woods v Johnson*, 44 AD3d 1201, 1202 [3d Dept 2007]).

Having reviewed all the submissions in light of this standard, this court concludes that plaintiff has sustained her *prima facie* burden to establish defendant's negligence,

and that the defendant has failed to provide a nonnegligent explanation for the accident, which is required to defeat the motion. Accordingly, plaintiff is entitled to an award for summary judgment, having established that the defendant is completely at fault for the accident.

Therefore, it is

ORDERED that plaintiff's motion for summary judgment on the issue of liability and striking the defendant's affirmative defenses three through thirteen is hereby granted. As defendant withdrew his first and second affirmative defenses, this portion of plaintiff's motion is dismissed as moot.

This shall constitute the decision and order of the court. All papers are being returned to plaintiff's counsel for filing. The signing of this decision and order shall not constitute entry or filing under CPLR §2220. Counsel are not relieved from the provisions of that rule regarding filing, entry and notice of entry.

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

August 24, 2020

ENTER,



CHRISTOPHER E. CAHILL, JSC

Papers Considered:

Plaintiff's Notice of Motion, dated June 15, 2020;

Affirmation in Support of Thomas C. Yatto, Esq, with annexed exhibits A-G, dated June 15, 2020; Affidavit of Plaintiff dated June 5, 2020; and Affirmation of Douglas R. Kemp, Esq., dated July 16, 2020.