Beatty v Laipple
2020 NY Slip Op 35211(U)
July 22, 2020
Supreme Court, Erie County
Docket Number: Index No. 812541/2018
Judge: Timothy J. Walker

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF ERIE

MINDY M. BEATTY and TIMOTHY BEATTY,

Plaintiff,

DECISION & ORDER

vs. Index No. 812541/2018

EMMA K. LAIPPLE and MICHAEL W. LAIPPLE,
Defendants.

BEFORE: **HON. J. TIMOTHY J. WALKER, Presiding Justice**

APPEARANCES:

JOHN J. FROMAN, ATTORNEYS AT LAW, P.C.
John J. Froman, Jr., Esq., Of Counsel
Attorneys for Plaintiff

LAW OFFICES OF JOHN WALLACE
Leo T. Fabrizi, Esq., of Counsel
Attorneys for Defendant

WALKER, J.

The parties have applied for partial summary judgment pursuant to CPLR 3212. Defendants have moved on the issues of negligence, threshold injury, and economic loss. Plaintiff has similarly moved on the issue of negligence, and to dismiss Defendants' affirmative defenses based on comparative negligence, failure to utilize a seat belt, and the emergency doctrine.

This action arises out of a motor vehicle accident, which occurred on August 3, 2016 in the Town of Cheektowaga (the "Incident"). Defendant EMMA K. LAIPPLE, was operating a vehicle owned by her father, co-Defendant MICHAEL W. LAIPPLE, on the I-90 during rush

hour traffic. Defendant claims that, as she attempted to maneuver from the left-hand lane into the center lane, she was met by a small, black vehicle, which was attempting to enter the center lane at the same time. Defendant claims that, in order to avoid a collision with that vehicle, she moved back into the left lane, colliding with the rear end of Plaintiff's vehicle. It is undisputed that there was a collision between the front-end of Defendant's vehicle and the rear end of Plaintiff's vehicle.

As to Defendants' contention that Plaintiff's cross-motion is untimely, it is based on Defendants' nearly identical motion for summary judgment. As such, the Court will consider the cross-motion motion on the merits (*Lennard v. Kahn*, 69 A.D.3d 812, 814 [2d Dept 2010]).

As to that aspect of Defendants' on the issue of negligence, the emergency doctrine may be asserted as a shield for "those who are 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 . . . make a quick decision without weighing alternative courses of conduct. . . " (*Bello v. Transit Auth. of N.Y. City*, 12 A.D.3d 58, 60, 783 N.Y.S.2d 648; *see also Miloscia v. New York City Bd. of Educ.*, 70 A.D.3d 904, 905, 896 N.Y.S.2d 109; *Vitale v. Levine*, 44 A.D.3d 935, 936, 844 N.Y.S.2d 105). Such parties "may not be negligent if their actions are reasonable and prudent in the context of the emergency." *Id.*

Here, Defendant swerved back into the left lane in order to prevent a collision with the phantom vehicle, instead colliding with the rear of Plaintiff's car (NYSCEF Doc. No. 16. Pp. 15-16.)

In Mead v Marino, 205 AD2d 669 (2nd Dept. 1994), strikingly similar facts were involved: the motor vehicle accident occurred in backed up, rush hour traffic. The defendant driver, following behind the plaintiff in the same lane, attempted to change lanes. When her entry into the adjacent lane was unexpectedly blocked, she crashed into the rear end of plaintiff's vehicle. The court concluded that the emergency doctrine did not apply and granted summary

judgment in favor of the plaintiff. In so doing, The court rejected defendant's attempt to invoke the "emergency doctrine", on the basis that "the party seeking to invoke it created or contributed to the emergency. Indeed, the defendant's failure to anticipate and react to the eventuality that she would be unable to move her vehicle into the left lane as planned precluded application of the emergency doctrine. " Id.

For the same reasons, Defendant here was not faced with an unforeseeable situation not of her making.

Moreover, "[a] rear-end collision with a vehicle that is stopped or is in the process of stopping creates a prima facie case of liability with respect to the driver of the rearmost vehicle, thereby requiring that driver to rebut the inference of negligence by providing a nonnegligent explanation for the collision" (*Lyons v Zeman*, 106 AD3d 1517 [4th Dept. 2013]). Defendant's version of events, taken at face value, do not establish a nonnegligent explanation for the collision, and therefore the presumption stands, entitling Plaintiff to summary judgment on the issue of negligence.

As to the issue of threshold injury and economic loss, the parties have submitted competing expert testimony, thereby creating genuine issues of material fact, precluding an award of summary judgment on these issues (*Haas v. F.F. Thompson Hosp., Inc.*, 86 A.D.3d 913, 914 [4th Dept 2011] [conflicting opinions of the parties' respective medical experts present credibility issues that cannot be resolved on a motion for summary judgment]).

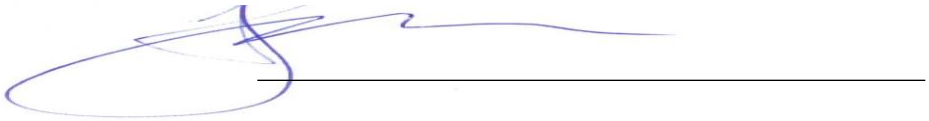
As to those aspects of the cross-motion pertaining to the affirmative defenses of failure to use a seat belt and comparative fault, Plaintiff has made a *prima facie* showing of entitlement to judgment as a matter of law, which Defendants have failed to rebut.

Accordingly, it is hereby

ORDERED, that Defendants' motion for partial summary judgment is denied; and it is further

ORDERED, that Plaintiff's cross-motion is granted.

Dated: July 22, 2020



HON. TIMOTHY J. WALKER, J.C.C.
Acting Supreme Court Justice
8th Judicial District