

**Grant-Brown v Campe**

2020 NY Slip Op 35499(U)

March 11, 2020

Supreme Court, Bronx County

Docket Number: Index No. 30455/2018E

Judge: John R. Higgitt

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX: I.A.S. PART 14

-----X  
ANN-MARIE GRANT-BROWN,

Plaintiff,

DECISION AND ORDER

- against -

Index No. 30455/2018E

MOLLY CAMPE, BRIAN CAMPE, NOELENA RENEE  
BROWN and ST. GEORGE TREATS, INC.,

Defendants.  
-----X

John R. Higgitt, J.

Upon plaintiff’s October 28, 2019 notice of motion and the affirmation submitted in support thereof; the January 8, 2020 affirmation in opposition of defendants Molly Campe and Brian Campe (“the Campe defendants”) and the exhibits submitted therewith; plaintiff’s January 9, 2020 affirmation in reply; and due deliberation; plaintiff’s motion for an order dismissing the Campe defendants’ affirmative defense alleging plaintiff’s comparative fault is granted.

This is a negligence action to recover damages for personal injuries plaintiff sustained in a three-car motor vehicle accident that occurred on February 24, 2018. On September 20, 2019, the undersigned granted plaintiff’s motion for partial summary judgment on the issue of the Campe defendants’ liability for causing the subject accident.

Now, plaintiff seeks dismissal of the Campe defendants’ first affirmative defense alleging plaintiff’s culpable conduct. At an examination under oath (“EUO”), plaintiff testified that she was stopped in the left lane on West Houston Street due to a red traffic light when she suddenly felt a “thud” to the back of her vehicle, followed by a second hit to the rear of her vehicle.

Plaintiff’s evidence established, prima facie, that her vehicle was struck in the rear, triggering the presumptions that the rearmost driver (defendant Molly Campe) was negligent and

plaintiff was not negligent (*see Giap v Hathi Son Pham*, 159 AD3d 484 [1st Dept 2018]; *see Soto-Marouquin v Mellet*, 63 AD3d 449 [1st Dept 2009]).

The Campe defendants opposed the present motion, asserting that it is a second motion for summary judgment and that plaintiff should not be allowed to make a successive summary judgment motion. However, this motion is for dismissal of an affirmative defense (*see CPLR* 3211[b]). Additionally, the court noted in the September 20, 2019 decision and order that plaintiff did not seek, and the court did not consider, dismissal of defendants' affirmative defenses.

The Campe defendants also assert that the motion should be denied because there are questions of fact as to whether plaintiff made a sudden stop at the time of the accident. However, generally, a claim that the driver of a rear-ended vehicle made a sudden stop is insufficient to constitute a non-negligent explanation for the accident (*see Bajrami v Twinkle Cab Corp.*, 147 AD3d 649[1st Dept 2017]). Thus, the general rule regarding liability for rear-end accidents "has been applied when the front vehicle stops suddenly in slow-moving traffic; even if the sudden stop is repetitive; when the front vehicle, although in stop-and-go traffic, stopped while crossing an intersection; and when the front car stopped after having changed lanes" (*Johnson v Phillips*, 261 AD2d 269, 271 [1st Dept 1999]). Furthermore, "[a] driver of a vehicle approaching another vehicle from the rear is required to maintain a reasonably safe distance and rate of speed under the prevailing conditions to avoid colliding with the other vehicle" (*Nsiah-Ababio v Hunter*, 78 AD3d 672, 672 [2d Dept 2010]). The principle that a claim of a sudden stop by the rear-ended vehicle is insufficient to constitute a non-negligent explanation for a hit-in-the-rear accident has particular force when the accident occurs on a local public roadway in the City of New York (*see*

*Animah v Agyei*, 63 Misc 3d 783 [Sup Ct, Bronx County 2019]). Thus, defendants' claim that the plaintiff made a sudden stop is insufficient to raise a triable issue of fact.

Moreover, even assuming in the Campe defendants' favor that, as defendant Molly Campe averred, plaintiff "made a sudden move towards the middle lane of West Houston Street, for no apparent reasons," the Campe defendants do not explain why such a maneuver would suggest comparative fault on plaintiff's part for this hit-in-the-rear accident. Notably, under defendant Molly Campe's narrative, plaintiff was moving out of, not into, the Campe defendants' lane of traffic.

Accordingly, it is

ORDERED, that plaintiff's motion for an order dismissing the Campe defendants' first affirmative defense alleging plaintiff's comparative fault is granted, and that defense is dismissed.

The parties are reminded of the March 27, 2020 compliance conference before the undersigned.

This constitutes the decision and order of the court.

Dated: March 11, 2020

  
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John R. Higgitt, J.S.C.