

**Brockman v Cox**

2021 NY Slip Op 33809(U)

April 20, 2021

Supreme Court, Westchester County

Docket Number: Index No. 59973/2020

Judge: Terry Jane Ruderman

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.

To commence the statutory time 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.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

-----X  
DONNA BROCKMAN,

Plaintiff,

DECISION and ORDER

-against-

Motion Sequence Nos. 1 & 2  
Index No. 59973/2020

LAUREN COX,

Defendant.

-----X  
LAUREN COX,

Third-Party Plaintiff,

-against-

RASHEDA RIVERS,

Third-Party Defendant.

-----X  
RUDERMAN, J.

The following papers were considered in connection with the motion by plaintiff Donna Brockman for an order pursuant to CPLR 3212, granting her partial summary judgment on the issue of liability and dismissing defendant's first affirmative defense of comparative negligence (motion sequence 1), and third-party defendant Rasheda Rivers' cross-motion for an order granting her summary judgment dismissing the third-party complaint (motion sequence 2):

<u>Papers - Sequence 1</u>	<u>Numbered</u>
Notice of Motion, Affirmation, Affidavit, Exhibits A - D	1
Affirmation in Opposition, Exhibit A	2
Reply Affirmation	3

- Sequence 2

Notice of Cross-Motion, Affirmation, Affidavit, Exhibits A - B, and Memorandum of Law	4
Affirmation in Opposition, Exhibit A	5
Reply Affirmation, Reply Memorandum of Law	6

This is an action for personal injuries allegedly sustained by plaintiff as a result of a collision between the vehicle owned and operated by defendant Lauren Cox and the vehicle owned and operated by third-party defendant Rasheda Rivers, in which plaintiff Donna Brockman was a passenger. The collision occurred on February 7, 2020, at approximately 3:15 p.m., on the exit ramp for exit 7A from I-87 southbound to the Saw Mill River Parkway in the Town of Greenburgh, New York. The vehicle operated by Rasheda Rivers had stopped at the stop sign at the bottom of the ramp, and then began to proceed onto the Saw Mill River Parkway when she braked again, at which time the Cox vehicle struck the Rivers vehicle in the rear.

Plaintiff Brockman, as a passenger in the Rivers vehicle, commenced this negligence action against Cox, by summons and complaint filed September 11, 2020. Cox filed an answer alleging, inter alia, the affirmative defense of comparative negligence, then filed a third-party complaint against Rivers.

In moving for summary judgment, Brockman relies on her status as an innocent passenger, citing *Johnson v Phillips* (261 AD2d 269 [1st Dept 1999]) and *Silberman v Surrey Cadillac Limousine Serv., Inc.* (109 AD2d 833 [2d Dept 1985]), as well as on the rule that “a rear-end collision with a stopped or stopping vehicle establishes a prima facie case of negligence on the part of the operator of the rear vehicle, thereby requiring that operator to rebut the inference of negligence by providing a nonnegligent explanation for the collision” (*see Kuris v El Sol Contr. & Constr. Corp.*, 116 AD3d 675, 675-676 [2d Dept 2014]).

In cross-moving for dismissal of the third-party complaint, Rivers also relies on the rule

regarding rear-end collisions, contending that a sudden stop by the lead vehicle does not raise an issue of fact.

In opposition to both motions, Cox submits an affidavit describing how the Rivers vehicle first stopped at the stop sign and then began to accelerate into the merge lane, while Cox pulled up to the solid white line at the stop sign and came to a full stop. Cox describes looking over her left shoulder for oncoming cars, then beginning to accelerate, when she observed the Rivers vehicle come to a stop in the merge lane ahead of her, although there were no approaching vehicles and no traffic stopped in front of it. Cox argues that the motions are premature, since discovery has not yet taken place, and that issues of fact exist as to Brockman's and Rivers' observations, the reason Rivers braked after starting to accelerate, and the possibility that Rivers could have taken evasive action to avoid the collision.

#### Discussion

Cox was under a duty to maintain a safe distance between her vehicle and the vehicle in front of her (*see* Vehicle and Traffic Law § 1129 [a]). Even accepting as true Cox's description of how the accident occurred, she has not rebutted the inference of negligence by providing a nonnegligent explanation for the collision: "the defendant's contention, made in opposition to the plaintiffs' motion, that the plaintiff proceeded once the traffic light turned green but then suddenly stopped, did not rebut the inference of negligence by providing a non-negligent explanation for the collision" (*Ramirez v Konstanzer*, 61 AD3d 837, 837 [2d Dept 2009] [citations omitted]; *see also Silberman v Surrey Cadillac Limousine Service, Inc.*, 109 AD2d 833, 833 [summary judgment granted in favor of passenger and against rear vehicle, regardless of possibility comparative negligence of vehicle in front, where "The only explanation provided by [the rear driver] for the accident [was] that the vehicle in front had stopped suddenly and

without warning”)).

Plaintiff is entitled to summary judgment against Cox. The issues that Cox claims require discovery are insufficient to establish a non-negligent explanation for Cox’s vehicle colliding with Rivers’ vehicle. Nor may Cox interpose a valid claim of comparative negligence as against plaintiff, an innocent passenger (*see Silberman v Surrey Cadillac, supra*).

Cox’s claim for contribution/indemnification in her third-party action against Rivers is based on the contention that Rivers caused or contributed to causing the collision by stopping short after starting to accelerate from a full stop, without good reason for doing so. However, the Second Department has repeatedly held that “A claim that the driver of the lead vehicle made a sudden stop, standing alone, is insufficient to rebut the presumption of negligence” (*see e.g. Jumandeo v Franks*, 56 AD3d 614, 615 [2d Dept 2008], quoting *Russ v Investech Secs.*, 6 AD3d 602 [2d Dept 2004]). The lead vehicle’s reason for stopping after beginning to accelerate is not relevant; the rear vehicle is not entitled to accelerate without looking, based on the assumption that the vehicle one or two car lengths in front of it will continue to accelerate once it begins.

Although “not every rear-end collision is the *exclusive* fault of the rearmost driver” (*Gaeta v Carter*, 6 AD3d 576, 576 [2d Dept 2004] [emphasis added] [citations omitted]), and there are circumstances where questions are presented as to whether the lead driver breached a duty “not to stop suddenly or slow down without proper signaling so as to avoid a collision” (*see e.g. Carhuayano v J&R Hacking*, 28 AD3d 413, 414 [2d Dept 2006], quoting *Chepel v Meyers*, 306 AD2d 235, 236 [2d Dept 2003]), more must be shown than a mere assertion that the lead driver stopped after briefly proceeding after a full stop, in order to establish the existence of an issue of fact as to the lead driver’s comparative negligence. In *Gaeta v Carter*, for example, an

issue remained for trial as to the lead driver's comparative negligence based on the evidence that "the plaintiff stopped his car in traffic in an attempt to make a right-hand turn, from the left-hand lane, without signaling" (6 AD3d at 577). Similarly, evidence that the lead driver stopped suddenly and without warning in the left lane of moving traffic in order to make an illegal left turn also sufficed (*see Ramos v TC Paratransit*, 96 AD3d 924, 925-926 [2d Dept 2012]). In such cases, since the rear driver could reasonably anticipate that the car in front would continue to proceed with the flow of traffic until conditions or circumstances changed, the lead driver could be found negligent for stopping short in the roadway in the middle of the flow of traffic, in contravention of traffic regulations, without prior indication:

This is not such a situation. By Cox's own narrative, Rivers had only just begun to accelerate, and was only a car length or two in front of Cox's vehicle. Cox had no right to anticipate or assume that the vehicle in front of it would proceed onto the highway without hesitation. By accelerating before the vehicle ahead of her had completely proceeded, the negligence that caused the collision was solely Cox's failure to ensure that a safe distance was maintained between her vehicle and the vehicle in front of her (*see Vehicle and Traffic Law* § 1129 [a]).

Accordingly, it is hereby

ORDERED that plaintiff's motion for partial summary judgment against defendant Lauren Cox on the issue of liability, and to dismiss defendant's affirmative defense of culpable conduct on plaintiff's part, is granted, and it is further

ORDERED that third-party defendant's motion for summary judgment dismissing the third-party complaint is granted, the third-party complaint is dismissed; and it is further

ORDERED that the remaining parties shall appear in the Preliminary Conference Part of

the Westchester Supreme Court on a date and in a manner of which they will be notified by that Part.

This constitutes the Decision and Order of the Court.

Dated: White Plains, New York  
April 20, 2021

  
HON. TERRY JANE RUDERMAN, J.S.C.