

Smith v Gabrielli Truck Leasing LLC
2022 NY Slip Op 32456(U)
January 14, 2022
Supreme Court, Queens County
Docket Number: Index No. 712275/2021
Judge: Karina E. Alomar
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (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.

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: Honorable **KARINA E. ALOMAR**
Justice

IA PART 23

-----X

JENNIFER V. SMITH,

Index No.: 712275/2021

Motion Date: 1/6/2022

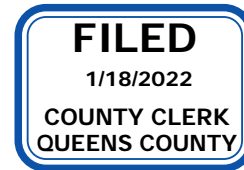
Plaintiff,

Motion Cal. No.:8

Motion Seq. No.: 1

-against-

GABRIELLI TRUCK LEASING LLC, DIAMOND
TRUCK LEASING CORP., and EDWARD D.
DONELAN,



Defendants.

-----X

The following numbered papers read on this motion by plaintiff for summary judgment, and defendants' cross motion to dismiss plaintiff's complaint against defendant Gabrielli Truck Leasing LLC

PAPERS	NUMBERED
Notice of Motion-Affidavits-Exhibits.....	1 - 5
Notice of Cross Motion-Affidavits-Exhibits.....	6 - 9
Reply	10 - 11

Upon the foregoing cited papers, it is ordered that plaintiff's motion for summary judgment and defendants' cross motion to dismiss the complaint against defendant, Gabrielli Truck Leasing LLC, are determined as follows:

Plaintiff commenced the instant action to recover for injuries she allegedly sustained in a motor vehicle accident that occurred on February 20, 2021 when a vehicle operated by defendant Edward D. Donelan, owned by co-defendants, Gabrielli Truck Leasing LLC and Diamond Truck Leasing Corp., struck plaintiff's vehicle in the rear. Plaintiff now moves for, inter alia, summary judgment on the issue of liability and for an order dismissing defendants' first, third and sixth affirmative defenses. Defendants' cross-move to, inter alia, dismiss plaintiff's complaint against defendant, Gabrielli Truck Leasing LLC on the ground that the action is barred by the Graves Amendment.

The proponent of a summary judgment motion has the burden of submitting evidence in admissible form demonstrating the absence of any triable issues of fact and establishing entitlement to judgment as a matter of law (*see Giuffrida v Citibank Corp.*, 100 NY2d 72 [2003]; *see also Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986]). Only when the movant satisfies its *prima facie* burden will the burden shift to the opponent “to lay bare his or her proof and demonstrate the existence of triable issues of fact” (*Alvarez*, 68 NY2d at 324; *see also Zuckerman v City of New York*, 49 NY2d 557 [1980]; *Chance v Felder*, 33 AD3d 645, 645-646 [2006]).

In support of the motion, plaintiff submits, inter alia, plaintiff’s affidavit and a certified copy of the police report.

Plaintiff stated that at the time of the accident, she brought her vehicle to a complete stop due to the red traffic light at the intersection of Sunrise Highway and Terrace Place in Valley Stream, New York. She averred that she was at a complete stop for approximately two minutes when defendants’ vehicle struck her vehicle in the rear. Additionally, plaintiff stated that she was seat belted at the time of the accident. Plaintiff further explained that she was not speeding immediately prior to the accident, nor did she make any maneuvers with her vehicle to cause or contribute to the happening of this accident.

The driver of a motor vehicle that approaches another vehicle from the rear, must maintain a reasonably safe rate of speed and control over his vehicle, and use reasonable care to avoid colliding with a lead vehicle (*see Comas-Bourne v City of New York*, 146 AD3d 855, 856 [2d Dept 2017]). It is well-settled law that a rear-end collision with a stopped or stopping vehicle creates a *prima facie* case of liability as to the rearmost vehicle, requiring that driver to rebut this inference of negligence by providing a nonnegligent explanation for the collision (*see Tutrani v County of Suffolk*, 10 NY3d 906, 908 [2008]; *Comas-Bourne*, 146 AD3d at 856; *see also Vehicle and Traffic Law* § 1129[a]). Therefore, plaintiff met her *prima facie* burden, and it is incumbent on defendants to raise a triable issue of fact.

In opposition, defendants submit, inter alia, the affidavit of defendant, Edward D. Donelan.

Donelan stated that on the date of the accident, he was driving in the center lane of eastbound Sunrise Highway behind plaintiff’s vehicle. He testified that the truck was in excellent mechanical condition. He further averred that immediately prior to the accident, both vehicles approached the intersection of South Terrace Place at approximately 25-30 miles per hour. Moreover, he explained that at the time he was approximately 30 feet behind plaintiff’s vehicle. Additionally, he stated that when plaintiff’s vehicle was approximately 1 car length from the intersection, the traffic light turned yellow, and plaintiff’s vehicle suddenly and unexpectedly came to an abrupt stop

in front of the truck. Donelan was unable to bring the truck to a stop in time to avoid a collision. However, “[a] claim that the driver of the lead vehicle made a sudden stop, standing alone, is insufficient to rebut the presumption of negligence” (*see Robayo v Aghaabdul*, 109 AD3d 892, 893 [2d Dept 2013], quoting *Jumandeo v Franks*, 56 AD3d 614 [2d Dept 2008]).

Accordingly, plaintiff’s motion for summary judgment on the issue of liability is granted.

As to defendants’ unopposed cross motion, defendants submit, inter alia, a copy of the lease agreement dated April 28, 2017 between Gabrielli Truck Leasing LLC and Diamond Truck Leasing Corp.

Defendants aver that pursuant to the lease and lease extension, defendant, Gabrielli Truck Leasing LLC cannot be held vicariously liable for any negligence on the part of a lessee or non-Gabrielli employee operator pursuant to the Graves Amendment. Defendant Gabrielli takes the position that it has no legal responsibility for the use and operation of the subject vehicle. Additionally, Donelan states in his affidavit that the truck he drove at the time of the accident was in excellent mechanical condition.

49 USC § 30106 (also known as the Graves Amendment) states in relevant part:

“An owner of a motor vehicle that rents or leases the vehicle to a person (or an affiliate of the owner) shall not be liable under the law of any State or political subdivision thereof, by reason of being the owner of the vehicle (or an affiliate of the owner), for harm to persons or property that results or arises out of the use, operation, or possession of the vehicle during the period of the rental or lease, if: (1) the owner (or an affiliate of the owner) is engaged in the trade or business of renting or leasing motor vehicles; and (2) there is no negligence or criminal wrongdoing on the part of the owner (or an affiliate of the owner).

Pursuant to the lease agreement and extension, Gabrielli Truck Leasing LLC has established, prima facie entitlement to summary judgment based on the Graves Amendment barring plaintiff’s cause of action, because Gabrielli Truck Leasing LLC is the owner of the vehicle and is “engaged in the trade or business of renting or leasing motor vehicles” (49 USC § 30106; *Bryne v Collins*, 77 AD3d 782 [2d Dept 2010]; *Gluck v Nebgen*, 72 AD3d 1023 [2d Dept 2010]). Additionally, the vehicle at issue was being used as a leased vehicle by co-defendant Diamond Truck Leasing Corp. on the date of the

accident. Thus, the complaint against defendant Gabrielli Truck Leasing LLC must be dismissed (49 USC § 30106; *Graham v Dunkley*, 50 AD3d 55 [2d Dept 2008]).

Accordingly, plaintiff's motion on the issue of liability is granted; and it is further

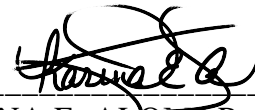
ORDERED that the affirmative defenses alleging assumption of risk and culpable conduct of the plaintiff, the third affirmative defense concerning plaintiff's failure to use a seat belt, and sixth affirmative defense alleging that plaintiff's acts and/or omissions constitute a failure to mitigate damages are dismissed; and it is further

ORDERED that defendants' cross motion is granted and plaintiff's complaint is dismissed as to Gabrielli Truck Leasing LLC; and it is further

ORDERED that plaintiff shall serve a copy of this order, together with notice of entry, on the defendants within 30 days of the date of entry of this order.

This constitutes the decision and order of the Court.

Dated: January 14, 2022



KARINA E. ALOMAR, J.S.C.

