

Hanchard v Spectrum N.Y. Metro, LLC
2023 NY Slip Op 30153(U)
January 12, 2023
Supreme Court, New York County
Docket Number: Index No. 155484/2019
Judge: James G. Clynes
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. JAMES G. CLYNES PART 22M

Justice

CHRISTINE HANCHARD,

Plaintiff,

- v -

SPECTRUM NEW YORK METRO, LLC F/K/A TIME
WARNER CABLE NEW YORK CITY LLC., OMAR D.
ALEXANDER, CHARTER COMMUNICATIONS, LLC

Defendant.

INDEX NO. 155484/2019
MOTION DATE 04/29/2022
MOTION SEQ. NO. 003

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102

were read on this motion to/for

JUDGMENT - SUMMARY

Upon the foregoing documents and following oral argument Plaintiff's motion for an order granting summary judgment on liability in favor of Plaintiff and against Defendants and for an order finding Plaintiff to be free from comparative fault striking Defendants' second (culpable conduct by Plaintiff), third (culpable conduct by some unknown third person or persons), eighth (failure to use seatbelt by Plaintiff) and ninth (intervening and/or interceding acts of superseding negligence, liability, statutory liability, strict liability by other parties) affirmative defenses; and Defendants' cross-motion for summary judgment on liability in favor of Defendants and against Plaintiff and for dismissal of the complaint against them is decided as follows:

Plaintiff seeks recovery for injuries allegedly sustained as a result of a November 29, 2018, motor vehicle accident between Plaintiff's vehicle and the vehicle owned and operated by Defendants.

Plaintiff's submission includes the examination before trial testimony (EBT) of Plaintiff, Defendant Driver, and the police officer who responded to the accident, Plaintiff's affidavit, dated

April 12, 2022, the affidavit of the Defendant Driver dated September 14, 2020, the police accident report, photographs, and the pleadings. In her April 12, 2022 affidavit, Plaintiff avers that Defendants' van backed up and rammed into the driver's side of her car while she was parking behind it and that she was wearing her seatbelt at the time of the accident. Plaintiff's affidavit also provides summaries of her examination before trial testimony on March 9, 2021, and April 6, 2021, her statements to the police officer who responded to the accident, and states that the police report annexed to her papers is accurate and contains the exact statement she gave to the officer when he asked her what happened. Plaintiff further explains that she signed a previous affidavit without reading it that was submitted in support of her first motion for summary judgment on the issue of liability only, but that once she read that affidavit and realized it contained some factual errors, she told her attorney and Plaintiff's previous affidavit and prior motion for summary judgment on liability were withdrawn.

In her EBT testimony and her supporting affidavit Plaintiff avers, among other things that she was already in a parking spot, not perfectly but in the spot and trying to maneuver to get closer to the curb and straight when defendants' van began backing into her vehicle and that she moved up on the sidewalk to try to avoid contact with defendants' vehicle.

Plaintiff contends that she has established prima facie negligence in her favor and against Defendants through the combination of her sworn testimony that she was a seat-belted operator of her vehicle in a parking spot when Defendants' vehicle reversed into Plaintiff's vehicle and also through Defendant driver's testimony that he did not see Plaintiff's vehicle until the collision had occurred and his admission as recorded in the police accident report that he was backing up and did not see Plaintiff attempting to pull into spot, subsequently crashing into Plaintiff.

Defendants oppose Plaintiff's motion and cross-move for summary judgment in their favor and for dismissal of the complaint against them. Defendants' submission includes an affidavit from John A. Desch, Defendants' expert in accident reconstruction and traffic engineering, dated June 29, 2022, and Plaintiff's affidavit, dated July 7, 2020, and fully incorporated by reference the exhibits annexed to Plaintiff's motion papers.

In his affidavit, Desche avers that he conducted an analysis of Plaintiff's vehicle using Virtual Crash Accident Reconstruction Software (Virtual CRASH) and found that given the position of her vehicle following the impact, as observed in the photographs, it would be physically impossible for the accident to occur as Plaintiff described it. Desche concluded that it is his opinion, to a reasonable degree of accident reconstruction and engineering certainty, that the actions of plaintiff were the immediate contributing factors that resulted in the subject collision.

Defendant driver's EBT testimony states that he was in the process of parallel parking, was wearing a seat belt, he was driving in reverse at 1-2 miles per hour; despite continuously scanning his mirrors he had no warning before the accident, did not hear a horn; and that Plaintiff was pulling forward as he was backing into the parking spot when the collision occurred.

Defendant contends that there are inconsistencies between Plaintiff's account of how the accident happened as set forth in her EBT testimony and her affidavits, Defendant driver's testimony, and Defendants' expert affidavit.

Based on the submissions of both parties, there are material issues of fact as to how the accident occurred. Therefore, summary judgment must be denied on both motions so that these issues of fact and credibility may be resolved at trial.

Accordingly, it is

ORDERED that Plaintiff's motion for summary judgment on liability in favor of Plaintiff and against Defendants and for an order finding Plaintiff to be free from comparative fault striking Defendants' second (culpable conduct by Plaintiff), third (culpable conduct by some unknown third person or persons), eighth (failure to use seatbelt by Plaintiff), and ninth (intervening and/or interceding acts of superseding negligence, liability, statutory liability, strict liability by other parties) affirmative defenses is DENIED; and it is further

ORDERED that Defendants' cross-motion for summary judgment on liability in favor of Defendants and against Plaintiff and for dismissal of the complaint against them is DENIED; and it is further

ORDERED that any relief sought not expressly addressed herein has nonetheless been considered; and it is further

ORDERED that within 30 days of entry, Plaintiff shall serve a copy of this Decision and Order upon Defendants with Notice of Entry.

This constitutes the Decision and Order of the Court.

1/12/2023

DATE

CHECK ONE:

APPLICATION:

CHECK IF APPROPRIATE:

☐
☐
☐
☐

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

☒

DENIED

☒
☐
☐
☐

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

☐

OTHER

☐

REFERENCE

James G. Clynes

JAMES G. CLYNES, J.S.C.