

Clas v Wright

2023 NY Slip Op 32868(U)

August 7, 2023

Supreme Court, Kings County

Docket Number: Index No. 524759/2018

Judge: Francois A. Rivera

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At an IAS Term, Part 52 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 7th day of August 2023

HONORABLE FRANCOIS A. RIVERA

-----X
ANNETE CLAS

Plaintiff,

- against -

TROY OJAN WRIGHT and AVNISH GHEI

Defendant.

-----X

Recitation in accordance with CPLR 2219 (a) of the papers considered on the notice of motion filed on December 30, 2022, under motion sequence number five by plaintiff Annete Clas (hereinafter plaintiff of Clas) for an order pursuant to CPLR 3212 granting summary judgment in plaintiff's favor on the issue of liability and dismissing the affirmative defenses related to liability and failure to properly use a seat belt asserted by Troy Ojan Wright (hereinafter Wright or the defendant). The motion is opposed.

- Notice of Motion
- Statement of material facts
- Affirmation of counsel in support
Exhibits A-F
- Affirmation in opposition
Exhibit A
- Counterstatement of material facts
- Affirmation in reply

BACKGROUND

On December 10, 2018, plaintiff commenced the instant action for damages for personal injury by filing a summons and verified complaint with the Kings County Clerk's

office. On January 9, 2019, defendant Wright joined issue by filing a verified answer. On

February 28, 2019, defendant Avnish Ghei joined issue by filing a verified answer with cross claims. As relevant here, Wright's second affirmative defense alleges that the plaintiff's negligence contributed to causing the subject accident and the fourth affirmative defense alleges that the plaintiff's injuries was caused in whole or in part by the failure to properly use a seatbelt.

The verified complaint alleges the following salient facts. On February 26, 2018, at approximately 8:30 am, Clas was driving an automobile on Central Park Avenue at or near its intersection with Canfield Avenue, in the County of Westchester, City of Yonkers and State of New York. On the same date, time and place, Ghei was driving his 2017 Infinity bearing license plate HVU7425 and Wright was driving his 2015 Nissan bearing license plate T717595C. On the same date, time and place the vehicle driven by Ghei and the vehicle driven by Wright came into contact with each other due to the drivers' negligent operation of their respective cars. The contact caused a collision with the plaintiff's vehicle and caused the plaintiff to sustain serious physical injuries

LAW AND APPLICATION

A plaintiff moving for summary judgment on the issue of liability in a negligence action must establish, prima facie showing that the defendant breached a duty owed to the plaintiff and the defendant's negligent actions were a proximate cause of the alleged injuries (*Hall v Powell*, 183 AD3d 576 [2nd Dept 2020]). A rear-end collision 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 non-negligent explanation for the collision (*Witonsky v New York City Transit Authority*, 145 AD3d 938

[2nd Dept 2016]; *Hall v Powell*, 183 AD3d 576 [2nd Dept 2020]; *Tsyganash v Auto Mall Fleet Mgt., Inc.*, 163 AD3d 1033 [2nd Dept 2018]).

A motion for summary judgment shall be supported by an affidavit, by a copy of the pleadings and by other available proof, such as, depositions and written admissions (CPLR 3212 (b); *Poon v Nisanov*, 162 AD3d 804 [2nd Dept 2018]; *Marriot v Jackson*, 67 Misc3d 1211(A) [Kings Supreme Court 2020]).

In support of the motion, the plaintiff submitted, among other things, her own affidavit, the affidavit of Avnish Ghei, a copy of a certified police accident report and two prior orders of the Court. One order sanctioning defendant Wright and the other granting a summary judgment motion made by Ghei and dismissing the complaint as asserted against Ghei.

The plaintiff's evidentiary submission established the following facts. At the time of the accident, plaintiff was the driving her vehicle on Central Park Avenue near its intersection with Canfield Avenue in the City of Yonkers and came to a complete stop on the roadway while she waited for the traffic light to change to green. She then felt a very hard impact when she was struck in the rear by the vehicle operated Ghei. She averred that the vehicle operated by Ghei was struck by the vehicle operated by Wright.

By decision and order issued on January 7, 2021, the Court granted defendant Ghei's motion for summary judgment finding that Ghei was not liable for causing the subject accident and dismissing the complaint as asserted against Ghei. Ghei's affidavit made a prima facie showing that at the time of the collision, he was stopped at a red light on Central Park Avenue at or near its intersection with Canfield Avenue, in the City of Yonkers when

he was struck in the rear by Wright's vehicle and was propelled into the vehicle operated by the plaintiff. In a chain collision accident, the operator of the middle vehicle may establish prima facie entitlement to judgment as a matter of law by demonstrating that the middle vehicle was properly stopped behind the lead vehicle when it was struck from behind by the rear vehicle and propelled into the lead vehicle (*Chuk Hwa Shin v Correale*, 142 AD3d 518, 519 [2nd Dept 2016], citing *Niosi v Jones*, 133 AD3d 578, 580 [2nd Dept 2015]).

Plaintiff's evidentiary submission has established prima facie entitlement to judgment in her favor on the issue of liability as against defendant Wright. 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 (Vehicle and Traffic Law § 1129 [a]; *Witonsky*, 145 AD3d 938). Here, defendant Wright breached that duty owed to defendant Ghei and to the plaintiff and caused the chain collision propelling the Ghei vehicle into the plaintiff's vehicle.

It is well established that summary judgment may be granted only when no triable issue of fact exists. A failure to make that showing requires the denial of the summary judgment motion, regardless of the adequacy of the opposing papers. (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851 [1985]; *Campbell v Mehmood*, 68 Misc3d 1205(A) [Kings Supreme Court 2020]).

Plaintiff's evidentiary submission established, prima facie, that she was not at fault in the happening of the accident and that she was wearing a seat belt at the time of the accident. By order issued on December 15, 2022, Justice Knipel sanctioned defendant

Wright for willful discovery violations precluding him from offering an affidavit in response to any dispositive motion. Although he did submit an affidavit in opposition to the instant motion, he withdrew it conceding it was improperly submitted in violation of that order. Consequently, defendant Wright's opposition papers did not raise a triable issue of fact.

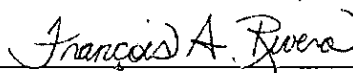
CONCLUSION

The motion by plaintiff Annete Clas for an order pursuant to CPLR 3212 granting summary judgment in plaintiff's favor on the issue of liability as against the defendant Troy Ojan Wright is granted.

The motion by plaintiff AnneteClas for an order pursuant to CPLR 3212 granting summary judgment in plaintiff's favor and striking the affirmative defenses alleging comparative negligence and failure to properly use a seat belt as asserted by Try Ojan Wright is granted.

The foregoing constitutes the decision and order of this Court.

ENTER:



J.S.C.
HON. FRANCOIS A. RIVERA
J.S.C.