

**Geneve-Third v Collins**

2024 NY Slip Op 33699(U)

October 17, 2024

Supreme Court, New York County

Docket Number: Index No. 159098/2021

Judge: James G. Clynes

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.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. JAMES G. CLYNES PART **22M****

*Justice*

-----X	<b>INDEX NO.</b>	<u>159098/2021</u>
JOANNA GENEVE-THIRD, DAVID ROBERT THIRD	<b>MOTION DATE</b>	<u>05/20/2024,</u> <u>05/21/2024</u>
Plaintiff,	<b>MOTION SEQ. NO.</b>	<u>001 002</u>
- v -		

TIMOTHY JEFFERIES COLLINS, STEPHEN COLLINS,  
Defendants.

**DECISION + ORDER ON  
MOTION**

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 19, 20, 21, 22, 23, 24, 28, 29, 30, 31

were read on this motion to/for JUDGMENT - SUMMARY.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 35, 36, 37, 38

were read on this motion to/for SUMMARY JUDGMENT (AFTER JOINDER).

Upon the foregoing documents, the motion by Plaintiff on the counterclaim David Third for summary judgment pursuant to CPLR 3212 dismissing the counterclaim and any and all cross claims against him on the basis that he did not breach any duty owed to Plaintiff, and, therefore, is not a proximate cause of the subject accident (Motion Sequence #1) and Plaintiff Joanna Geneve-Third's motion for partial summary judgment against Defendants, dismissing Defendants' affirmative defenses alleging comparative negligence and culpable conduct on the part of Plaintiff Joanna Geneve-Third (Motion Sequence #2) are decided as follows:

Plaintiffs seeks recovery for injuries allegedly sustained as a result of a May 22, 2021 motor vehicle accident between a vehicle operated by David Third within which Joanna Geneve-Third was a passenger and a vehicle owned by Stephen Collins and operated by Timothy Jefferies (TJ) Collins.

Motion Sequence #1

In support of his motion, Plaintiff on the counterclaim David Third relies on, in pertinent part, the examination before trial testimony of himself, Joanna Geneve-Third, and Defendant TJ Collins, as well as a certified copy of the police report. Plaintiff on the counterclaim contends that his vehicle was at a complete stop when Defendant TJ Collins' vehicle struck his in the rear, causing the subject accident. He further contends that there is no dispute that his vehicle was stopped when Defendant TJ Collins' vehicle rear ended it and that there is no evidence of any negligent act or omission on Plaintiff on the counterclaim's part that caused or contributed to the happening of this accident.

David Third testified that he was prescribed glasses but was not wearing them on the day of the accident; before the accident, he mounted a bike rack and two bicycles to the back of his vehicle and checked to make sure that nothing was protruding from the sides and that the rear lights were visible; his wife was in the front passenger seat and his two children were rear passengers; he saw the other vehicle prior to the impact traveling directly behind his vehicle; they came to an intersection where there was a traffic jam, he stopped his vehicle for about five seconds when the vehicle behind his impacted the rear of his vehicle one time.

Joanna Geneve-Third testified that they were heading to Connecticut; her husband was driving, her children were in the back seat; she was wearing her seatbelt; her husband put a bike rack on the vehicle that morning; when the impact occurred their vehicle was fully stopped because there was traffic ahead of them; they went through an intersection, stopped for five seconds, and she felt a force to the rear of her vehicle. She further testified that she had seen the vehicle earlier on the road traveling directly behind their vehicle.

Defendant TJ Collins testified that he was driving alone at the time of the incident on his way to a track meet, he was following Plaintiffs' vehicle for about 1.5-2 miles before the intersection, Plaintiffs' vehicle was driving slowly and erratically, stopping and almost turning before most roads and intersections as though they did not know where they were going, at the intersection, they slowed down, so he did too, then they suddenly came to a stop, but Defendant TJ Collins testified that he "couldn't really" see the brake lights when they were stopping because of a bike rack on the back of Plaintiffs' vehicle, and his vehicle impacted the rear of Plaintiffs' vehicle and their bike rack.

The certified police accident report identifies the parties and states "Veh 1 [Plaintiff on the counterclaim] travelling E on Rt 35 stopped in traffic was rear ended by Veh 2 [Defendant TJ Collins]. Veh 1 [Plaintiff on the counterclaim] had 2 bikes + bike rack damaged."

In opposition, Defendants contend that there are genuine issues of material fact with respect to the happening of the subject accident. Specifically, Defendants contend that Plaintiff on the counterclaim's abrupt stop, which was not preceded by any warning as the brake lights were obscured, was unexpected. Defendants further contend that Plaintiff on the counterclaim violated VTL 1163 (d) which requires that the driver of a motor vehicle provide the appropriate signal.

In reply, Plaintiff on the counterclaim contends that a sudden stop in anticipated traffic conditions is insufficient to create a triable issue of fact.

Here, Plaintiff has established prima facie entitlement to summary judgment as it is undisputed that Defendants' vehicle rear ended Plaintiffs' vehicle. In opposition, Defendants failed to offer a nonnegligent explanation for the accident sufficient to rebut the presumption of negligence (*Lambert v Bonilla*, 201 AD3d 502 [1st Dept 2022]). A conclusory assertion that the sudden stop of the lead vehicle caused the accident is in and of itself insufficient (*Giap v Hathi*

*Son Pham*, 159 AD3d 484, 485 [1st Dept 2018]). Further, stops that are foreseeable under prevailing traffic conditions must be anticipated by the driver who follows, who is under a duty to maintain a safe distance between their vehicle and the lead vehicle (*Catanzaro v Ebery*, 172 AD3d 995, 996 [2d Dept 2019]). Defendant TJ Collins failed to establish that he maintained a safe following distance and that any repeated braking by Plaintiff on the counterclaim was not foreseeable due to traffic, regardless of whether he saw the brake lights (*Ahmad v Behal*, 221 AD3d 558 [1st Dept 2023]; *see also Farrington v NY City Tr. Auth.*, 33 AD3d 332 [1st Dept 2006] defendant first saw stopped vehicle three or four seconds before impact; even if brake lights not functioning, such failure would not adequately rebut inference of the defendant's negligence]). The motion by Plaintiff on the counterclaim David Third for summary judgment pursuant to CPLR 3212 dismissing the counterclaim and any and all cross claims against him is granted.

#### Motion Sequence #2

Plaintiff Joanna Geneve-Third's motion for partial summary judgment is granted without opposition. There is no dispute that Plaintiff is free from liability as an innocent passenger and is therefore entitled to partial summary judgment on the issue of liability (*see Garcia v Tri-County Ambulette Service, Inc.*, 282 A.D.2d 206 [1st Dept. 2001]). Plaintiff contends that she established her entitlement to summary judgment as a matter of law on the issue of liability and established that she was a passenger in the lead vehicle, which was struck from behind by the Defendants' vehicle.

Plaintiff on the counterclaim submits an affirmation in response to Plaintiff Geneve-Third's motion for partial summary judgment. Plaintiff on the counterclaim contends that Plaintiff Geneve-Third does not impute any liability on the part of the Plaintiff on the counterclaim, David

Third, in the happening of the accident as Mr. Third, was lawfully stopped when impacted in the rear by Defendants' vehicle.

There is no evidence of culpable conduct or contributory negligence by Plaintiff Geneve-Third, and it is undisputed that Plaintiff was using a seatbelt at the time of the accident. Therefore, the portion of the motion seeking an order striking Defendants' affirmative defenses is granted and those affirmative defenses are dismissed. Accordingly, it is

**ORDERED** that Plaintiff on the counterclaim's motion for summary judgment (Motion Sequence #1) is granted; and it is further

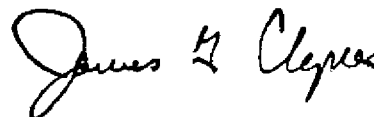
**ORDERED** that the counterclaim and any and all cross claims against Plaintiff on the counterclaim are dismissed; and it is further

**ORDERED** Plaintiff Joanna Geneve-Third's motion for partial summary judgment is granted without opposition; and it is further

**ORDERED** that Defendants' first Affirmative Defense alleging culpable conduct or contributory negligence by Plaintiff Joanna Geneve-Third is dismissed; and it is further

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

This constitutes the Decision and Order of the Court.



JAMES G. CLYNES, J.S.C.

10/17/2024  
DATE

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE