

Krackow v Kandler
2024 NY Slip Op 35649(U)
August 13, 2024
Supreme Court, Suffolk County
Docket Number: Index No. 605598/2019
Judge: Kathy G. Bergmann
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SHORT FORM ORDER

INDEX No. 605598/2019CAL. No. 202400100MVSUPREME COURT - STATE OF NEW YORK
I.A.S. PART 6 - SUFFOLK COUNTY***P R E S E N T :***Hon. KATHY G. BERGMANN
Justice of the Supreme CourtMOTION DATE 4/17/24
ADJ. DATE 5/7/24
Mot. Seq. # 006 MD-----X
NICHOLE KRACKOW,

Plaintiff,

- against -

ERIC KANDLER, NORTH SHORE
CHEVROLET LLC, CHRISTIAN DUFFOO,
FRANCES J. DUFFOO, BONNIE R. STENZEL
and RAYMOND J. STENZEL,Defendants.
-----XTHE LICATESI LAW GROUP, LLC
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Uniondale, New York 11556LAW OFFICE OF KATIE A. WALSH
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Upon the following papers read on this e-filed motion for summary judgment: Notice of Motion/Order to Show Cause and supporting papers by plaintiff, filed March 21, 2024; Notice of Cross-Motion and supporting papers ; Answering Affidavits and supporting papers by defendants Bonnie R. Stenzel and Raymond J. Stenzel, filed April 15, 2024, and by defendants Eric Kandler and North Shore Chevrolet LLC, filed on May 3, 2024; Replying Affidavits and supporting papers by plaintiff, filed in reply to defendants Bonnie R. Stenzel and Raymond J. Stenzel, filed April 22, 2024, and by plaintiff, filed in reply to defendants Eric Kandler and North Shore Chevrolet LLC, filed on May 6, 2024; Other ; it is

ORDERED that the motion by plaintiff for summary judgment in her favor on the issue of defendants' negligence is denied.

Plaintiff commenced this action to recover damages for personal injuries she allegedly sustained as the result of a motor vehicle accident that happened on Route 112 in the Town of Brookhaven on August 28, 2018. The accident allegedly occurred as the result of a four-car, chain-reaction collision which involved plaintiff's vehicle, as well as a vehicle driven by defendant Bonnie Stenzel and owned by defendant Raymond Stenzel (the Stenzel defendants); a vehicle driven by defendant Christian Duffoo

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and owned by defendant Frances Duffoo (the Duffoo defendants); and a vehicle driven by defendant Eric Kandler, and owned by defendant North Shore Chevrolet LLC (the Kandler defendants). Plaintiff asserted claims of negligence against all defendants. The action was discontinued against the Duffoo defendants pursuant to a stipulation filed on August 7, 2023.

Plaintiff now moves for summary judgment in her favor on the issue of defendants' negligence, arguing that she was free from fault in the accident. In support of the motion, she submits, among other things, the parties' deposition transcripts. The Stenzel defendants and the Kandler defendants oppose the motion, both arguing, among other things, that plaintiff failed make a prima facie case that defendants were negligent.

Plaintiff testified that she was involved in a motor vehicle accident on August 28, 2018, while traveling northbound on Route 112. She testified that after having stopped her vehicle for a red light for ten to twenty seconds, it was impacted from the rear by a white Jeep. She testified that, approximately one second after the impact to her vehicle, she heard another "loud" impact from behind her. She exited her vehicle and saw another two vehicles behind the one that impacted hers: a blue Jeep, and a dark blue pickup truck. She testified that she believes the second collision she heard involved the blue Jeep and blue truck.

Defendant Bonnie Stenzel testified that on August 28, 2018, she was operating her vehicle, a white Jeep, northbound on Route 112. She testified that she had been traveling less than 30 miles per hour when she came to a stop at a red light, and twelve to fifteen feet in front of her vehicle was another vehicle, which was also stopped at the traffic light. She testified that, while stopped, she saw a blue Jeep approaching "full force" from behind, and that this vehicle collided with the rear of her vehicle and propelled it forward into the preceding vehicle. She stated that her foot was on the brake prior to the impact, and that she kept her foot on the brake as her vehicle was propelled forward.

Defendant Christian Duffoo testified that he was involved in a motor vehicle accident on August 28, 2018, while traveling northbound on Route 112. He testified that he was driving a Jeep at the time, and that there was a vehicle traveling in front of him, and that the preceding vehicle came to a sudden stop for a red light. He testified that he brought his vehicle to a stop, and was stopped for approximately three seconds, when another vehicle impacted it from behind, propelling it into the vehicle in front of his vehicle. He stated that he heard the sound of screeching tires prior to the impact to his vehicle.

Defendant Eric Kandler testified that he was involved in a motor vehicle accident on August 28, 2018, while traveling northbound on Route 112. He testified that he was operating a vehicle owned by his employer, North Shore Chevrolet, LLC. He testified that he was stopped behind a vehicle at a red traffic light, and when the traffic light turned green, the vehicles in front of his began to move. He testified that the vehicles traveled the equivalent of two to three "football fields" before his vehicle and the vehicle in front of it came into contact. He testified that, immediately prior to the impact, there were approximately two car lengths between his vehicle and the preceding vehicle. He testified that prior to the collision, he "heard" two impacts among the vehicles in front of him, and then the vehicle directly in front of him appeared to start moving backwards. He "slammed" on his brakes, and then collided with

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the rear of this vehicle. He testified that, prior to what appeared to be a change in direction of preceding vehicle, such vehicle did not stop or slow down prior to reversing direction. He testified that he believed that the reason the vehicle in front of him moved backward was because it had impacted the vehicle in front of it. Kandler stated that he was traveling at approximately 15 miles per hour when the collision occurred. He further stated that after the collision, the vehicle in front of him stopped, and a male passenger fled from the vehicle and away from the scene of the accident. He believed that there may have been two vehicles in front of the vehicle with which he collided.

“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” (see *O’Hara v Bancker Constr. Corp.*, 225 AD3d 889, 2024 NY Slip Op 01721 [2d Dept 2024]; *Jimenez-Pantaleon v Aucancela*, 221 AD3d 676, 197 NYS3d 601 [2d Dept 2023]; *Lopez v Dobbins*, 164 AD3d 776, 79 NYS3d 566 [2d Dept 2018]; Vehicle and Traffic Law § 1129 [a]). “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” (*Yawagyentsang v Safeway Constr. Enters., LLC*, 225 AD3d 827, 207 NYS3d 608 [2d Dept 2024]). Stops which are foreseeable under prevailing traffic conditions, even if sudden and frequent, must be anticipated by the following driver, who has a duty to maintain a safe distance between his or her vehicle and the preceding vehicle (*Quintanilla v Mark*, 210 AD3d 713, 177 NYS3d 687 [2d Dept 2022]; *Mahmud v Ouyang*, 208 AD3d 861, 174 NYS3d 721 [2d Dept 2022]). Generally, “[a]n assertion that the lead vehicle came to a sudden stop, standing alone, is insufficient to rebut the presumption of negligence on the part of the operator of the rear vehicle” (*Genao v Cassetta*, 214 AD3d 626, 627, 182 NYS3d 904 [2d Dept 2023], quoting *Gil v Manhattan Beer Distribs., LLC*, 207 AD3d 525, 526, 169 NYS3d 822 [2d Dept 2022] [internal quotation marks omitted]). “Evidence that a vehicle was struck in the rear and propelled into the vehicle in front of it may provide a sufficient nonnegligent explanation” for a rear-end collision (*Sougstad v Capuano*, 215 AD3d 776, 777, 187 NYS3d 93 [2d Dept 2023] [quotation marks and citations omitted]).

Plaintiff failed to demonstrate, prima facie, entitlement to summary judgment in her favor on the issue of the Stenzel defendants’ liability, as Bonnie Stenzel offered a nonnegligent explanation for the collision (see *Sougstad v Capuano*, 215 AD3d 776, 187 NYS3d 93; *Kuris v El Sol Contr. and Const. Corp.*, 116 AD3d 675, 983 NYS2d 580 [2d Dept 2014]). Bonnie Stenzel testified that she was stopped immediately prior to the accident, and that her vehicle was propelled into the rear of plaintiff’s vehicle by the force of the impact from the following vehicle driven by Christian Duffoo (see *Sougstad v Capuano*, 215 AD3d 776, 187 NYS3d 93). Therefore, there are triable issues of fact that still exist regarding the Stenzel defendants’ liability (see *Kuris v El Sol Contr. and Const. Corp.*, 116 AD3d 675, 983 NYS2d 580).

Plaintiff has also failed to demonstrate, prima facie, that the Kandler defendants were negligent (see *Despinos-Cadet v Stein*, 209 AD3d 978, 177 NYS3d 320 [2d Dept 2022]; *Cruz v Valentine Packaging Corp.*, 167 AD3d 707, 89 NYS3d 316 [2d Dept 2018]). Defendant Kandler testified that the vehicle in front of his vehicle unexpectedly reversed direction and moved toward him before the two vehicles collided, after another impact had already occurred between the vehicles in front of him.

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Christian Duffoo testified that Kandler's vehicle collided with the rear of his stopped vehicle, propelling it into the rear of the Stenzel's vehicle, and Bonnie Stenzel testified that her vehicle was hit from behind by the Duffoo vehicle because it was traveling too fast to stop. Further, it is unclear from the deposition testimony whether the impact between the Kandler vehicle and the Duffoo vehicle contributed to the impact to plaintiff's vehicle: plaintiff claims she heard an impact between the vehicles behind her, after her vehicle had already been struck, and Kandler's testimony reflects that a collision occurred in front of him, which forced the Duffoo vehicle backward into his. Thus, the parties' conflicting deposition testimony raises triable issues of fact regarding how the accident occurred (*see Despinos-Cadet v Stein*, 209 AD3d 978, 177 NYS3d 320).

Accordingly, plaintiff's motion for summary judgment in her favor on the issue of liability against all defendants is denied.

Dated: Aug. 13 2024

Kathy G. Bergmann
J.S.C.

HON. KATHY G. BERGMANN

 FINAL DISPOSITION

 X NON-FINAL DISPOSITION