

Oliver v City of New York

2011 NY Slip Op 33275(U)

December 13, 2011

Supreme Court, Queens County

Docket Number: 16779/08

Judge: Kevin Kerrigan

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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE KEVIN J. KERRIGAN Part 10
Justice

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Linda Oliver,

Plaintiff,

- against -

The City of New York, Fire Department New
York Emergency Medical Service, David L.
Edicy, Yoel Halaf and Douglas Quaranto,

Defendants.

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Index
Number: 16779/08

Motion
Date: 9/6/11

Motion
Cal. Number: 15

Motion Seq. No.: 5

The following papers numbered 1 to 21 read on this motion by defendants, the City of New York, Fire Department New York City Emergency Medical Service and David L. Edicy, for an order "directing liability" against defendant, Douglas Quaranto and for summary judgment; cross-motion by plaintiff for summary judgment against the City of New York, Fire Department New York Emergency Medical Service and David Edick(s/h/s David Edicy) (hereinafter collectively referred to as the City) and restoring the matter to the trial calendar; and cross-motion by defendants, Yoel Halaf and Ronit Halaf for summary judgment.

	<u>Papers Numbered</u>
Notice of Motion-Affirmation-Exhibits.....	1-4
Notice of Cross-Motion-Affirmation-Exhibits.....	5-8
Notice of Cross-Motion(Halaf).....	9-11
Affirmation in Opposition to Halaf.....	12-13
Affirmation in Opposition to City.....	14-15
Reply(City).....	16-17
Reply(PLtf).....	18-19
Reply to Quaranto(City).....	20-21

Upon the foregoing papers it is ordered that the motion and cross-motions are decided as follows:

Motion by the City for an order "directing liability" against Quaranto and for summary judgment dismissing the complaint and all cross-claims against it is denied. Cross-motion by plaintiff for

summary judgment against the City on the issue of liability and to restore the case to the trial calendar is denied. Cross-motion by Halaf for summary judgment dismissing the complaint and all cross-claims against them is denied. The papers on this motion and cross-motions raise issues of fact as to the comparative negligence of the parties that precludes the granting of summary judgment.

Plaintiff, a passenger in the motor vehicle operated by Quaranto, allegedly sustained injuries when Quaranto's vehicle rear-ended Halaf's vehicle on the Southern State Parkway at its merging point with the Cross-Island Parkway in Queens County after the City's vehicle, a Fire Department ambulance operated by Edick, slowed down or stopped on the Southern State on April 8, 2007.

Plaintiff testified in her statutory 50-h hearing that she was a passenger in Quaranto's vehicle and they were merging onto the Southern State Parkway from the Cross-Island Parkway traveling at approximately 35mph. She testified that she saw the Fire Department vehicle, a Suburban, stopped in front of them on the Parkway. She also saw the Lexus (Halaf's vehicle) which was directly in front of their (Quaranto's) vehicle approximately five to six car lengths' distant strike the Fire Department vehicle. She testified that Quaranto was looking in his mirror at the time because they were trying to get onto the Parkway and she yelled to him "and he saw it at the same time and slammed on his brakes." They struck the rear end of Halaf's vehicle. She did not know if Halaf's vehicle thereupon moved in any direction.

Quaranto testified in his deposition that he was looking in his left rearview mirror immediately before the accident, then looked forward, saw Halaf's vehicle stopped four to five car lengths in front of him, slammed on his brakes and impacted the rear of Halaf's vehicle. He testified that Halaf's vehicle struck the Fire Department vehicle, although he did not see it strike the Fire Department vehicle.

Halaf testified in his deposition that he and the Fire Department vehicle were traveling 20mph, that the Fire Department vehicle was 50 feet ahead of him as they were going through the circle of the merge onto the Southern State and then slowed down so that the distance between them closed to approximately 10 feet. He saw that the Fire Department vehicle slow down because he saw its brake lights. He stated that the Fire Department vehicle was slowing down until it came to a full stop right before an overpass. When the Fire Department vehicle came to a full stop, Halaf's vehicle, which was five feet away from it, also came to a complete stop. Halaf did not make contact with the Fire vehicle. He stated that he was stopped behind the Fire vehicle for three to four

seconds honking his horn at it. At that point he observed Quaranto's vehicle approaching in his rearview mirror, stopped honking and took hold of the steering wheel to brace for impact. Quaranto's vehicle then rear-ended his. Halaf did not know whether after the impact his vehicle moved or came into contact with the Fire vehicle. He only felt one impact, at the rear of his vehicle and did not feel any impact to the front of his vehicle, and he did not see any damage to either the front of his vehicle or the rear of the Fire vehicle.

Edick testified in his deposition that he, essentially, had no recollection of the events of the accident. He mostly referred questioning counsel to his statements in his employee statement and the accident report he signed. These documents are not annexed to the moving papers but are annexed to plaintiff's cross-moving papers. In his employee statement, he states, "While driving from the Cross-Island Pkwy to the Southern State Pkwy, I noticed a low overpass. I slowed to ensure the clearance of the vehicle & lights. I was then hit from behind." He did not recall whether he slowed down suddenly or not suddenly. He also testified, "I was struck by a vehicle and then another vehicle struck our accident." He also testified that his vehicle was still moving when it was struck from behind and that he had not come to a complete stop at that point. He also did not remember whether he turned on any of the lights of his vehicle when he started to slow down. He also testified that there was sufficient clearance for his vehicle to pass underneath the overpass, and did so after he drove the vehicle from the scene of the accident. Halaf also testified that according to his observation, there was ample clearance for the Fire vehicle to pass under the overpass.

A rear-end collision with a stopped or stopping vehicle establishes a prima facie case of liability with respect to the driver of the rearmost vehicle absent a non-negligent explanation (see Chepel v Meyers, 306 AD2d 235 [2nd Dept 2003]; Mohan v Puthumana, 302 AD2d 437 [2nd Dept 2003]; Filippazzo v Santiago, 277 AD2d 419 [2nd Dept 2000]).

"A sudden, negligent, or unexplained stop of the lead vehicle can constitute a nonnegligent explanation because the lead driver has a duty not to stop suddenly or slow down without proper signaling so as to avoid a collision when there is opportunity to give such signal" (John v Leyba, 38 AD 3d 496, 497 [2nd Dept 2007]).

The record herein raises a triable issue of fact as to whether Edick, when he slowed down or stopped his Fire vehicle in a lane of traffic on the Parkway, negligently failed to signal properly so as to avoid a collision.

In this regard, the Court notes that Vehicle and Traffic Law §1163(c) provides, "No person shall stop or suddenly decrease the speed of a vehicle without first giving an appropriate signal in the manner provided herein to the driver of any vehicle immediately to the rear when there is opportunity to give such signal." The appropriate signal to be given in such situation is the use of the vehicle's emergency flashers as described in VTL §1163(e), which provides, "The driver of a vehicle equipped with simultaneously flashing signals as provided for in subdivision eighteen-a of section three hundred seventy-five shall use such signals when the vehicle is stopped or disabled on a public highway ...The driver of a vehicle so equipped may use such signals whenever necessary to warn the operators of following vehicles of the presence of a traffic hazard ahead of the signaling vehicle, or to warn the operators of other vehicles that the signaling vehicle may itself constitute a traffic hazard, taking into account traffic and highway conditions." The evidence presented on this record that Edick stopped his vehicle in the middle of the Southern State Parkway because he was not sure if his vehicle would fit under the overpass without attempting to pull over and activate any warning lights as required by VTL 1163(c) and (e), raises an issue of comparative negligence to be determined by the jury at trial (see Purcell v Axelsen, 286 AD 2d 379 [2nd Dept 2001]; see also Quezada v Aquino, 38 AD 3d 873 [2nd Dept 2007]; John v Leyba, 38 AD 3d 496, supra). Therefore, since the City is not entitled to summary judgment, it is not entitled to an order "directing liability" against Quaranto, a remedy which, in any event, has no basis in law.

Since there is an issue of comparative negligence, that branch of plaintiff's cross-motion for summary judgment against the City on the issue of liability must also be denied.

It is well established that a driver approaching another vehicle from the rear has a duty to maintain a reasonably safe rate of speed and control over his or her vehicle and to exercise reasonable care to avoid colliding with the other vehicle (see Chepel v Meyers, supra; Power v Hupart, 260 AD2d 458 [2nd Dept 1999]). Moreover, a driver has a duty to maintain a safe distance from the vehicle ahead (see Filippazzo v Santiago, 277 AD2d 419 [2nd Dept 2000]). The record herein raises an issue of fact as to whether Quaranto was comparatively negligent in failing to maintain a safe distance and in failing to exercise reasonable care to avoid colliding with Halaf's vehicle.

That branch of plaintiff's motion for restoration of the action to the trial calendar upon the ground that discovery is complete is also denied. Plaintiff's counsel erroneously represents

that a note of issue was filed on January 20, 2010 and that on December 22, 2010 the case was marked off the trial calendar. The Court record, however, indicates that the note of issue was filed on January 22, 2010, that said note of issue was vacated pursuant to the stipulation so-ordered by Justice Martin E. Ritholtz on March 5, 2010, and that a new note of issue filed on April 23, 2010 pursuant to the aforementioned so-ordered stipulation was also vacated in the Trial Scheduling Part on December 22, 2010.

Halaf's cross-motion for summary judgment dismissing the complaint and all cross-claims against them must also be denied, for the same reasons.

Accordingly, The City's motion for summary judgment, plaintiff's cross-motion for summary judgment against the City on the issue of liability and to restore the matter to the trial calendar and Halaf's cross-motion for summary judgment are denied.

Dated: September 13, 2011

KEVIN J. KERRIGAN, J.S.C.