

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

KIARA C. MAYFIELD,)
) C.A. No. K12C-08-017 JTV
Plaintiff,)
)
v.)
)
KATHRYN E. HARRINGTON,)
)
Defendant /)
Third-Party Plaintiff,)
)
v.)
)
AMIR H. MOHAMMADI,)
)
Third-Party Defendant.)

Submitted: May 17, 2013
Decided: September 18, 2013

Jeffrey A. Young, Esq., Young & McNelis, Dover, Delaware. Attorney for Plaintiff.

Christopher T. Logullo, Esq., Chrissinger & Baumberger, Wilmington, Delaware. Attorney for Defendant/Third-Party Plaintiff.

Mary E. Sherlock, Esq., Weber, Gallagher, Simpson, Stapleton, Fires & Newby, Dover, Delaware. Attorney for Third-Party Defendant.

*Upon Consideration of
Third-Party Defendant's
Motion for Summary Judgment*
GRANTED

VAUGHN, President Judge

Mayfield v. Harrington, et al.
C.A. No. 12C-08-017 JTV
September 18, 2013

ORDER

Upon consideration of the third-party defendant's Motion for Summary Judgment, the third-party plaintiff's opposition, and the record of the case, it appears that:

1. On May 14, 2011, the plaintiff, Kiara Mayfield, was stopped at a red light on Route 13 in Dover when her vehicle was struck from behind by the defendant/third-party plaintiff, Kathryn Harrington. Immediately thereafter, Ms. Harrington's vehicle was lightly struck from behind by the third-party defendant, Amir Mohammadi.

2. On August 15, 2012, Ms. Mayfield sued Ms. Harrington for injuries sustained as a result of Ms. Harrington's alleged negligence. Ms. Mayfield did not sue Mr. Mohammadi and has not claimed that his impact on the Harrington vehicle caused her any injury. On September 18, 2012, Ms. Harrington answered Ms. Mayfield's complaint and filed a third-party complaint against Mr. Mohammadi seeking contribution for Ms. Mayfield's damages that she alleged were proximately caused by him. In her third-party complaint, Ms. Harrington alleged that "[Ms. Mayfield's] alleged injuries were caused and/or contributed to by the negligence of [Mr. Mohammadi]."

3. On April 5, 2013, after some discovery and depositions had been completed, Mr. Mohammadi moved for summary judgment of Ms. Harrington's third-party complaint. In his motion, Mr. Mohammadi contends that he is entitled to summary judgment because "there is no evidence that the impact from Amir Mohammadi striking the rear of the Harrington vehicle pushed the Harrington vehicle

Mayfield v. Harrington, et al.

C.A. No. 12C-08-017 JTV

September 18, 2013

into the Mayfield vehicle for a second impact.”

4. In response, Ms. Harrington contends that her vehicle and Ms. Mayfield’s vehicle were touching after the first impact occurred, and therefore, “it would be impossible for [Ms. Harrington’s] vehicle to move without causing a second impact to [Ms. Mayfield’s] vehicle.” Because a reasonable jury could conclude that Mr. Mohammadi’s impact caused a second impact to Ms. Mayfield’s vehicle, Ms. Harrington contends, the motion for summary judgment should be denied.

5. The plaintiff does not oppose third-party defendant Mohammadi’s motion.

6. Summary judgment should be granted when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law.¹ The moving party bears the burden of establishing the non-existence of material issues of fact.² If a motion is properly supported, the burden shifts to the non-moving party to establish the existence of material issues of fact.³ In considering the motion, the facts must be viewed in the light most favorable to the non-moving party.⁴

7. As the Delaware Supreme Court noted in *Ebersole v. Lowengrub*, “[g]enerally speaking, issues of negligence are not susceptible to summary adjudication. It is only when the moving party establishes the absence of a genuine issue of any material fact respecting negligence that summary judgment may be

¹ Super. Ct. Civ. R. 56(c).

² *Moore v. Sizemore*, 405 A.2d 679, 680 (Del. 1979).

³ *Id.* at 681.

⁴ *Merrill v. Crothall-American, Inc.*, 606 A.2d 96, 99 (Del. 1992).

Mayfield v. Harrington, et al.

C.A. No. 12C-08-017 JTV

September 18, 2013

entered.”⁵ Summary judgment will not be granted when there is a reasonable indication from the evidence produced and the inferences drawn therefrom that a material fact is in dispute, or when “it seems desirable to inquire thoroughly into [the facts] in order to clarify the application of the law to the circumstances.”⁶

8. The following is a summary of the facts drawn from the depositions of the three parties to the lawsuit: Ms. Mayfield testified that she was struck from behind by a vehicle while she was stopped at a red light. She also testified that she only remembered one impact and that she did not hear or feel a second impact. Ms. Harrington testified that she struck Ms. Mayfield’s vehicle from behind while traveling approximately 40 to 45 miles per hour. She believed that Mr. Mohammadi’s impact occurred almost instantaneously after her collision with Ms. Mayfield, but she did not know that there was a second impact at the time that the impact occurred, possibly because she was in shock from the first impact. She also testified that her vehicle and Ms. Mayfield’s vehicles were touching after the first impact occurred and that it was possible that her vehicle was pushed forward into the rear of Ms. Mayfield’s vehicle when Mr. Mohammadi impacted her car. Mr. Mohammadi testified that he struck Ms. Harrington’s vehicle at a “very slow speed,” traveling “less than two miles per hour.” He also testified that his impact did not cause a second impact between Ms. Harrington’s and Ms. Mayfield’s vehicles, because his front bumper is made out of fiberglass, he had little damage to his car, and he did not strike Ms. Harrington’s vehicle very hard. In her responding papers, defendant

⁵ *Ebersole v. Lowengrub*, 180 A.2d 467, 468 (Del. 1962).

⁶ *Id.* at 468-69; *see also Watson v. Shellhorn & Hill, Inc.*, 221 A.2d 506, 508 (Del. 1966).

Mayfield v. Harrington, et al.

C.A. No. 12C-08-017 JTV

September 18, 2013

Harrington claims that Mr. Amir admitted that his vehicle pushed Ms. Harrington's vehicle forward, but the record does not seem to support that assertion.

9. To prove negligence, one must show that there was a legal duty, a breach of that duty, and an injury proximately caused by that breach.⁷ Ms. Harrington testified that her vehicle and Ms. Mayfield's vehicles were touching after the first impact occurred. Based upon this testimony, a jury could infer that it was possible that Mr. Amir's impact with Ms. Harrington's vehicle had some impact on the plaintiff's vehicle. However, the record must contain facts which will allow a jury to conclude by a preponderance of the evidence that, not only did Mr. Amir's impact cause Ms. Harrington's vehicle to have a second impact with the plaintiff's vehicle, but that said second impact was a proximate cause of injury to the plaintiff. On the record which has been presented to me in this case, my conclusion is that a jury could do no more than speculate about whether Mr. Amir's impact on Ms. Harrington's vehicle had any effect upon the plaintiff's injuries. No suggestion has been made to the Court that a further development of the record will lead to a different conclusion.

10. Therefore, Mr. Mohammadi's Motion for Summary Judgment is ***granted***.

IT IS SO ORDERED.

/s/ James T. Vaughn, Jr.

oc: Prothonotary
cc: Order Distribution
File

⁷ See e.g., *Patton v. Simone*, 1993 WL 144367, at *10 (Del. Super. Mar. 22, 1993).