

<b>Fatima v Dun J. Zheng</b>
2015 NY Slip Op 31344(U)
March 3, 2015
Supreme Court, Queens County
Docket Number: 703792/2013
Judge: Robert J. McDonald
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SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK  
CIVIL TERM - IAS PART 34 - QUEENS COUNTY  
25-10 COURT SQUARE, LONG ISLAND CITY, N.Y. 11101

P R E S E N T : HON. ROBERT J. MCDONALD  
**Justice**

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MEHWASH FATIMA,

Plaintiff,

- against -

DUN J. ZHENG and YGNACIO MORILLO,

Defendants.

----- x

YGNACIO MORILLO, JACQUELINE  
BAEZ-MELELENDEZ, KATHERINE MORILLO, and  
JACQUELINE BAEZ-MELELENDEZ as Mother and  
Natural Guardian of INYALINE MORILLO,  
an Infant,

Plaintiffs,

- against -

DUN J. ZHENG, TIAN BIAO ZHENG,  
GUIE J. ZENGH, and MEHWASH FATIMA,

Defendants.

-----x

The following papers numbered 1 to 13 were read on this motion by  
defendant in Action No. 1, YGNACIO MORILLO, for an order pursuant  
to CPLR 3212(b) granting summary judgment dismissing the  
complaint of plaintiff in Action No. 1; and the cross-motion of  
plaintiff in Action No. 1 MEHWASH FATIMA for partial summary  
judgment on the issue of liability against the defendant DUN J.  
ZHENG:

Papers  
Numbered

Defendant Morillo's Notice of Motion-Affidavits-Exhibits....1 - 6  
Plaintiff's Cross-Motion-Affidavits-Exhibits.....7 - 12  
Defendant Morillo's Affirmation in Support of Cross-Motion.13 - 15

In this action for negligence, plaintiff in Action No. 1, Mehwash Fatima, seeks to recover damages for personal injuries she allegedly sustained as a result of a three-vehicle, chain reaction accident that occurred on November 28, 2010, on the eastbound lanes of the Long Island Expressway near the intersection with Exit 25 in Queens County, New York. Plaintiff, Ms. Fatima, the driver of the middle vehicle, alleges that she was stopped in traffic when her vehicle was struck in the rear by the third vehicle operated by defendant, Dun J. Zheng. Plaintiff contends that the impact from the Zheng vehicle caused her vehicle to be propelled into the vehicle of co-defendant, Ygnacio Morillo, the operator of the lead vehicle.

This action was commenced by the plaintiff by the filing of a summons and complaint in New York County on January 23, 2013. By decision and order of New York Supreme Court Justice Arlene P. Bluth, dated August 1, 2013, the instant action was transferred to Queens County to be tried jointly with the above captioned Action No. 2.

By order dated May 24, 2013, Justice Siegal granted the motion of Mehwash Fatima for summary judgment and dismissed the complaint against Ms. Fatima in Action No 2. Justice Siegal held that the Fatima vehicle was completely and lawfully stopped in traffic when it was struck in the rear by the Zheng vehicle the last vehicle in the chain. The court held that Zheng failed to offer any evidence to rebut the inference of negligence by failing to provide a non-negligent explanation for the collision.

By decision and order dated February 11, 2015, Justice Nahman dismissed the counterclaims of Dun J. Zheng in Action No. 2, finding that it was undisputed that the vehicle operated by Zheng struck the vehicle operated by Fatima in the rear, causing Fatima's vehicle to be propelled into the Morillo vehicle, the lead vehicle. Justice Nahman also found that Zheng failed to provide a non-negligent explanation for rear ending the Fatima vehicle.

Ms. Fatima, the plaintiff in Action No. 1, now cross-moves for an order granting summary judgment on the issue of liability on the ground that her vehicle was stopped in traffic when Zheng the driver of the last or third vehicle, negligently initiated the chain reaction accident by striking her vehicle in the rear, which resulted in Ms. Fatima's vehicle being propelled into the lead vehicle operated by Ygnacio Morillo.

In support of her cross-motion for summary judgment, the plaintiff submits an affirmation from counsel, Komila Geroulakis, Esq; a copy of the pleadings; a copy of the police accident report; and an affidavit from Mehwash Fatima.

In her affidavit, Mehwash Fatima states that she was proceeding in the left lane of the Long Island Expressway behind the Morillo vehicle for at least 10 seconds when Morillo came to a stop due to traffic conditions. She then brought her vehicle to a stop behind his vehicle. She states her vehicle was stopped for 1 - 2 seconds before it was struck in the rear by the Zheng vehicle. After being struck in the rear by Zheng her vehicle was pushed forward into rear of the Morillo vehicle that was stopped in front of her vehicle.

The police report submitted states in the description portion of the report, "at t/p/o driver of Veh #1 (Morillo), states he was rear ended by Veh #2. Veh #2 (Fatima) states she was rear-ended by Veh #3 (Zheng) and pushed into Veh #1 (Morillo). Driver of Veh #3 (Zheng) states Veh #2 (Fatima) stopped in front of him and he tried to brake but was unable to avoid hitting Veh #2."

Plaintiff contends that the police report as well as the plaintiff's affidavit demonstrates that she was in the middle vehicle and was lawfully stopped in traffic behind the Morillo vehicle when her vehicle was struck in the rear by Zheng vehicle and propelled into the Morillo vehicle in front of her.

As Ms. Fatima, in the middle vehicle, was stopped and propelled into the Morillo vehicle, counsel for Ms. Fatima contends that the proof submitted shows that she is entitled to partial summary judgment on the issue of liability (see Ferguson v Honda, 34 AD3d 356 [1<sup>st</sup> Dept. 2006]; Mustafaj v Driscoll, 5 AD3d 139 [1<sup>st</sup> Dept. 2004]; McNulty v DePetro, 298 AD2d 566 [2d Dept. 2002]; Harris v Ryder, 292 AD2d 499 [2d Dept. 2002]; Cerda v Paisley, 273 AD2d 339 [2d Dept. 2000]).

In addition counsel submits that both Justice Siegal and Justice Nahman have already determined in their respective decisions that the accident was caused by Mr. Zheng and that Ms. Fatima bears no comparative liability for the accident.

In the main motion, Mr. Morillo moves for summary judgment dismissing Ms. Fatima's complaint on the ground that his vehicle was stopped in traffic when he was rear ended by Ms. Fatima's vehicle who had been struck in the rear by co-defendant Zheng. In his affidavit, Ygnacio Morillo states that on November 28, 2010 at approximately 6:55 p.m. he was proceeding eastbound on the Long Island Expressway near Exit 25 in Queens County. He states that he

was traveling in the left lane in stop and go traffic and was fully stopped for a few seconds when his vehicle was struck in the rear. He states that he did not stop short nor hit any other vehicle prior to the impact to his vehicle. He states that the car he was operating was struck in the rear by the Honda Sedan operated by Mehwash Fatima. He states that prior to the impact with his car Ms Fatima's vehicle was struck in the rear by the vehicle operated by Dun J. Zheng.

Defendant Zheng had not submitted papers in opposition to the motion or the cross-motion.

The proponent of a summary judgment motion must tender evidentiary proof in admissible form eliminating any material issues of fact from the case. If the proponent succeeds, the burden shifts to the party opposing the motion, who then must show the existence of material issues of fact by producing evidentiary proof in admissible form, in support of his position (see Zuckerman v City of New York, 49 NY2d 557[1980]).

Here, both Ms. Fatima and Mr. Morillo state in their respective affidavits that their vehicles were at a complete stop on the Long Island Expressway when Dun J. Zheng, whose vehicle failed to stop in time and struck Fatima's vehicle in the rear causing the chain reaction accident. "The rearmost driver in a chain-reaction collision bears a presumption of responsibility" (Ferguson v Honda Lease Trust, 34 AD3d 356 [1<sup>st</sup> Dept. 2006], quoting De La Cruz v Ock Wee Leong, 16 AD3d 199[1<sup>st</sup> Dept. 2005]). In multiple-car, chain-reaction accidents, the courts have recognized that the operator of a vehicle which has come to a complete stop and is propelled into the vehicle in front of it, as a result of being struck from behind, is not negligent inasmuch as the operator's actions cannot be said to be the proximate cause of the injuries resulting from the collision (see Mohamed v Town of Niskayuna, 267 AD2d 909 [3<sup>rd</sup> Dept. 1999]). Evidence that a vehicle was rear-ended and propelled into the stopped vehicle in front of it may provide a sufficient non-negligent explanation (see Franco v Breceus, 70 AD3d 767 [2d Dept. 2010]; Katz v Masada II Car & Limo Serv., Inc., 43 AD3d 876 [2d Dept. 2007]). Here, both Fatima and Morillo whose vehicles were completely stopped in traffic at the time of the impact, demonstrated that their conduct was not a proximate cause of the rear-end collision between the Zheng vehicle and the vehicles ahead of it (see Robayo v Aghaabdul, 109 AD3d 892 [2d Dept. 2013]; Sayed v Murray, 109 AD3d 464 [2d Dept. 2013]; Prosen v Mabella, 107 AD3d 870 [2d Dept. 2013]; Xian Hong Pan v Buglione, 101 AD3d 706 [2d Dept. 2012]).

Thus, both Morillo and Fatima satisfied their prima facie burden of establishing their freedom from comparative negligence and their entitlement to judgment as a matter of law by demonstrating that their vehicles were stopped at the time they were struck in a chain reaction which was initiated by the negligence of defendant Zheng.

Having made the requisite prima facie showing of entitlement to summary judgment, the burden then shifted to defendant Zheng to raise a non-negligent explanation for the collision or a triable issue of fact as to whether plaintiff and/or co-defendant were also negligent, and if so, whether that negligence contributed to the happening of the accident (see Xian Hong Pan v Buglione, 101 AD3d 706 [2d Dept. 2012]; Goemans v County of Suffolk, 57 AD3d 478 [2d Dept. 2007]).

This court finds that Zheng failed to oppose the motion and failed to submit evidence as to any negligence on the part of plaintiff or co-defendant or to provide a non-negligent explanation for the accident sufficient to raise a triable question of fact (see Lampkin v Chan, 68 AD3d 727 [2d Dept. 2009]; Gomez v Sammy's Transp., Inc., 19 AD3d 544 [2d Dept. 2005]). If the operator of the moving vehicle cannot come forward with evidence to rebut the inference of negligence, the occupants and owner of the stationary vehicle are entitled to summary judgment on the issue of liability (see Kimyagarov v Nixon Taxi Corp., 45 AD3d 736 [2d Dept. 2007]).

Thus, as the defendant Zheng failed to proffer sufficient evidence to rebut the inference of his own negligence and to raise a triable issue of fact in this regard and as the evidence in the record demonstrates that there are no triable issues of fact as to whether plaintiff Fatima in the middle vehicle or co-defendant Morillo may have borne comparative fault for the causation of the accident, and based on the foregoing, it is hereby,

ORDERED, that the motion of defendant YGNACIO MORILLO in Action No. 1 dismissing the complaint of the plaintiff and all cross-claims against him is granted, and it is further,

ORDERED, that the cross-motion of plaintiff in Action No. 1 , Mehwash Fatima, for an order granting partial summary judgment on the issue of liability as against defendant, Dun J. Zheng, is granted, and it is further,

ORDERED, that upon completion of discovery on the issue of damages, and compliance with all the rules of the Court, this action shall be placed on the trial calendar of the Court for a trial on serious injury and damages, and it is further,

ORDERED, that the Clerk of Court is authorized to enter judgment accordingly.

Dated: March 3, 2015  
Long Island City, N.Y.

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**ROBERT J. MCDONALD**  
**J.S.C.**