

**Preval v Fisher**

2017 NY Slip Op 33458(U)

September 28, 2017

Supreme Court, Orange County

Docket Number: Index No. EF002609-2017

Judge: Catherine M. Bartlett

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-STATE OF NEW YORK
IAS PART-ORANGE COUNTY

Present: HON. CATHERINE M. BARTLETT, A.J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

JIMS C. PREVAL and JOSHUA L. IRIZARRY,

Plaintiffs,

-against-

MICHAEL A. FISHER and ALEX P. HOLST,

Defendants.

To commence the statutory time
period for appeals as of right
(CPLR 5513 [a]), you are
advised to serve a copy of this
order, with notice of entry,
upon all parties.

Index No. EF002609-2017
Motion Date: September 7, 2017

The following papers numbered 1 to 7 were read on the motion of defendant Alex P.

Holst for summary judgment dismissing the claims against him:

Table listing documents: Notice of Motion - Affirmation / Exhibits - Affidavit (1-3), Affirmation in Opposition (Plaintiffs) (4), Affirmation in Opposition (Fisher) (5), Reply Affirmations (2) (6-7)

Upon the foregoing papers it is ORDERED that the motion is disposed of as follows:

This is a personal injury action stemming from a three-car chain collision motor vehicle
accident which occurred on September 9, 2016 on Silver Lake Scotchtown Road, at or near its
intersection with Stratford Lane in the Town of Wallkill, New York. By affidavit, defendant
Alex P. Holst established that he brought his vehicle (Vehicle #2) safely to a stop behind

Plaintiffs' vehicle (Vehicle #1), and was then rear-ended by defendant Michael Fisher (Vehicle #3) and pushed forward into Plaintiffs' vehicle.

Defendant Holst moves for summary judgment dismissing the claims against him. Plaintiffs and defendant Fisher, tendering only affirmations by counsel, argue that Mr. Holst has not established *prima facie* entitlement to judgment as a matter of law, and in any event that because deposition have not taken place the motion is premature.

Concerning motions for summary judgment by the operator of a middle vehicle, like Mr. Holst, in a multi-vehicle chain collision, the Second Department has held:

In a multi-vehicle, chain reaction accident, when the operator of a vehicle that was propelled into another vehicle by a following vehicle presents evidence that he...was able to safely bring his...vehicle to a stop behind the lead vehicle before being struck in the rear by a following vehicle, that operator has established his...*prima facie* entitlement to judgment as a matter of law [cit.om.]. Thus, “[i]n chain collision accidents, the operator of the middle vehicle may establish *prima facie* entitlement to judgment as a matter of law by demonstrating that the middle vehicle was struck from behind by the rear vehicle and propelled into the lead vehicle” (*Kuris v. El Sol Contr. & Constr. Corp.*, 116 AD3d 675, 676...).

*Niosi v. Jones*, 133 AD3d 578, 579 (2d Dept. 2015). See also, *Morales v. Amar*, 145 AD3d 1000, 1002 (2d Dept. 2016) (same); *Chuk Hwa Shin v. Correale*, 142 AD3d 518, 519 (2d Dept. 2016) (same); *Marcellin v. Passaro*, 118 AD3d 758 (2d Dept. 2014) (same). Hence, Mr. Holst established *prima facie* entitlement to summary judgment by demonstrating that he was able to safely bring his vehicle (Vehicle #2) to a stop behind Plaintiffs' vehicle (Vehicle #1) before being rear-ended by defendant Michael Fisher's vehicle (Vehicle #3).

The opponents of the motion have failed to demonstrate the existence of any triable issue of fact, and their contention that Mr. Holst's motion is premature is unavailing. In *Morales v. Amar*, *supra*, 145 AD3d 1000 (2d Dept. 2016), which like this case involved a motion for

summary judgment by the operator of the middle vehicle in a multi-vehicle chain collision, the

Second Department held:

The appellants' contention that the motions should have been denied as premature pursuant to CPLR 3212(f) is without merit. A party who contends that summary judgment is premature is required to demonstrate that discovery might lead to relevant evidence or that the facts essential to justify opposition to the motion were exclusively within the knowledge and control of the movant (*see* CPLR 3212[f]; *Suero-Sosa v. Cardona*, 112 AD3d 706, 708...; *Cajas-Romero v. Ward*, 106 AD3d 850, 852...; *Woodward v. Thomas*, 77 AD3d 738, 740...). Here, the appellants, who relied solely on their attorney's affirmation, failed to set forth either basis, and the "mere hope or speculation that evidence sufficient to defeat a motion for summary judgment may be uncovered during the discovery process is an insufficient basis for denying the motion" (*Suero-Sosa v. Cardona*, 112 AD3d at 708...; *see Williams v. Spencer-Hall*, 113 AD3d 759, 760-761; *Westport Ins. Co. v. Altertec Energy Conservation, LLC*, 82 AD3d 1207, 1212...).

*Morales v. Amar, supra*, 145 AD3d at 1003.

Like parties in *Morales*, the opponents of Mr. Holst's motion here rely solely on their attorneys' affirmations. Neither has established that additional discovery might lead to relevant evidence or that the facts essential to justify opposition to the motion were exclusively within Mr. Holst's knowledge and control of the movant. Defendant Fisher, quite obviously in a position to observe Mr. Holst in the vehicle immediately preceding him, proffers no evidence that Mr. Holst was speeding, or that he stopped short, or that he had a broken tail light, or that he rear-ended Plaintiffs' vehicle before Fisher himself rear-ended Mr. Holst, or that Mr. Holst engaged in any other negligent conduct. Plaintiffs, for their part, would have known by the sense of hearing and by the sequence of impacts whether Mr. Holst had first rear-ended them or whether Mr. Fisher rear-ended Mr. Holst and propelled his vehicle into Plaintiffs' vehicle. Plaintiffs' attorney, on their behalf, asserts only that Mr. Holst's stopping "an undisclosed length" from Plaintiffs' vehicle gives rise to a question whether he contributed to the accident

by following too closely. This argument runs afoul of *Niosi v. Jones, supra, Morales v. Amar, supra, Chuk Hwa Shin v. Correale, supra,* and *Marcellin v. Passaro, supra,* all of which hold that the operator of a middle vehicle who is able to safely bring his vehicle to a stop behind the lead vehicle before being struck in the rear by a following vehicle has established his *prima facie* entitlement to judgment as a matter of law.

Consequently, Mr. Holst is entitled to summary judgment.

It is therefore

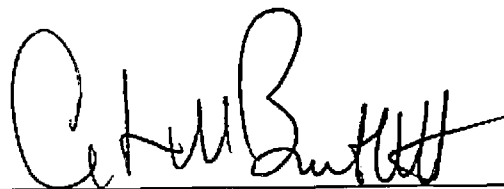
ORDERED, that the motion of defendant Alex P. Holst for summary judgment dismissing the claims against him is in all respects granted, and it is further

ORDERED, that the Complaint (as against defendant Alex P. Holst only) and all cross claims against defendant Alex P. Holst are dismissed.

The foregoing constitutes the decision and order of this Court.

Dated: September 28, 2017  
Goshen, New York

ENTER



HON. CATHERINE M. BARTLETT, A.J.S.C.

HON. C. M. BARTLETT  
JUDGE NY STATE COURT OF CLAIMS  
ACTING SUPREME COURT JUSTICE