

**Siddiqui v Smith**

2018 NY Slip Op 34426(U)

September 20, 2018

Supreme Court, Queens County

Docket Number: Index No. 707580/2017

Judge: Robert J. McDonald

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This opinion is uncorrected and not selected for official publication.

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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SALIM SIDDIQUI,
Plaintiff,
- against -

Index No.: 707580/2017
Motion Date: 9/20/18
Motion No.: 41
Motion Seq.: 1

TIRRELL T. SMITH, FELIX A. SMITH,
GEORGE BAQUERO and MOHAMMED
ASADUZZAMAN,

Defendants.

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The following electronically filed documents read on this motion
by defendant MOHAMMED ASADUZZAMAN for an Order pursuant to CPLR
3212, granting summary judgment in favor of said defendant and
dismissing all claims and crossclaims as against said defendant:

Table with 2 columns: Document Name and Papers Numbered. Includes entries for Notice of Motion-Affirmation-Exhibits, Plaintiff's Aff. in Opposition-Exhibits, Baquero's Aff. in Opposition-Exhibits, and Reply Affirmations (2).

In this negligence action, plaintiff seeks to recover
damages for personal injuries allegedly sustained as a result of
a motor vehicle accident that occurred on May 5, 2017 on the
eastbound side of the Grand Central Parkway, near Exit 18, in
Queens County, New York.

Plaintiff commenced this action by filing a summons and
verified complaint on July 17, 2017. Defendant Mohammed
Asaduzzaman (defendant) joined issue by service of an answer on
September 14, 2017. Co-defendant George Baquero joined issue by
service of an answer on July 17, 2017. Co-defendants Tirrell T.
Smith and Felix A. Smith joined issue by service of an answer on
September 8, 2017. Defendant now moves for summary judgment on
the grounds that there are no triable issues of fact that would
prevent the court from entering summary judgment in favor of
defendant.

In support of the motion, defendant submits an affidavit dated May 22, 2018. He affirms that he was involved in the subject accident, which involved a total of four vehicles. His vehicle was the first vehicle in the four car collision. At the time of the accident, he was traveling eastbound on the Grand Central Parkway in the center lane. He observed ongoing construction ahead of him. Because of the construction work, he gradually slowed his vehicle down while driving in the center lane. While slowing his vehicle down, he was struck in the rear by another vehicle. After the impact to the rear of his vehicle, he brought his vehicle to a complete stop and exited his vehicle. He observed four vehicles in total involved in the accident. He did not experience any mechanical difficulties with his vehicle. Just before the accident, he did not suddenly change lanes.

Defendant also submits a copy of the certified police report (MV-104AN). In the Accident Description portion of the report, the responding officer notes:

AT T/P/O, OPERATOR OF VEHICLE #1 (PLAINTIFF) STATES HE BELIEVED HE SAW AN ACCIDENT AHEAD OF HIM AND HE DOESN'T RECALL WHAT HAPPENED NEXT. OPERATOR OF VEHICLE #2 (DEFENDANT SMITH) STATES HE WAS TRAVELING E/B IN THE CENTER LANE WHEN HE WAS STRUCK FROM BEHIND BY VEHICLE 1, CAUSING HIM TO STRIKE VEHICLE 3. OPERATOR OF VEHICLE #3 (BAQUERO) STATES HE WAS TRAVELING E/B IN THE CENTER LANE WHEN HE WAS STRUCK BY VEHICLE 2, CAUSING HIM TO STRIKE VEHICLE 4. OPERATOR OF VEHICLE #4 (DEFENDANT ASADUZZAMAN) STATES HE WAS TRAVELING E/B IN THE CENTER LANE WHEN HE WAS STRUCK BY VEHICLE 3. THERE WAS NO OTHER ACCIDENT AHEAD OF THIS ONE AND POLICE OFFICERS DID NOT WITNESS THE ACCIDENT.

Based on the submitted evidence, counsel for defendant contends that the operator of the vehicle traveling behind him, defendant Baquero, failed to maintain a safe distance between his vehicle and the vehicle traveling in front of his vehicle in violation of VTL § 1129(a), failed to maintain a reasonable rate of speed and control of his vehicle, and failed to avoid striking the vehicle in front in the rear.

Both plaintiff and co-defendant George Baquero oppose the motion. Baquero submits an affidavit dated August 23, 2018. He affirms that he was involved in the subject accident. At the time of the accident, he was traveling eastbound in the center lane behind defendant Asaduzzaman's vehicle and in front of co-

defendant Smith's vehicle. In the area where the accident occurred, the right most lane was blocked off by large construction cones. At the time of the accident, traffic conditions were light. Lighting conditions were sufficient as the area was well lit from construction and street lights. He observed defendant's vehicle suddenly and abruptly brake, after realizing the Utopia Parkway Exit was closed off. At that point, defendant's vehicle came to a complete stop without any warning. In an attempt to avoid the collision, he pressed the brakes and was able to stop his vehicle in time, without hitting defendant's vehicle. His vehicle was completely stopped for two seconds behind defendant's vehicle before his vehicle was struck from behind. There was only one impact to the rear of his vehicle. There was only one impact to the front of his vehicle.

The non-moving parties contend that the motion is premature as discovery, including depositions, remains outstanding. Additionally, the non-moving parties contend that there are issues of fact regarding the proximate causes of the subject accident, whether defendant suddenly stopped and/or changed lanes when it was not safe to do so.

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 or her position (see Zuckerman v City of New York, 49 NY2d 557 [1980]). "A court deciding a motion for summary judgment is required to view the evidence presented in the light most favorable to the party opposing the motion and to draw every reasonable inference from the pleadings and proof submitted by the parties in favor of the opponent to the motion" (Myers v Fir Cab Corp., 64 NY2d 806 [1985]).

"When the driver of an automobile approaches another automobile from the rear, he or she is bound 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" (Maccauley v ELRAC, Inc., 6 AD3d 584 [2d Dept. 2003]). It is well established law that a rear-end collision creates a prima facie case of negligence on the part of the driver of the rearmost vehicle, requiring the operator of that vehicle to proffer an adequate, non-negligent explanation for the accident (see Hearn v Manzolillo, 103 AD3d 689 [2d Dept 2013]; Taing v Drewery, 100 AD3d 740; Kastritsios v Marcello, 84 AD3d 1174[2d Dept. 2011]; Klopchin v Masri, 45 AD3d 737 [2d Dept.

2007]; Hakakian v McCabe, 38 AD3d 493 [2d Dept. 2007]; Velazquez v Denton Limo, Inc., 7 AD3d 787 [2d Dept. 2004]).

Here, defendant affirmed that his stopping vehicle was struck in the rear. Thus, defendant satisfied his prima facie burden of establishing entitlement to judgment as a matter of law on the issue of liability (see Volpe v Limoncelli, 74 AD3d 795 [2d Dept. 2010]; Vavoulis v Adler, 43 AD3d 1154 [2d Dept. 2007]).

However, viewing the evidence submitted in the light most favorable to the nonmoving parties, co-defendant Baquero's affidavit stating that defendant changed lanes and suddenly stopped and that his vehicle was pushed into Baquero's vehicle, raises triable issues of fact as to the proximate cause of the subject accident and is sufficient to rebut the inference negligence (see Ortiz v Hub Truck Rental Corp., 82 AD3d 725 [2d Dept. 2011] [finding that evidence that a plaintiff's vehicle made a sudden lane change directly in front of a defendant's vehicle, forcing that defendant to stop suddenly, is sufficient to rebut the inference of negligence]; Reitz v. Seagate Trucking, Inc., 71 AD3d 975 [2d Dept. 2010] [finding that the defendants rebutted the inference of negligence by adducing evidence that the plaintiffs' vehicle suddenly changed lanes directly in front of their vehicle, forcing the defendant to stop suddenly]; Oguzturk v. General Elec. Co., 65 AD3d 1110 [2d Dept. 2009]).

Moreover, a "court may not weigh the credibility of witnesses on a motion for summary judgment, unless it clearly appears that the issues are not genuine, but feigned" (Conciatori v Port Auth. of N.Y. & N.J., 46 AD3d 501 [2d Dept. 2007]). As the parties have presented differing versions as to how the accident occurred, including, inter alia, whether defendant changed lanes immediately prior to the accident, there are triable issues of fact that preclude summary judgment (see Boockvor v Fischer, 56 AD3d 405 [2d Dept. 2008]; Makaj v Metropolitan Transp. Auth., 18 AD3d 625 [2d Dept. 2005]).

Accordingly, for the above stated reasons, it is hereby,

ORDERED, that defendant MOHAMMED ASADUZZAMAN's motion for summary judgment is denied.

Dated: September 20, 2018  
Long Island City, N.Y.



ROBERT J. McDONALD  
J.S.C.

