

**Diaz v American United Transp. Inc.**

2019 NY Slip Op 34983(U)

October 2, 2019

Supreme Court, Bronx County

Docket Number: Index No. 28458/2017E

Judge: Mary Ann Brigantti

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SUPREME COURT OF THE STATE OF NEW YORK  
 COUNTY OF BRONX

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 CLAIRE DIAZ and VICTOR VASQUEZ,  
 Plaintiffs,

Index No.:28458/2017E

-against-  
 AMERICAN UNITED TRANSPORTATION INC.,  
 and BAH LAMINE,  
 Defendants.

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 HON. MARY ANN BRIGANTTI:

Plaintiffs move for partial summary judgment in their favor on the issue of liability. This is an action to recover damages for alleged personal injuries sustained by Plaintiffs, CLAIRE DIAZ and VICTOR VASQUEZ, in a three-car motor vehicle accident, which occurred on or about June 11, 2017, at 4:35 p.m., on Park Avenue, near its intersection with St. Paul's Place, in Bronx, NY.

Plaintiffs were passengers in the front-most vehicle, described as white 2017 Toyota Camry – which was owned and operated by Julio Cesar Estrella Holguin.<sup>1</sup> Nonparty, Juan Felix-Caro, was the owner and operator of the middle vehicle, described as a gray Mercedes with Pennsylvania plates (DIAZ EBT p. 22; *see* Plaintiffs' Bill of Particulars, dated Jan. 15, 2018). Defendant BAH LAMINE

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<sup>1</sup> It is noted that the above-entitled action was recently consolidated with another action, wherein Holguin sued the same Defendants for injuries sustained in the same motor vehicle accident, *Holguin v. American United Transportation Inc.*, which bore Kings County Index Number 524612/2017 (*see* this Court's Order, dated June 20, 2019).

was the driver of the rear-most vehicle, a taxi, described as a black 2015 Toyota Highlander, which was owned by Defendant AMERICAN UNITED TRANSPORTATION INC (LAMINE EBT, p. 11).

In support of their Motion, Plaintiffs' submissions include their deposition transcripts and Defendant LAMINE's deposition transcript. There was no opposition submitted to the instant Motion.

According to the Plaintiffs' testimony, Holguin's vehicle was stopped at the subject intersection at the yellow flashing light; and nonparty Caro's Mercedes was stopped behind it. Plaintiffs felt one heavy impact. Defendants' vehicle rear-ended the Mercedes, causing it to be pushed into the rear of Holguin's vehicle located in front of it (VASQUEZ EBT, p. 20- 25, 58-67; DIAZ EBT, p. 22- 30).

Defendant LAMINE acknowledged that he rear-ended the fully-stopped Mercedes directly in front of him, once, and that his air bags deployed. He thought that the Mercedes struck the car in front of it (LAMINE EBT, p.11, 17, 21- 33, 37-40, 57-58).

Vehicle and Traffic Law § 1129 (a) "Following too closely", provides that: "The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon and the condition of the highway."

"It is well settled that a "rear-end collision with a stopped vehicle

establishes a prima facie case of negligence on the part of the driver of the rear vehicle" ” (*Tutrani v County of Suffolk*, 10 NY3d 906, 908 [2008]; *Urena v GVC Ltd.*, 160 AD3d 467, 467 [1st Dept 2018]). In this regard, “a driver is expected to maintain enough distance between himself and cars ahead of him so as to avoid collisions with stopped vehicles, taking into account weather and road conditions” (*Matos v Sanchez*, 147 AD3d 585, 586 [1st Dept 2017]).

In “a chain-reaction collision, responsibility presumptively rests with the rearmost driver” (*Mustafaj v Driscoll*, 5 AD3d 138, 138 [1st Dept 2004]). “When such a rear-end collision occurs, the injured occupants of the front vehicle are entitled to summary judgment on liability, unless the driver of the following vehicle can provide a non-negligent explanation, in evidentiary form, for the collision” (*Johnson v Phillips*, 261 AD2d 269, 272 [1st Dept 1999] ).

Accordingly, Plaintiffs made a prima facie showing of their entitlement to partial summary judgment on the issue of liability by establishing that Defendant LAMINE was negligent in rear-ending the Mercedes, propelling it into Holguin’s vehicle (in which Plaintiffs were passengers) – which was stopped at the yellow flashing light.

Thus, Movants “shift[ed] the burden to defendant of advancing a non-negligent explanation for the accident ... [“A collision with a stationary vehicle amounts to prima facie evidence of negligence on the part of the operator

of the moving vehicle"')]” (*Rodriguez v City of NY*, 161 AD3d 575, 577 [1st Dept 2018]).

In response, Defendants, who did not oppose the motion, failed to offer a non-negligent explanation for the accident. Based upon the papers presented herein, Defendant LAMINE was responsible for the happening of the accident; there are no “triable issues of fact as to which defendant driver was responsible for the accident” (*see Hedian v MTLR Corp.*, 169 AD3d 620, 621 [1st Dept 2019]; *see Oluwatayo v Dulinayan*, 142 AD3d 113 [1st Dept 2016]).

In addition, where, as here, a plaintiff was an innocent passenger, and “there is no basis for finding that plaintiff ... did anything to cause the accident or could have prevented it”, the Court properly found no culpable conduct by a plaintiff passenger on the issue of liability (*Mello v Narco Cab Corp.*, 105 AD3d 634, 635 [1st Dept 2013]). “CPLR 3212 (g) permits the court to limit issues of fact for trial, by specifying which facts are not in dispute or are incontrovertible, and such facts shall be deemed established for all purposes in the action” (*Garcia v Tri County Ambulette Serv.*, 282 AD2d 206, 207 [1st Dept 2001]).

Accordingly, Plaintiffs’ Motion, for partial summary judgment in their favor on liability, is granted, without opposition, to the extent that Defendant LAMINE is found negligent and his negligence was a substantial factor in causing

the accident.<sup>2</sup> In addition, Plaintiffs CLAIRE DIAZ and VICTOR VASQUEZ, are found free from culpable conduct on the issue of liability for the happening of the accident upon the ground that they are innocent passengers.

This constitutes the decision and order of this Court.

Dated: 10/2, 2019

  
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HON. MARY ANN BRIGANTTI, J.S.C.

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<sup>2</sup> However, this Court makes no determination as to other issues herein, such as whether Plaintiffs' alleged injuries were proximately caused by the negligence of the Defendants, and whether Plaintiffs sustained "serious injuries" within the meaning of the Insurance Law.