

**Johnson v Turner**

2020 NY Slip Op 30825(U)

February 26, 2020

Supreme Court, Kings County

Docket Number: 501700/2017

Judge: Peter P. Sweeney

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

Index No.: 501700/2017  
Motion Date: 1-6-20  
Mot. Cal. No.: 25-27

-----x  
KRYSTLE JOHNSON,

Plaintiff,

-against-

**DECISION/ORDER**

SHIRLEY L. TURNER, RICHARD J. LEWIS, T.M.  
DOUGLAS-COOK, ERICA WILSON and DONNARIE H.  
MERISIER,

Defendants.  
-----x

The following papers numbered 1 to 9 were read on these motions:

<b>Papers:</b>	<b>Numbered:</b>
Notice of Motion Orders to Show Cause Affidavits/Affirmations/Exhibits/Memos of Law.....	1
Notice of Cross-Motion Affidavits/Affirmations/Exhibits/Memos of Law.....	2
Answering Affirmations/Affidavits/Exhibits/Memos of Law.....	3-6
Reply Affirmations/Affidavits/Exhibits/Memos of Law.....	7-8
Supplemental Affirmation in Support.....	9
Other.....	

Upon the foregoing papers, the motions are decided as follows:

In this action to recover damages for personal injuries arising out of a multi-vehicle accident, defendants T.M. DOUGLAS-COOK and ERICA WILSON move for an order pursuant to CPLR § 3212 granting them summary judgment dismissing the complaint and all cross-claims insofar as asserted against them on the ground that there are no triable issue of fact as to their negligence. Defendant, RICHARD LEWIS, cross- moves for summary judgment dismissing the complaint and all cross-claims insofar as asserted against him on the

ms #05-xmD  
ms #06-xmD

ground that there are no triable issue of fact as to his negligence. Both motions are consolidated for disposition.

**Background:**

This action arises out of a four vehicle accident that occurred on February 10, 2015, at approximately 8:45 p.m., on North Conduit Avenue, near 115th Street, Queens, New York. In support of their motions, the moving defendants submitted the deposition transcripts of defendants Richard Lewis, Shirley L. Turner and Donnmarie H. Merisier and the plaintiff, Krystle Johnson. Defendants Wilson and T.M. Douglas-cook also submitted an affidavit of Ms. Wilson.

Defendant Richard Lewis testified that shortly before the accident, he was traveling in the left lane of North Conduit Avenue, between 25-27 mph, when he observed the Wilson vehicle stopped in front of him. He maintained that were none of the lights on the Wilson vehicle were on at the time. Defendant Lewis claims that he activated his right turn indicator and intended to move into the middle lane. Before moving into the middle lane, he maintained that he came to a gradual and complete stop in the left lane approximately 10 feet behind the Wilson vehicle. He claims that his vehicle was stopped for between 5-10 seconds, at which time it was struck by another vehicle (the Turner vehicle).

Defendant Shirley L. Turner testified that at the time of the accident, she was operating her vehicle in the middle lane of North Conduit Avenue at a speed of approximately 30 mph when she saw the Lewis vehicle abruptly swerve into and stop in her lane of travel. She applied her brake but was unable to avoid colliding with it. The left side of her vehicle would up striking the Lewis vehicle on the right side near the rear. After her

vehicle came to a stop following the collision , it was struck in the rear by a vehicle owned by defendant Donnmarie H. Merisier.

Defendant Donnmarie H. Merisier testified that at the time of the accident, she was operating her vehicle in the left lane of North Conduit Avenue with the plaintiff, Krystle Johnson, as a passenger, when she observed the Wilson vehicle at a complete stop in the left lane with its hazard lights on. She activated her right turn signal and moments later, the Turner vehicle swerved into her lane from the middle lane. She maintained that as the Turner vehicle was moving into her lane, the tail end of the vehicle struck her vehicle and caused it to collide into the Lewis vehicle.

Plaintiff Krystle Johnson confirmed that the Merisier vehicle made contact with the Turner vehicle only after the Turner vehicle swerved into Merisier's lane of travel.

In her affidavit, Wilson averred that at the time of the accident, she was operating a vehicle owned by defendant T.M. Douglas-Cook, which had been at a complete stop in the left lane of North Conduit Avenue . She claims that she brought her vehicle to a stop because shortly before the accident, one of the axles on her vehicle broke causing one of the wheels to fall off. After bringing her vehicle to a stop, she activated her hazards lights. She was stopped for between 8-10 minutes when her was struck in the rear by a motor vehicle owned and operated by defendant, Richard Lewis. She maintained that her hazard lights were on when her vehicle was struck by the Lewis vehicle .

**Analysis:****A. The Motion of Defendants T.M. Douglas-cook and Erica Wilson:**

The proponent of a motion for summary judgment has the initial burden of making a prima facie showing of entitlement to judgment as a matter of law by tendering sufficient proof eliminating any material issues of fact (*see, Winegrad v. New York Univ. Med. Ctr.*, 64 N.Y.2d 851, 853; *Zuckerman v. City of New York*, 49 N.Y.2d 557, 562; *Sillman v. Twentieth Century-Fox Film Corp.*, 3 N.Y.2d 395, 404). If the proponent meets this burden, the burden shifts to any party opposing the motion to come forward with proof in admissible form raising a triable issue of fact (*see Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324; *Zuckerman*, 49 N.Y.2d at 562; *Friends of Animals v. Associated Fur Mfrs.*, 46 N.Y.2d at 1068). If the proponent fails to meet its initial burden, however, the Court must deny the motion regardless of the sufficiency of the opposition papers (*see Winegrad*, 64 N.Y.2d at 853; *New York & Presbyt. Hosp. v. Allstate Ins. Co.*, 29 A.D.3d 547).

Here, the submissions of defendants T.M. Douglas-cook and Erica Wilson reveal the existence of triable issue of fact as to whether defendant Wilson exercised reasonable care in warning other drivers of the hazard posed by her vehicle being disabled on the roadway (*see Marsicano v. Fabrizio*, 61 A.D.3d 941, 941-42, 877 N.Y.S.2d 461, 463; *Gregson v. Terry*, 35 A.D.3d 358, 361, 827 N.Y.S.2d 181, 183). While defendant stated in her affidavit that the hazard lights of her vehicle were on at the time of the accident, defendant Lewis maintained that none of the lights on her vehicle were on at the time of the accident. Although defendant Lewis testified that he was still able to bring his vehicle to a gradual stop behind the Wilson vehicle prior to the accident and that he was stopped for approximately 10 seconds before his

vehicle was struck by the Turner vehicle, defendant Turner testified that just prior to striking the Lewis vehicle, it abruptly swerved into her lane (the middle lane) and came to a stop. It the Court view, this raises triable issue of fact not only as to whether Wilson exercised reasonable care in warning other drivers of the hazard posed by her vehicle being disabled on the roadway, but also as to whether such was a substantial factor in causing the accident. Since the submissions of defendants T.M. Douglas-cook and Erica Wilson reveal the existence of triable issues of fact, they failed to demonstrate their prima facie entitlement to judgment as a matter of law. Accordingly, their motion for summary judgment must also be denied regardless of the sufficiency of the opposing papers (*see Winegrad v. New York Univ. Med. Ctr.*, 64 N.Y.2d 851, 853, 487 N.Y.S.2d 316, 476 N.E.2d 642).

**B. The Motion of Defendant Richard Lewis:**

Defendant Turner's deposition testimony, which defendant Lewis submitted in support of his motion, raises as triable issue of fact as to whether defendant Lewis made an unsafe lane change into the middle lane, in violation of Vehicle and Traffic Law § 1128(a), causing the Turner vehicle to collide into the his vehicle (*see Meng Wai Wang v. Dailly News, L.P.*, 90 A.D.3d 624, 625, 933 N.Y.S.2d 888). Vehicle and Traffic Law § 1128(a) provides that “[a] vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety. Since defendant Lewis’ submissions also reveal the existence of triable issues of fact, he too failed to demonstrate his prima facie entitlement to judgment as a matter of law. His motion for motion for summary judgment must also be denied regardless of the sufficiency of the opposing papers (*see Winegrad v. New York Univ.*


*Med. Ctr.*, 64 N.Y.2d 851, 853, 487 N.Y.S.2d 316, 476 N.E.2d 642).

For all of the above reasons, it is hereby

**ORDERED** that both motions are **DENIED**.

This constitutes the decision and order of the Court.

Dated: February 26, 2020



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PETER P. SWEENEY, J.S.C.

Hon. Peter P. Sweeney, J.S.C.

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