

**Robinson-Caillet v Laurie**

2020 NY Slip Op 33539(U)

October 27, 2020

Supreme Court, New York County

Docket Number: 159197/2017

Judge: Lisa S. Headley

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

PRESENT: HON. LISA S. HEADLEY PART IAS MOTION 22  
*Justice*

-----X INDEX NO. 159197/2017

SHARAE ROBINSON-CAILLOT,  
Plaintiff, MOTION DATE N/A

- v -

MOTION SEQ. NO. 004

EBONY LAURIE,  
Defendant. **DECISION + ORDER ON  
MOTION**

-----X  
EBONY LAURIE Third-Party  
Plaintiff, Index No. 595452/2018

-against-

JOHN BIALEK, API INDUSTRIES INC, RYDER TRUCK  
RENTAL LT  
Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 004) 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 65, 67, 68, 69, 70

were read on this motion to/for JUDGMENT - SUMMARY

Upon the foregoing documents, it is ORDERED that the defendant/third-party plaintiff, Ebony Laurie’s (hereinafter, “third-party plaintiff Laurie”), motion for summary judgment pursuant to *CPLR §3212* is granted on the issue of liability against third-party defendants, John Bialek, API Industries Inc. and Ryder Truck Rental LT (hereinafter, “third-party defendants”). Third-party plaintiff Laurie’s motion contends that on May 17, 2016, while she was traveling completely in one lane, her vehicle was struck by an 18-wheel truck driven by third-party

defendant John Bialek as he attempted to change lanes, and entered her lane of traffic and struck the rear driver's side door of third-party plaintiff Laurie's vehicle.

Plaintiff, Sharae Robinson-Caillet, opposes the motion. Third-party defendants failed to submit opposition to the motion. Third-party plaintiff Laurie's counsel submitted an affirmation in reply.

"The proponent of a summary judgment motion must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case." *Winegrad v. New York University Medical Center*, 64 N.Y.2d 851, 853 (1985). Once such entitlement has been demonstrated by the moving party, the burden shifts to the party opposing the motion to "demonstrate by admissible evidence the existence of a factual issue requiring a trial of the action or tender an acceptable excuse for his failure...to do [so]." *Zuckerman v. City of New York*, 49 N.Y.2d 557, 560 (1980). Here, third-party plaintiff Laurie has made out a *prima facie* case of negligence, and the burden shifts to third-party defendants to raise a triable issue of fact. A violation of the New York Vehicle and Traffic Law ("VTL") constitutes negligence *per se*. See, *Flores v. City of New York*, 66 A.D.3d 599 (1st Dep't 2009). *VTL §1128(a)* states:

"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."

Here, third-party plaintiff Laurie testified that her vehicle was struck by an 18-wheel truck vehicle belonging to third-party defendant Bialek, when defendant Bialek came into the middle lane from the left lane when the defendant's trailer struck the rear driver's side door, (Mot, Exh F at 18, 21-24, 26), causing her vehicle to get stuck to the trailer of the truck and was dragged approximately one car length and landed in the right-hand moving lane. (Mot, Exh F at 27, 33). Third-party plaintiff Laurie also testified that the third-party defendant Bialek stayed at the scene for a few minutes, gave her his insurance and contract information, then left the scene of the accident before the police arrived (Mot, Exh F at 34-46). Third-party plaintiff Laurie attached to her motion as Exhibit G, the deposition transcript of Plaintiff Sharae Robinson-Caillet. Plaintiff Sharae Robinson-Caillet testified that "she was a seat-belted passenger in a vehicle operated by third-party plaintiff Laurie when she was involved in a motor vehicle accident. Plaintiff Robinson-Caillet testified that they were traveling completely in a middle lane on East 135<sup>th</sup> Street, when an

18-wheel commercial truck that was traveling in the lane directly to their left entered the lane they were traveling in, and hit the rear driver's side of the vehicle. Plaintiff further explained that part of the truck got hooked on the rear driver's side wheel of their vehicle, and caused the vehicle's tire to pop. Plaintiff testified that as a result of this impact, the vehicle they were traveling in was pushed partially into the lane to their right." (Mot, Exh G at pp 39-40, 43, 45, 47-50, 53-54). Third-party plaintiff Laurie attached to her motion the police report, which contains her statements regarding the occurrence of the accident (Mot, Exh H). Based on the evidence submitted, this court finds that the third-party plaintiff Laurie has made a *prima facie* showing of defendant's negligence. As such, the burden now shifts to the opposing party or parties to raise a triable issue of fact.

In opposition, the Plaintiff argues that the motion is wholly premature as it was made before there was a deposition of one of the drivers in this two-car collision and there are facts unavailable to the plaintiff. Plaintiff further argues that the motion is procedurally defective as the full pleadings in the consolidated actions are not before this court and have not been served on all parties. Here, Plaintiff proffers an attorney's affirmation and fails to raise any genuine issues of fact regarding defendant/third-party's *prima facie* case of negligence with regards to this collision. "[A] bare affirmation of . . . [an] attorney who demonstrated no personal knowledge . . . is without evidentiary value and thus unavailing." *Zuckerman v. City of New York*, 49 N.Y.2d 557, 563 (1980). Thus, the plaintiff attorney's affirmation is conclusory and speculative and thus, is insufficient to raise any factual issues to warrant a denial of the within motion. *See, GTF Marketing Inc. v. Colonial Aluminum Sales, Inc.*, 66 N.Y.2d 965, 968 (1985).

Moreover, Plaintiff Robinson-Caillet failed to establish that summary judgment was premature in light of outstanding discovery. "A party who contends that a summary judgment motion 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." *Cajas-Romero v. Ward*, 106 A.D.3d 850, 852, 965 N.Y.S.2d 559; *see, CPLR §3212(f)*. Here, both the Plaintiff and third-party plaintiff Laurie submitted to examinations before trial (EBT), and they both testified that the accident was caused by the third-party defendant Bialek when he entered into third-party plaintiff Laurie's lane. Third-party defendants have failed to oppose the motion; thus, they have failed to raise any issues of triable facts and have not put forth a nonnegligent excuse for the accident. In addition, Plaintiff's argument that she will be

unable to continue her action is without merit as according to her affidavit, Plaintiff has also filed an action against the third-party defendants. For the reasons stated herein, third-party plaintiff Laurie’s motion for summary judgment as to liability against the third-party defendants is granted. Accordingly, it is

**ORDERED** that defendant/third-party’s motion for summary judgment is granted on the issue of liability as against third-party defendants; and it is further

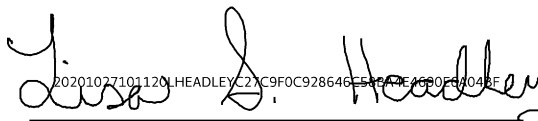
**ORDERED** that any relief sought not expressly addressed herein has nonetheless been considered; and it is further

**ORDERED** that within 60 days of entry, defendant/third-party plaintiff shall serve a copy of this decision/order upon all parties with notice of entry.

This constitutes the Decision/Order of the Court.

10/27/2020

DATE



LISA S. HEADLEY, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE