

**Pan v Pizante**

2020 NY Slip Op 35488(U)

December 9, 2020

Supreme Court, Queens County

Docket Number: Index No. 712780/2019

Judge: Lourdes M. Ventura

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.

**SHORT FORM ORDER**

SUPREME COURT OF THE STATE OF NEW YORK - QUEENS COUNTY

Present: HONORABLE LOURDES M. VENTURA, J.S.C.

IAS Part 37

-----X  
ARLENE PAN,

Plaintiff,

Index

Number: 712780/2019

-against-

Motion

Date: August 24, 2020

LEON YEHUDA PIZANTE and  
VW CREDIT LEASING LTD.,

Defendants.

Motion

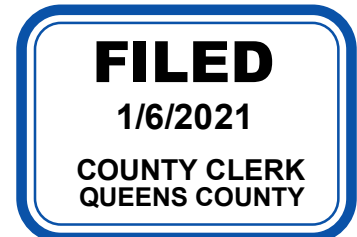
Seq. No.: 3

-----X  
The following electronically filed (EF) papers read on this motion by plaintiff Arlene Pan, for an Order: pursuant to CPLR 3212, granting plaintiff Arlene Pan summary judgment on the issue of liability against defendants, as she was an innocent passenger and in no way responsible for the happening of the accident herein; and on the common law principles that a rear-end collision with a stopped or stopping vehicle creates a prima facie case of negligence against the operators of the following vehicles; and that a driver is considered to be negligent when an accident occurs because the driver failed to see that which through the proper use of his senses he should have seen. Striking defendants’ affirmative defenses of comparative negligence; striking defendants’ affirmative defense as to the emergency doctrine; setting this matter down for a trial on damages and granting such other and further relief as this court deems just and proper.

	Papers
	<u>Numbered</u>
Notice of Motion - Affirmation - Exhibits.....	EF 34-43
Opposition to Motion - Affirmation - Exhibits.....	EF 45-46
Affirmation in Reply.....	EF 47

As an initial matter, this Court notes that the instant motion (sequence 3) was marked “fully submitted no opp” on August 24, 2020. On October 19, 2020, the parties entered into a stipulation<sup>1</sup> agreeing and consenting to a briefing schedule for motion sequence 3, which provided for opposition to be filed on or before October 23, 2020 and reply to be filed on or before October 27, 2020. Notwithstanding the “fully submitted-no opp” marking, in the interest of justice, and upon this Court’s discretion to have matters litigated on the merits; this Court has reviewed the subsequent papers filed after August 24, 2020 in relation to motion sequence 3 and has taken said papers into consideration.

\_\_\_\_\_  
<sup>1</sup> Attached hereto.



Upon the foregoing papers, it is Ordered that plaintiff's Motion is determined as follows:

Plaintiff commenced this action to recover for damages arising from a two-car collision that occurred on or about September 25, 2018, at or on the Horace Harding Expressway at or near the intersection 161st Street in Queens County, New York. At the time of collision, it is alleged that a vehicle operated by defendant Leon Yehuda Pizante (hereinafter "defendant Pizante") struck Sheung Kwok's vehicle in the rear. Plaintiff was a passenger in the front seat of Sheung Kwok's vehicle at the time of the collision.

Plaintiff filed the instant motion seeking an order by this Court, pursuant to CPLR 3212, granting plaintiff Arlene Pan partial summary judgment on the issue of liability, striking defendants' affirmative defenses of comparative negligence and the emergency doctrine, setting this matter down for a trial on damages, and any such other and further relief as this Court deems just and proper. Plaintiff avers that the defendant Pizante is negligent under the common law principle that a rear-end collision with a stopped or stopping vehicle creates a prima facie case of negligence against the operators of the following vehicles, and for his failure to see that which through proper use of his senses she should have seen. Plaintiff further avers that the affirmative defense of comparative negligence should be stricken as plaintiff was an innocent passenger who in no way contributed to the happening of the accident.

In order to succeed on a motion for summary judgment "it is necessary that the movant establish [its] cause of action or defense 'sufficiently to warrant the court as a matter of law in directing judgment' in [its] favor [CPLR 3212, subd. (b)], and [it] must do so by tender of evidentiary proof in admissible form" (*Zuckerman v City of New York*, 49 NY2d 557 (1980)). "Only if the movant succeeds in meeting its burden will the burden shift to the opponent to demonstrate through legally sufficient evidence that there exists a triable issue of fact" [cite omitted] (see *Richardson v County of Nassau*, 156 AD3d 924 [2d Dept 2017]). Consequently, where the movant fails to meet this initial burden, summary judgment must be denied regardless of the sufficiency of the opposing papers (see *Voss v Netherlands Ins. Co.*, 22 NY3d 728 [2014]). 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]). "[I]n a comparative negligence case, a plaintiff does not bear the double burden of establishing a prima facie case of defendant's liability and the absence of his or her own comparative fault" (see *Rodriguez v City of New York*, 31 NY3d 312 [2d Dept 2018]).

In support of plaintiff's motion, it submits an affidavit, which in relevant part states:

"7. At the time of the accident, I was wearing my seatbelt.

8. Prior to the collision, driver Sheung Kwok had brought the vehicle I was a passenger in slowly and smoothly to a complete stop. The vehicle was stopped for at least 30 seconds prior to being struck in the rear.

9. I was not distracting Sheung Kwok in any way from her focus on operating the vehicle at or around the time of this incident.

10. I was also not obstructing Sheung Kwok's view in any way at the time of the accident.

11. At no point did I exercise control of either vehicle involved in the aforementioned collision.

12. At all times prior to and during the accident, I was merely a passenger in the vehicle that was rear-ended.”

The Court finds that plaintiff has established a prima facie entitled to judgment as a matter of law on the issue of liability through the submission of an affidavit which alleges that plaintiff was a passenger in a vehicle that was stopped for at least 30 seconds before being struck in the rear by defendant Pizante's vehicle (see *Mulhern v Gregory*, 161 AD3d 881 [2d Dept 2018])[ plaintiff met his prima facie burden by demonstrating, through the submission of his undisputed deposition testimony, that the defendants' vehicle struck the rear of the vehicle in which he was a passenger while the latter vehicle was stopped]).

The burden now shifts to defendant to raise a triable issue of fact (see *Richardson v County of Nassau*, 156 AD3d 924 [2d Dept 2017]). “A rear-end collision with a stopped or stopping vehicle creates a prima facie case of negligence with respect to the operator of the moving vehicle, and imposes a duty on the operator of the moving vehicle to come forward with an adequate non-negligent explanation for the accident” (see *Carman v Arthur J. Edwards Mason Contracting Co.*, 71 AD3d 813 [2d Dept 2010] quoting (see *Oguzturk v Gen. Elec. Co.*, 65 AD3d 1110 [2d Dept 2009]). This presumption of negligence arises from the duty of the driver of the vehicle behind to keep a safe distance and to not collide with the vehicle ahead (Vehicle and Traffic Law § 1129[a]; *Gleason v Villegas*, 81 AD3d 889 [2d Dept 2011]). “Thus, a rear-end collision with a stopped or stopping vehicle establishes a prima facie case of negligence on the part of the operator of the rear vehicle, requiring that operator to come forward with evidence of a nonnegligent explanation for the collision to rebut the inference of negligence [citations omitted]” (see *Montalvo v Cedenno*, 170 AD3d 1166 [2d Dept 2019]). One of several nonnegligent explanations for a rear-end collision [may be] a sudden stop of the lead vehicle” [citations omitted] (see *Le Grand v Silberstein*, 123 AD3d 773 [2d Dept 2014]). However, “vehicle stops which are foreseeable under the prevailing traffic conditions, even if sudden and frequent, must be anticipated by the driver who follows, since he or she is under a duty to maintain a safe distance between his or her car and the car ahead” [citations omitted] (see *Le Grand v Silberstein*, 123 AD3d 773 [2d Dept 2014]).

In opposition defendants submits an affidavit. The Court finds that defendant Pizante's affidavit failed to rebut the inference of negligence. In addition, even in viewing the facts in the light most favorable to defendant and according full credit to defendant's version of how the collision occurred, it was insufficient to raise a triable issue of fact. Lastly, “[u]pon establishing his or her freedom from fault, the right of an innocent passenger to an award of summary judgment on the issue of liability against one driver is not barred or restricted by potential issues of comparative fault as between that driver and the driver of another vehicle involved in the accident” [citations omitted] (see *Rodriguez v Farrell*, 115 AD3d 929, 930 [2d Dept 2014]).

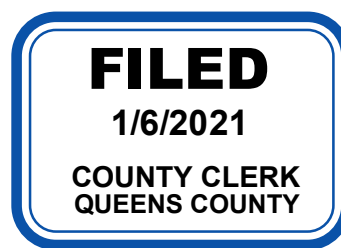
Accordingly, plaintiff's motion for an Order pursuant to CPLR 3212 on the issue of liability is granted. In addition, plaintiff's request to strike defendants' affirmative defenses of comparative negligence as against plaintiff is granted. Any other requested relief not expressly addressed herein has nonetheless been considered by this Court and is hereby denied.

This shall constitute the Decision and Order of the Court.

Dated: December 9, 2020



\_\_\_\_\_  
LOURDES M. VENTURA, J.S.C.



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

ARLENE PAN,

Plaintiff(s)

- against -

LEON YEHUDA PIZANTE and VW CREDIT  
LEASING LTD.,

Defendant(s)

STIPULATION

Index #: 712780/2019

IT IS HEREBY STIPULATED AND AGREED by and between the undersigned, the attorneys of record for the parties, that the plaintiff's Summary Judgment Motion, which was originally returnable on July 20, 2020, is hereby adjourned to November 23, 2020. Defendant's opposition to be filed by October 26, 2020. Plaintiff to file reply as per the CPLR. This stipulation may be filed without further notice with the Clerk of the Court.

DATED: Westbury, New York  
October 7, 2020



Christina Anziano, Esq.  
FERRO & STENZ  
Attorneys for Defendant(s)  
Leon Pizante  
875 Merrick Avenue  
Westbury, NY 11590-6603  
Our File #: 19Q2218



Caesar and Napoli P.C.  
Attorneys for Plaintiff(s)  
233 Broadway, Suite 2348  
New York, NY 10279  
212-226-2100