

**Podlubny v Kour**

2020 NY Slip Op 35543(U)

December 21, 2020

Supreme Court, Bronx County

Docket Number: Index No. 28324/2019E

Judge: Ben R. Barbato

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CEH 001

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX, PART 14

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ELISABETH C. PODLUBNY

Index No. 28324/2019E

-against-

Hon. **BEN R. BARBATO**

SANDEEP KOUR, SINGH M. SUDAN, DAVID L. SWEIGARD, PINNACLE DRIVEAWAY INC., and JOHN DOES 1-10 and/or ABC CORP. 1-10 (said names being fictitious, true names unknown)

Justice Supreme Court

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The following NYSCEF docs numbered 15 to 35 were read on this motion (NYSCEF and CASE MANAGEMENT Seq No. **1**) for **SUMMARY JUDGMENT LIABILITY** noticed on October 14, 2020 and submitted on December 11, 2020.

Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed	NYSCEF No(s). 15-24
Answering Affidavit and Exhibits	NYSCEF No(s). 25-34
Replying Affidavit and Exhibits	NYSCEF No(s). 35

Upon the foregoing papers, defendants Sandeep Kour (“Kour”) and Singh M. Sudan (“Sudan”) (collectively “moving defendants”) move for an order granting them summary judgment dismissing plaintiff’s complaint and all cross-claims as against them. The motion is opposed.

The cause of action is for personal injuries allegedly sustained by the plaintiff in a multi-vehicle accident that occurred on December 6, 2017 on Interstate 287 (“I-287”) approximately 100 feet west of the 100A overpass in the Village of Elmsford in Westchester County.

In support of their motion, the moving defendants submit the deposition transcripts of Kour, the plaintiff, and co-defendant David L. Sweigard (“Sweigard”). They also submit photographs of Kour and Sudan’s vehicle depicting the damage after the accident, and a certified copy of the police report. The moving defendants assert that they bear no responsibility for the subject accident. They refer to plaintiff’s deposition testimony wherein she stated that at the time of the accident, she was traveling in the left-most lane of I-287. She stated that there was a truck traveling in the lane to the right of her vehicle (Sweigard’s vehicle) which swerved completely into her lane. Plaintiff’s vehicle made contact with Sweigard’s vehicle on the right, as well as the concrete barrier lining the road to the left of her vehicle.

Next, the moving defendants refer to the deposition testimony of Sweigard who stated that his vehicle was traveling in the middle lane of I-287 when a blue car that was in the left lane cut across the road to get off the exit that was on the right. The exit was full so the blue car was sticking out into the road and other vehicles were forced to move over so as not to strike the blue car. Sweigard observed the moving defendants’ vehicle to his right and his vehicle impacted the moving defendants’ vehicle. The vehicle he was towing then impacted the plaintiff’s vehicle to the left of his.

Kour testified that she had been traveling on I-287 at approximately 40-50 mph when her vehicle

was impacted by a blue SUV to the right rear side of her vehicle, which belonged to a non-party. The impact with that blue SUV caused Kour's vehicle to be pushed into the middle lane causing a second impact to the rear of the driver's side, by Sweigard's vehicle. The blue vehicle then left the scene. Kour claims that she had no time to avoid Sweigard's truck as she was pushed into it.

The moving defendants claim that the emergency doctrine is applicable in this case, even though not plead in their Answer, because the deposition testimony shows that the facts of this case constituted an emergency situation. All parties agree that a blue vehicle, which left the scene, initiated the events that caused the accident and created the emergency circumstance that was the proximate cause of the accident by cutting across all lanes of traffic in violation of Vehicle and Traffic Law §1128(a). Photographs of the moving defendants' vehicle shows damage to the right and left side of the vehicle. Kour claims that she was not even aware the blue vehicle had cut across traffic and only knew that she had been struck on the right of her vehicle when the vehicle attempted to exit.

The moving defendants further argue that even absent the emergency circumstance, Kour's vehicle was struck by another vehicle which caused hers to strike Sweigard's vehicle which then came in contact with plaintiff's vehicle. The moving defendants argue that this situation is analogous to chain collision cases where the middle vehicle is propelled into the vehicle in front and summary judgment in favor of the middle vehicle is frequently granted. Therefore, summary judgment should be granted in the moving defendants' favor.

Plaintiff opposes the motion and argues that there are two to three distinct versions of how the accident occurred thereby raising issues of fact which preclude summary judgment in favor of moving defendants. Plaintiff indicates that two separate police reports were filed in this action. The first police report resembles Sweigard's version of the accident, as testified to at his deposition, and the second one resembles Kour's version of the events as testified to at her deposition. In the first version, it states that Kour's vehicle was cut off by an "uninvolved" vehicle causing her to swerve to the left and sideswipe Sweigard's vehicle. No impact is reported between Kour's vehicle and the vehicle that left the scene. The second report states that a blue SUV entered the roadway from the ramp and struck Kour's vehicle in the rear passenger bumper, Kour's vehicle then swerves to the left causing it to strike Sweigard's vehicle. Sweigard testified that he did not see the blue vehicle strike Kour's vehicle.

Plaintiff argues that pursuant to Sweigard's version of the events, the moving defendants' vehicle swerved left to avoid an unidentified vehicle in front of hers, not behind hers, thereby initiating the three-car collision. Plaintiff claims that the second police report was influenced by Kour's deposition testimony. Kour testified that she was not sure where the blue SUV came from and that she was in the right lane but the blue vehicle came from her right. Plaintiff, in contrast testified that she did not see a blue SUV at any time and did not see anything happen until her vehicle was struck by Sweigard's vehicle. Furthermore, she did not hear any other impacts. Plaintiff contends that the moving defendants seek to have this court determine as a matter of law that the Kour vehicle was struck in the right rear of her vehicle by the blue

SUV and that her actions were reasonable, which is contrary to the testimony given by Sweigard and the Plaintiff. Moreover, whether or not there was a qualifying emergency should be left to a jury to determine and summary judgment should be denied.

In reply, the moving defendants argue that the purported differing versions of the accident are not based on actual observation and only speculation and since all defendants agree that the blue vehicle created an emergency for all the vehicles, summary judgment should be granted in moving defendants' favor.

To be entitled to the "drastic" remedy of summary judgment, the moving party "must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact from the case." (Winegrad v. New York University Medical Center, 64 N.Y.2d 851 [1985]). The failure to make such prima facie showing requires denial of the motion, regardless of the sufficiency of any opposing papers (id., see also, Alvarez v. Prospect Hosp., 68 N.Y.2d 320, 324 [1986]). Once a movant meets his initial burden, the burden shifts to the opponent, who must then produce sufficient evidence, also in admissible form, to establish the existence of a triable issue of fact. (Zuckerman v. City of New York, 49 N.Y.2d 557 [1980]).

The court finds that the moving defendants did not meet their burden of demonstrating that no triable issues of fact exist in this multi-vehicle accident. There is some variation between the parties as to how the accident occurred. Moreover, the moving defendants claim that they were faced with an emergency situation. The Court of Appeals has determined that, "Where some reasonable view of the evidence establishes that an actor was confronted by a sudden and unforeseen occurrence not of the actor's own making, then the reasonableness of the conduct in the face of the emergency is for the jury..." (Kuci v. Manhattan and Bronx Surface Transit Operating Authority, 88 N.Y.2d 923 [1996]). In Maisonet v. Roman, 139 A.D.3d 121 [1st Dept. 2016], the court was clear that, "...except in the most egregious circumstances, an evaluation of the reasonableness of a defendant driver's reaction to an emergency is normally left to the trier of fact..." Id. at 125.

Accordingly, the moving defendants' motion for summary judgment dismissing plaintiff's complaint and all cross-claims against them, is denied.

This constitutes the Decision and Order of this Court.

Dated: 12/21/2020

Hon.  J.S.C.

- 1. CHECK ONE.....  CASE DISPOSED IN ITS ENTIRETY  CASE STILL ACTIVE
- 2. MOTION IS.....  GRANTED  DENIED  GRANTED IN PART  OTHER
- 3. CHECK IF APPROPRIATE.....  SETTLE ORDER  SUBMIT ORDER  SCHEDULE APPEARANCE
- FIDUCIARY APPOINTMENT  REFEREE APPOINTMENT