

**Jimenez-Canario v Pipul**

2020 NY Slip Op 35608(U)

October 30, 2020

Supreme Court, Queens County

Docket Number: Index No. 711100/2020

Judge: Robert J. McDonald

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This opinion is uncorrected and not selected for official publication.

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK  
CIVIL TERM - IAS PART 34 - QUEENS COUNTY  
25-10 COURT SQUARE, LONG ISLAND CITY, N.Y. 11101

P R E S E N T : HON. ROBERT J. MCDONALD  
**Justice**

- - - - - x

JOSE JIMENEZ-CANARIO, Index No.: 711100/2020  
Plaintiff, Motion Date: 10/22/2020  
- against - Motion Nos.: 18 & 19  
MD U. PIPUL, WALLACE CRUZ, and JIYOUNG Motion Seqs.: **1 & 2**  
J. NOH,

Defendants.

- - - - - x

The following electronically filed documents read on this motion by defendant JIYOUNG J. NOH (**seq. no. 1**) for an Order pursuant to CPLR 3212, granting said defendant summary judgment, dismissing the complaint and all cross-claims; and on this motion by defendant WALLACE CRUZ (**seq. no. 2**) for an Order pursuant to CPLR 2221 renewing the prior motion, and pursuant to CPLR 3212, granting said defendant summary judgment:

	<u>Papers</u> <u>Numbered</u>
Notice of Motion( <b>seq. no. 1</b> )-Affirmation-Memo. of Law-Exhibits.....	EF 64 - 77
Notice of Motion( <b>seq. no. 2</b> )-Affirmation-Exhibits....	EF 78 - 87
Plaintiff's Affirmation in Opposition.....	EF 88 - 117
Pipul's Affirmation in Opposition.....	EF 121
Noh's Affirmation in Reply.....	EF 118 - 119
Cruz's Reply Affirmation.....	EF 120

This is an action to recover damages for personal injuries arising out of a motor vehicle accident involving four vehicles that occurred on November 3, 2018 on the Queensboro Bridge, in Queens County, New York.

Plaintiff commenced this action by filing a summons and complaint on September 10, 2019 in Supreme Court, Bronx County. Defendant Noh served an answer with cross-claim on October 9,

2019. Defendant Cruz served an answer with cross-claim on October 29, 2019. Defendant Pipul served an answer with cross-claim on December 13, 2019. This matter was transferred to Queens County on February 10, 2020. Defendants Noh and Cruz now move for summary judgment. Although plaintiff failed to properly notice and file the cross-motion, the Court will still consider the "cross-motion" as it is based on the same grounds asserted by the moving defendants herein and as it is opposed.

Defendant Noh submits an affidavit affirming that on November 3, 2018, she was driving eastbound on the Queensboro Bridge when she was rear-ended. In response to the vehicle in front of her stopping for traffic, she gradually stopped her vehicle, coming to a complete and full stop. She remained stopped up until the time her vehicle was impacted. There was an impact to the rear of her vehicle. As a result of the impact to the rear of her vehicle, her vehicle was pushed into the vehicle in front of her.

Defendant Cruz submits an affidavit affirming that he was traveling behind defendant Noh's vehicle on the Queensboro Bridge. He observed brake lights on Noh's vehicle as it was slowing for traffic. He applied his brakes and came to a stop behind the Noh vehicle. While stopped behind the vehicle, he felt an impact to the rear of his vehicle. As a result of the impact, his vehicle impacted defendant Noh's vehicle in the rear.

Plaintiff submits an affidavit affirming that he was driving on the eastbound Queensboro Bridge lower level when he was struck in the rear. He saw the vehicle in front of him stop for traffic, so he gradually began to stop his vehicle and eventually came to a complete stop. He stayed stopped until his vehicle was struck from behind. He was struck from behind twice.

In the Accident Description portion of the Police Accident Report, the responding officer noted, in relevant part:

VEHICLE 1 (Pipul) STATES HE WAS DRIVING STRAIGHT WHEN HE TRIED TO STOP BUT SLID INTO VEHICLE 2 (Cruz) CAUSING VEH 2 TO HIT VEH 3 (Noh) AND VEH 4 (plaintiff). VEHICLE 2, 3, 4 STATES THEY WERE STOPPED WHEN THEY WERE REAR ENDED.

The proponent of a summary judgment motion must tender evidentiary proof in admissible form eliminating any material issues of fact from the case. The failure to make that showing requires the denial of the motion regardless of the sufficiency of the opposing papers (see Mastrangelo v Manning, 17 AD3d 326

[2d Dept. 2005]). If the proponent succeeds, the burden shifts to the party opposing the motion, who then must show the existence of material issues of fact by producing evidentiary proof in admissible form, in support of his or her position (see Zuckerman v City of New York, 49 NY2d 557 [1980]). Summary judgment should only be granted where the court finds as a matter of law that there is no genuine issue as to any material fact (see Cauthers v Brite Ideas, LLC, 41 AD3d 755 [2d Dept. 2007]).

It is well established law that a rear-end collision with a stopped or stopping vehicle creates a prima facie case of negligence on the part of the driver of the rearmost vehicle, requiring the operator of that vehicle to proffer an adequate, non-negligent explanation for the accident (see Klopchin v Masri, 45 AD3d 737 [2d Dept. 2007]; Hakakian v McCabe, 38 AD3d 493 2d Dept. 2007]; Reed v New York City Transit Auth., 299 AD2 330 [2d Dept. 2002]; Velazquez v Denton Limo, Inc., 7 AD3d787 [2d Dept. 2004]. "The rearmost driver in a chain-reaction collision bears a presumption of responsibility" (Ferguson v Honda Lease Trust, 34 AD3d 356 [1st Dept. 2006], quoting De La Cruz v Ock Wee Leong, 16 AD3d 199 [1st Dept. 2005]). In multiple-car, chain-reaction accidents, the courts have recognized that the operator of a vehicle that has come to a complete stop and is propelled into the vehicle in front of it, as a result of being struck from behind, is not negligent inasmuch as the operator's actions cannot be said to be the proximate cause of the injuries resulting from the collision (see Mohamed v Town of Niskayuna, 267 AD2d 909 [3d Dept. 1999]).

Here, movants satisfied their prima facie burden of establishing their entitlement to judgment as a matter of law on the issue of liability by demonstrating that their vehicles were stopped when struck in the rear (see Volpe v Limoncelli, 74 AD3d 795 [2d Dept. 2010]; Vavoulis v Adler, 43 AD3D 1154 [2d Dept. 2007]; Levine v Taylor, 268 AD2d 566 [2d Dept. 2000]).

Having made the requisite prima facie showing of entitlement to summary judgment, the burden then shifted to the non-moving parties to raise a triable issue of fact as to whether movants were also negligent, and if so, whether that negligence contributed to the happening of the accident (see Goemans v County of Suffolk, 57 AD3d 478 [2d Dept. 2007]).

No triable issues of fact have been raised in opposition. Any contention that this motion for summary judgment is premature is without merit as no evidentiary basis to suggest that discovery may lead to relevant evidence has been submitted. The mere hope and speculation that evidence sufficient to defeat the

motion might be uncovered during discovery is an insufficient basis upon which to deny the motion (see CPLR 3212[f]; Medina v Rodriguez, 92 AD3d 850 [2d Dept. 2012]; Hanover Ins. Co. v Prakin, 81 AD3d 778 [2d Dept. 2011]; Essex Ins. Co. v Michael Cunningham Carpentry, 74 AD3d 733 [2d Dept. 2010]; Peerless Ins. Co. v Micro Fibertek, Inc., 67 AD3d 978 [2d Dept. 2009]; Gross v Marc, 2 AD3d 681 [2d Dept. 2003]).

Accordingly, and for the reasons stated above, it is hereby

ORDERED, that the summary judgment motion by defendant JIYOUNG J. NOH (**seq. no. 1**) is granted, the complaint and any and all cross-claims asserted against defendant JIYOUNG J. NOH are dismissed; and it is further

ORDERED, that the summary judgment motion by defendant WALLACE CRUZ (**seq. no. 2**) is granted, the complaint and any and all cross-claims asserted against defendant WALLACE CRUZ are dismissed; and it is further

ORDERED, that plaintiff JOSE JIMENEZ-CANARIO is entitled to partial summary judgment on the issue of liability as against defendant MD U. PIPUL, only; and it is further

ORDERED, that upon completion of discovery on the issue of damages, filing a Note of Issue, and compliance with all the rules of the court, this action shall be placed on the trial calendar of the court for a trial on serious injury and damages, only.

Dated: October 30, 2020  
Long Island City, N.Y.



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**ROBERT J. McDONALD**  
J.S.C.

**FILED & RECORDED**  
**10/30/2020**  
**12:28 PM**  
**COUNTY CLERK**  
**QUEENS COUNTY**