SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. MARGARET A. CHAN** **PART** **IAS MOTION 33EFM**

Justice

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USAA Casualty Insurance Company a/s/o Daniel Matalon,

Plaintiff,

-v-

LACROSSE TAXI CORP., BLAISE BEDI, OSAMA EMARA, MOHAMED AHMED, GELCO CORPORATION, and THASHAM PERSAUD,

Defendants.

INDEX NO. 450975/18

MOTION DATE

MOTION SEQ. NO. 001 and 002

DECISION + ORDER ON MOTION

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LACROSSE TAXI CORP.,

Plaintiff,

-v-

OSAMA ELSAID EMARA, MOHAMED B. AHMED, GELCO CORPORATION, THASHAM J. PERSAUD,

Defendants

The following e-filed documents, listed by NYSCEF document numbers 14,15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 2526, 27, 28, 29, 30, 32, 32, 33, 36, 37, 38, 39, 41, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 61, 62,63, 64, 66.

were read on these motions to/for SUMMARY JUDGMENT/CONTEMPT.

In these consolidated actions for property damage arising out of an automobile accident, defendants Thasham Persaud ("Persaud") and Gelco Corporation ("Gelco") (together "the Persaud defendants") move, in motion sequence

1, for an order (i) granting Gelco summary judgment dismissing *Lacrosse Taxi v. Emara* ("the Lacrosse Action"), and *USSA Casualty Insurance v. Lacrosse Taxi* ("the USAA Action") on the ground that as a vehicle leasing company it is immune from liability under the Federal Transportation Equity Act of 2005 (49 U.S.C. § 301106), (ii) granting Persaud summary judgment dismissing the actions against him on the ground that Persaud is not responsible for the property damage to the vehicles at issue, and (iii) holding Lacrosse Taxi Corp. ("Lacrosse") in contempt pursuant to Judiciary Law § 753 (A)(3) (NYSCEF #15)(. Lacrosse and defendants Mohamed Ahmed and Osama Emara (together "the Ahmed/Emara defendants") oppose the motion except to the extent that Gelco seeks summary judgment on the ground that it is immune from liability (NYSCEF #36) (NYSCEF # 41). Plaintiff USAA Casualty Insurance Company ("USAA") does not oppose the motion.

In motion sequence 2,[1] the Ahmed/Emara defendants separately move for summary judgment dismissing the Lacrosse Action and the USAA Action against them, asserting that they did not breach any duty owed to the plaintiffs and were not a proximate cause of the accident (NYSCEF #44). The Persaud defendants partially oppose the motion (NYSCEF #62), which is not opposed by Lacrosse or USAA.

Background

The underlying incident occurred on January 29, 2014, when a yellow taxi driven by Blaise Bedi, which was owned by Lacrosse ("the taxi"), hit a commercial van ("the van") parked on the westside of First Avenue just north of the 34th Street intersection which, in turn, hit the back of another parked vehicle insured by USAA and owned by Daniel Matalon ("the Matalon vehicle'). The incident occurred near the main entrance of New York University Hospital's Emergency Room. Before the incident, a vehicle pulling a small food truck operated by Ahmed and owned by Emara ("the Ahmed vehicle") was travelling northbound on First Avenue behind the taxi. A vehicle driven by Persaud ("the Persaud vehicle") which was leased by his employer from Gelco, was behind the Ahmed vehicle.

In 2014, Bedi commenced a personal injury action in this court ("Bedi personal injury action") against the Ahmed/Emara defendants, the Persaud defendants, and Persaud's employer. Thereafter, Lacrosse commenced the Lacrosse Action in the Civil Court, Kings County, and USAA commenced the USAA Action in the Civil Court, Queens County. The Lacrosse Action and the USAA Action were transferred to this court and consolidated with the Bedi personal injury action (NYSCEF ## 19, 21). The Bedi personal injury action was discontinued after settlement in 2019, and before any depositions were taken. The parties in the Lacrosse Action and USAA Action have not sought or conducted depositions.

[1] Motion sequence nos. 001 and 002 are consolidated for disposition.

Motions for Summary Judgment

The Persaud defendants argue that summary judgment should be granted dismissing the Lacrosse Action and USAA Action against Gelco, on the ground that as the lessor of the Persaud vehicle, Gelco is immune from liability under the Federal Transportation Equity Act of 2005 (49 U.S.C. § 301106). In support of their position, they submit an affidavit from Gelco's Claims and Litigation Administrator (NYSCEF # 29) who states that Gelco leased the Persaud vehicle to Persaud's employer, which "remained the beneficial owner" of the vehicle.

There is no opposition to this aspect of the Persaud defendants' motion, which is granted as under the Federal Transportation Equity Act; Gelco is not subject to liability based on its status as a lessor of the Persaud vehicle (s*ee Jones v Bill*, 10 NY3d 550, 553 [2008] [noting that the Federal Transportation Equity Act preempts the New York Vehicle and Traffic Law to prohibit "the imposition of vicarious liability on vehicle lessors for injuries resulting from the negligent use or operation of the leased vehicles"]; *Hall v Elrac, Inc.*, 52 AD3d 262, 262 [1st Dept 2008] [dismissing complaint against defendant car rental company as plaintiff's claims of vicarious liability against the defendant were barred under 49 USC § 30106]).

The Persaud defendants next argue that Persaud is entitled to summary judgment as the record establishes that Persaud is not responsible for the property damage arising from the incident and submit Persaud's affidavit in support of this argument (NYSCEF # 16). According to Persaud, the accident occurred as follows:

> "As my vehicle approached the 34th Street intersection, an ambulance with its emergency lights and sirens approached heading east on 34th Street into the intersection. As the ambulance entered the intersection, Bedi hit his brakes. Once Bedi hit his brakes, the vehicle in front of me driven by Ahmed hit his brakes as well and allegedly made slight contact with Bedi's rear bumper. I also then hit my brakes given the Bedi and Ahmed vehicles stopping ahead of me, and my front bumper made minor contact with the food truck being pulled by the Emara/Ahmed vehicle. Then, after the ambulance passed, Bedi accelerated through the intersection at a very high velocity, appearing out of control, veered northwest through the intersection and slammed into the parked commercial van on the west side of First Avenue just north of the 34th Street intersection. Bedi's taxi hit the commercial van with such force that it smashed Bedi's hood like an accordion, and the vehicle Bedi's taxi struck then pushed into the rear bumper of the vehicle parked in front of it, owned by Daniel Matalon.

(*Id.*).

Persaud also submits photographs that he states that he took after right after the incident (NYSCEF # 31), and the Police Accident Report (NYSCEF #33).

According to the Police Accident Report, Bedi reported that his taxi "was struck in the rear [and] … his foot was on the brake but did forcibly move [westbound] on 1st Avenue and struck [the van] which was parked, and [the van] struck [the Matalon vehicle]." Ahmed reported that the taxi "was slowing down and [he] hit his brakes when he tapped [the taxi] as [the Persaud van] hit [his vehicle]." (*Id.*).

Lacrosse opposes the motion, arguing that the record raises triable issues of fact as to whether Bedi faced an emergency situation caused when his taxi was rear-ended by the Ahmed vehicle. In support of its opposition, Lacrosse relies on the Police Accident Report and the Report of Motor Vehicle Accident (M-104) signed by Bedi which indicates the taxi "was travelling on [First] Ave N/B (i.e., northbound) at a green light and that [the Ahmed vehicle] was in the rear of [the taxi] … [the Ahmed vehicle] rear ended [the taxi], causing [the taxi] to lose control and hit [the van]." (NYSCEF # 38).

The Ahmed/Emara defendants also oppose the Persaud defendants' motion, arguing that the record shows that issues of fact exist as to whether there was contract between the Bedi vehicle and the Ahmed vehicle, and if so, whether the impact to the rear of the Ahmed vehicle by the Persaud vehicle caused the Ahmed vehicle to be pushed into the Bedi vehicle.

The Ahmed/Emara defendants argue that they are entitled to summary judgment as the record establishes that their actions were not a proximate cause of the incident, and that as the middle vehicle, which was hit from behind by the Persaud vehicle, they owe no duty to plaintiff, citing *De La Cruz v Ock Wee Leong*, 16 AD3d 199, 200 [1st Dept 2005] [finding that driver of second vehicle in three-vehicle collision is entitled to summary judgment]).

In support of their motion, the Ahmed/Emara defendants submit Ahmed's affidavit. Ahmed states that on the date of the incident, the vehicle he was driving was pulling a small food truck, on First Avenue in Manhattan near the intersection of 34th Street, and that

> "as I approached the intersection of First Avenue and 34th Street there was a red light [and] I came to a complete stop at the intersection behind a yellow taxi. As I stopped at the intersection for approximately 10 seconds, I was impacted in the rear by a van operated by Persaud and pushed into the rear of the taxi. As a result of being pushed by the van operated by Persaud my vehicle lightly tapped the rear of the yellow taxi. Subsequent to this contact, the light turned green and

> yellow taxi accelerated and came into contact with another vehicle stopped passed the intersection."

(NYSCEF # 57.)

The Persaud defendants oppose the motion to the extent of denying Ahmed's statement that the impact of the Persaud vehicle made to the rear of the food cart pulled by the Ahmed vehicle pushed the foot cart into the Ahmed vehicle, causing the Ahmed vehicle to hit the taxi. Significantly, however, Ahmed and Persaud both aver that Bedi accelerated through the intersection after the three vehicles came to a stop and then hit the van, which was parked on the westside of First Avenue.

"It is well-settled that on a motion for summary judgment, the moving party has the initial burden of demonstrating, by admissible evidence, its right to judgment. The burden then shifts to the opposing party, who must proffer evidence in admissible form establishing that an issue of fact exists warranting a trial." (*Bendik v Dybowski*, 227 AD2d 228, 228 [1st Dept 1996] [internal citations omitted]). "While negligence cases do not generally lend themselves to resolution by motion for summary judgment, such a motion will be granted where…the facts clearly point to the negligence of one party without any fault or culpable conduct of the other party" (*Spence v Lake Service Station, Inc.*, 13 AD3d 276, 277-278 [1st Dept 2004]). In addition, "[e]vidence of negligence is not enough by itself to establish liability. It must also be proved that the negligence was the cause of the event which produced the harm sustained by one who brings the complaint" (*Sheehan v City of New York*, 40 NY2d 496, 501 [1976]).

Under this standard, the sworn statements by Persaud and Ahmed are sufficient to make a prima facie showing that the property damage to the parked cars was not caused by any negligence by the Persaud defendants or the Ahmed/Emara defendants. In particular, Persaud and Ahmed both aver that after the taxi was hit in the rear by the Ahmed vehicle, Bedi accelerated through the intersection and hit the parked van which, in turn, hit the Matalon vehicle. As such, even assuming *arguendo* that Persaud and/or Ahmed were negligent and such negligence resulted in hitting the rear of Bedi's taxi, based on statements in their affidavits such negligence cannot be said to be a proximate cause of the damage to the van and the Matalon vehicle. Instead, at most, their negligence "merely furnished the occasion for the accident" (*Pagan v Ouattara,* 115 AD3d 605, 605-606 [1st Dept 2014] [internal citations omitted]; *Kantor v Met Transport Inc.*, 91 AD3d 525, 526 [1st Dept 2012] [plaintiff failed to raise issue of fact as to whether any cab's violation of regulation in negligently stopping was a proximate cause of the accident); *see also*, *Hain v Jamison*, 28 NY3d 524, 532 [2016] [noting that "proximate cause has been found lacking, as a matter of law, where a defendants negligently caused a vehicular accident, but the first accident was complete and the plaintiff was in a position of safety when a secondary accident occurred"]).

In opposition, Lacrosse argues that when the taxi was struck from behind, it resulted in an emergency situation contributing to the accident. This argument is unavailing. "An emergency situation arises when one is confronted with a sudden and unexpected event or combination of events not of one's own making that leaves little or no time to reflection or the exercise of deliberate judgment" (*Stewart v Ellison*, 28 AD3d 252, 254 (1st Dept 2006). Under the circumstances here, being hit from behind at an intersection does not qualify as an emergency situation justifying the subsequent acceleration of the taxi and resultant incident. (*See Mead v Marino*, 205 AD2d 669, 669 [2d Dept 1994] [emergency doctrine does not apply where "party seeking to invoke it created or contributed to the emergency"] [internal citation omitted]). Moreover, the hearsay statements in the unsworn Motor Vehicle Accident Report are insufficient to defeat the motions for summary judgment. (*See Bendik v Dybowksi*, 227 AD2d at 229 [stating that unsworn accident reports "do not constitute evidentiary proof in admissible form and may not be considered in opposition to a motion for summary judgment"]; *Gonzalez v 1225 Ogden Deli Grocery*, 158 AD3d 582, 584 [1st Dept 2018] ["hearsay statements cannot defeat summary judgment where it is the only evidence upon which the opposition to summary judgment is predicated"] [internal citations and quotations omitted]).

Accordingly, the Persaud defendants and the Ahmed/Emara defendants are entitled to summary judgment dismissing the Lacrosse Action and the USAA Action.

Motion for Contempt

The Persaud defendants move for contempt against Lacrosse based on its failure to comply with court orders requiring Lacrosse to purchase a New York County index number and Request for Judicial Intervention. Lacrosse opposes the motion.

It is well settled that contempt is a drastic remedy, which should not issue absent a clear right to such relief. (*See Benson Park Assocs. v Herman*, 93 AD3d 609 [1st Dept 2012]). To sustain a finding of civil contempt based on an alleged violation of a court order, the moving party has the burden to establish, by clear and convincing evidence, that a lawful order of the court expressing a clear and unequivocal mandate was in effect, and that the order was disobeyed to a reasonable degree of certainty. (*See Matter of Department of Environmental Protection of City of N.Y. v Department of Environmental Conservation of State of N.Y.*, 70 NY2d 233 (1987); *Gryphon Domestic VI, LLC v APP International Finance Co.,* 58 AD3d 498, 499 [1st Dept 2009]). The party to be held in contempt must be shown to have had knowledge of the order, and the disobedience must have prejudiced the moving party's rights. (*See McCain v Dinkins*, 84 NY2d 216 [1994]).

At the outset, the court notes that the motion does not contain the warning required by Judiciary Law § 756 and is thus jurisdictionally defective. (*See Matter of the Estate of Devine*, 126 AD2d 491, 495 [1st Dept 1987] [denying application for contempt based on the absence of warning legend finding that such absence "was fatal since Section 756 requirements are jurisdictional"]). However, to the extent Lacrosse waived the requirements of Judiciary Law § 756, the motion must be denied as the Persaud defendants have not shown by clear and convincing evidence that Lacrosse violated the court orders, particularly as Lacrosse submits an affidavit from a paralegal describing efforts to comply with the orders. Furthermore, the Persaud defendants have not demonstrated that their rights have been prejudiced as a result of Lacrosse's noncompliance, particularly as the Lacrosse action is being dismissed for the reasons above.

Conclusion

In view of the above, it is

ORDERED that the Persaud defendants' motion for summary judgment dismissing the Lacrosse Action and the USAA Action is granted and their motion for contempt against Lacrosse is denied (motion sequence 001); and it is further

ORDERED that the Ahmed/Emara defendants' motion for summary judgment dismissing the Lacrosse Action and the USAA Action is granted (motion sequence 002); and it is further

ORDERED that the Lacrosse Action is dismissed in its entirety; and it is further

ORDERED that the USAA Action is dismissed against defendants Thasham Persaud, Gelco Corporation, Mohamed Ahmed and Osama Emara, and the Clerk is directed to enter judgment in favor of these defendants; and it is further

ORDERED that the USAA Action is severed and shall continue against the remaining defendants; and it is further

ORDERED that the Lacrosse Action is dismissed in its entirety, and the Clerk is directed to enter judgment dismissing the action; and it is further

ORDERED that caption is amended to reflect the dismissal and shall read as follows:

USAA Casualty Insurance Company a/s/o Daniel Matalon,

Plaintiff,

-v-

LACROSSE TAXI CORP. and BLAISE BEDI,

Defendants.

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and it is further

ORDERED that the Persaud defendants shall serve a copy of this order with notice of entry on the Clerk of General Clerk's Office and the County Clerk who are directed to mark their records to reflect the change in the caption; and it is further

ORDERED that such service upon the General Clerk's Office and the County Clerk shall be made in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases (accessible at the "E-Filing" page and on the court's website at the address (www.nycourts.gov/supctmanh); and it is further

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ORDERED that the remaining parties shall appear by telephone for a status conference on February 25, 2021 at 10 am.

This constitutes the decision and order of the court.

1/26/2021
DATE

MARGARET A. CHAN, J.S.C.
MARGARET A. CHAN, J.S.C.

CHECK ONE:		CASE DISPOSED			x	NON-FINAL DISPOSITION	
		GRANTED		DENIED	x	GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE