

**Calarco v Ianuzzi**

2021 NY Slip Op 33403(U)

March 5, 2021

Supreme Court, Suffolk County

Docket Number: Index No. 4975/2019

Judge: William G. Ford

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**SHORT FORM ORDER**

**INDEX No. 4975/2019**  
**CAL. No. 202100148MV**

**SUPREME COURT - STATE OF NEW YORK  
I.A.S. PART 38 - SUFFOLK COUNTY**

***P R E S E N T :***

**Hon. WILLIAM G. FORD**  
**Justice of the Supreme Court**

**MOTION DATE 7/31/20 (001 & 002)**  
**ADJ. DATE 8/6/20**  
**Mot. Seq. # 001 MG**  
**Mot. Seq. # 002 MG**

-----X  
**DOMINICK CALARCO,**  
**Plaintiff,**

**ZWIRN & SAULINO LLP**  
**Attorney for Plaintiff**  
2606 East 15th Street, Suite 205  
Brooklyn, New York 11235

**- against -**

**DESENA & SWEENEY, LLP**  
**Attorney for Defendants Knapp and Thomason**  
1500 Lakelane Avenue  
Bohemia, New York 11716

**ERICA IANUZZI, GLEN KNAPP, and**  
**JAMES THOMASON,**  
**Defendants.**

**BARTLETT LLP**  
**Attorney for Defendant Ianuzzi**  
320 Carleton Avenue, Suite 7500  
Central Islip, New York 11722

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Upon the following papers read on these motions for summary judgment : Notice of Motion/ Order to Show Cause and supporting papers filed by defendants Glen Knapp and James Thomason, on June 1, 2020; filed by plaintiff Dominick Calarco, on June 2, 2020 ; Notice of Cross Motion and supporting papers \_\_\_\_; Answering Affidavits and supporting papers filed by defendant Erica Ianuzzi, on July 24, 2020 ; Replying Affidavits and supporting papers filed by plaintiff, on July 27, 2020; filed by defendants Glen Knapp and James Thomason, on August 6, 2020 ; Other \_\_\_\_; it is

**ORDERED** that the motion (#001) by defendants Glen Knapp and James Thomason, and the motion (#002) by plaintiff Dominick Calarco, are consolidated for the purposes of this determination; and it is further

**ORDERED** that the motion by defendants Glen Knapp and James Thomason for summary judgment on the issue of liability is granted; and it is further

**ORDERED** that the motion, improperly denominated as a cross motion, by plaintiff Dominick Calarco for partial summary judgment in his favor on the issue of defendant Erica Ianuzzi's liability is granted.

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This is an action to recover damages for injuries allegedly sustained by plaintiff Dominick Calarco as the result of a motor vehicle accident, which occurred on November 18, 2016, at approximately 11:15 a.m., on the westbound entrance ramp of Route 110, at or near its junction with Sunrise Highway, in Amityville, New York. The accident allegedly occurred when a vehicle, which was owned by defendant James Thomason, and operated by defendant Glen Knapp, was struck in the rear by a vehicle owned and operated by defendant Erica Iannuzzi, as it was stopped at a stop sign. Plaintiff was a passenger in the Knapp vehicle.

Knapp and Thomason now move for summary judgment dismissing the complaint as asserted against them, arguing that as Knapp was stopped completely when his vehicle was struck in the rear by Iannuzzi's vehicle, Knapp was not at fault in the happening of the accident. In support of their motion, Knapp and Thomason submit, inter alia, the transcripts of the depositions of the parties and of nonparty witness Harold Miller. Iannuzzi opposes the motion, arguing that it is a successive motion for summary judgment, or, in the alternative, that she was unable to avoid the collision, as Knapp made an unexpected and sudden stop. Iannuzzi submits her affidavit.

Plaintiff also moves for summary judgment in his favor on the issue of Iannuzzi's liability, arguing that her negligence was the sole proximate cause of the accident. Plaintiff alleges that Iannuzzi violated, inter alia, Vehicle and Traffic Law § 1129 (a) by following too closely. Plaintiff submits the affirmation of his attorney. Iannuzzi opposes the motion, arguing that the motion is procedurally defective as it fails to include a complete set of the pleadings, or, in the alternative, that triable issues of fact exist with respect to the happening of the accident. Iannuzzi submits her affidavit.

This action was commenced by plaintiff against defendants, venued in Supreme Court, Nassau County, under Index Number 609882/2018 (Action 2). Prior to the commencement of Action 2, an action was commenced by defendant Knapp, as plaintiff, against defendant Iannuzzi, venued in this Court, under Index Number 608848/2018 (Action 1). By order of this Court, dated September 6, 2019, the two actions were joined for discovery and trial. The Court notes that a prior motion for summary judgment was made by Knapp in Action 1, and denied by order of this Court dated September 27, 2018 (Baisley, J.). However, contrary to Iannuzzi's contention, the motion for summary judgment was made in Action 1, and does not render the motions filed in Action 2 successive motions for summary judgment (*see HSBC Bank USA, N.A. v Fortini*, \_\_ AD3d \_\_, 2020 NY Slip Op 07873 [2d Dept 2020]).

A defendant moving for summary judgment in a negligence action has the burden of establishing, prima facie, that he or she was not at fault in the happening of the subject accident (*see Estate of Cook v Gomez*, 138 AD3d 675, 30 NYS3d 148 [2d Dept 2016]; *Boulos v Lerner-Harrington*, 124 AD3d 709, 709, 2 NYS3d 526 [2d Dept 2015]; *Rungoo v Leary*, 110 AD3d 781, 782, 972 NYS2d 672 [2d Dept 2013]). While there can be more than one proximate cause of an accident and it is generally for the trier of fact to determine, the issue of proximate cause may be decided as a matter of law where only one conclusion may be drawn from the established facts (*see Estate of Cook v Gomez, supra; Jones v Vialva-Duke*, 106 AD3d 1052, 966 NYS2d 187 [2d Dept 2013]; *Kalland v Hungry Harbor Assoc., LLC*, 84 AD3d 889, 922 NYS2d 550 [2d Dept 2011]).

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The driver of a vehicle approaching another vehicle from the rear must maintain a reasonably safe rate of speed and control over his or her vehicle and exercise reasonable care to avoid colliding with the other vehicle (*see Bloechle v Heritage Catering, Ltd.*, 172 AD3d 1294, 101 NYS3d 424 [2d Dept 2019]; *Schmertzler v Lease Plan U.S.A., Inc.*, 137 AD3d 1101, 27 NYS3d 648 [2d Dept 2016]; *Gallo v Jairath*, 122 AD3d 795, 996 NYS2d 682 [2d Dept 2014]). A rear-end collision with a stopped or stopping vehicle establishes an inference of negligence on the part of the operator of the rear vehicle, and requires the operator of the rear vehicle to rebut the inference of negligence by providing a non-negligent explanation for the collision (*see Miller v Steinberg*, 164 AD3d 492, 82 NYS3d 597 [2d Dept 2018]; *Edgerton v City of New York*, 160 AD3d 809, 74 NYS3d 617 [2d Dept 2018]). A non-negligent explanation may include evidence of a mechanical failure, a sudden, unexplained stop of the lead vehicle, an unavoidable skidding on wet pavement, or any other reasonable cause (*Grant v Carrasco*, 165 AD3d 631, 84 NYS3d 235 [2d Dept 2018]; *Binkowitz v Kolb*, 135 AD3d 884, 24 NYS3d 186 [2d Dept 2016]; *Ortiz v Hub Truck Rental Corp.*, 82 AD3d 725, 918 NYS2d 156 [2d Dept 2011]).

Knapp and Thomason have established, prima facie, entitlement to summary judgment dismissing the complaint and cross claims as asserted against them. Knapp testified that he was operating the vehicle northbound on Route 110 in Amityville, and that he intended to proceed westbound on Sunrise Highway. He testified that he took the entrance ramp, and that there was an inactive construction zone on either side of the entrance ramp. Knapp testified that there was a temporary stop sign located at the end of the entrance ramp, and that the merge lane was blocked by concrete barriers. Knapp testified that due to the closure of the merge lane, he had to enter Sunrise Highway directly from the ramp, after the stop sign. Knapp testified that he stopped at the stop sign for approximately 10 seconds, but that he moved forward one-half to one car length forward beyond the stop sign to get a better view of oncoming traffic. Knapp testified that while he was completely stopped, waiting for traffic to clear, his vehicle was struck in the rear by Iannuzzi's vehicle. Plaintiff testified that he was a passenger in Knapp's vehicle, and that the vehicle was completely stopped at the time of the collision.

Iannuzzi testified that prior to the collision, she was traveling northbound on Route 110, and that it was her intention to proceed westbound on Sunrise Highway. Iannuzzi testified that she was traveling behind Knapp's vehicle, as both proceeded onto the entrance ramp to Sunrise Highway. Iannuzzi testified that there was construction on the entrance ramp, and that there was a stop sign before the entrance to Sunrise Highway. Iannuzzi testified that she observed Knapp's vehicle stop at the stop sign, and testified that she observed it begin to move again, but that it had not yet left the entrance ramp onto Sunrise Highway. She testified that she observed Knapp's vehicle stop a second time. She testified that she stopped for the stop sign, and was looking to see if traffic was clear. She testified that she observed a bicyclist approach from the left, and that she accelerated, to try to "clear" him before he crossed in front of her on the ramp. She testified that after she accelerated, Knapp's vehicle "just stopped," and she struck it in the rear. Iannuzzi testified that she attempted to swerve left and applied her brakes "hard" in an attempt to avoid the accident.

Knapp and Thomason having met their initial burden on the motion, the burden now shifts to the opposing parties to submit evidence, in an admissible form, of a material issue of fact requiring a trial on the issue of Knapp and Thomason's liability (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 508 NYS2d 923 [1986]; *Zuckerman v City of New York*, 49 NY2d 557, 427 NYS2d 595 [1980]). Iannuzzi submits

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her affidavit, dated July 27, 2018, in which she avers that she observed Knapp's vehicle abruptly "slam[]" on his brakes, and that the accident took place several hundred feet away from the stop sign situated at the end of the entrance ramp. However, Iannuzzi testified during her deposition that she observed Knapp's vehicle stop at the stop sign at the end of the entrance ramp, and that she incorrectly stated in her July 27 affidavit that the accident happened several hundred feet from the stop sign. Therefore, Iannuzzi has failed to proffer a non-negligent explanation sufficient to rebut the inference of negligence (*see Miller v Steinberg, supra; see also Vehicle and Traffic Law § 1129 [a]*). Accordingly, Knapp and Thomason's motion for summary judgment is granted.

With respect to plaintiff's motion for summary judgment on the issue of Iannuzzi's liability, plaintiff fails to include a complete set of the pleadings with his summary judgment motion, as required by CPLR 3212 (b). However, there is no evidence that a substantial right of a party is prejudiced by this omission, as the pleadings were electronically filed and available to all parties, and Iannuzzi does not argue how she is prejudiced by the omission (*see CPLR 2001; Sensible Choice Contr., LLC v Rodgers, 164 AD3d 705, 83 NYS3d 298 [2d Dept 2018]*). Plaintiff has established, prima facie, entitlement to summary judgment on the issue of Iannuzzi's negligence. A plaintiff is no longer required to show freedom from comparative fault (*Rodriguez v City of New York, 31 NY3d 312, 76 NYS3d 898 [2018]; Bloechle v Heritage Catering, Ltd., supra; Marks v Rieckhoff, 172 AD3d 847, 101 NYS3d 63 [2d Dept 2019]; Auguste v Jeter, 167 AD3d 560, 560, 88 NYS3d 509 [2d Dept 2018]*). Plaintiff testified that he was a passenger in Knapp's vehicle, and that it was completely stopped, for 30 to 40 seconds, at the end of the entrance ramp to Sunrise Highway, when it was struck in the rear by Iannuzzi's vehicle. In opposition, Iannuzzi submits her July 27, 2018 affidavit, which, for the reasons set forth above, fails to provide a non-negligent explanation for the accident which is sufficient to rebut the inference of her negligence (*see Miller v Steinberg, supra; see also Vehicle and Traffic Law § 1129 [a]*). Accordingly, plaintiff's motion is granted.

Dated: March 5, 2021  
Riverhead, New York



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WILLIAM G. FORD, J.S.C.

\_\_\_\_ FINAL DISPOSITION      X   NON-FINAL DISPOSITION