Czyzyk v Tyson
2021 NY Slip Op 33633(U)
February 23, 2021
Supreme Court, Suffolk County
Docket Number: Index No. 601923/2017
Judge: George M. Nolan
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SHORT FORM ORDER

INDEX No. 601923/2017
CAL. No. 2020000637M

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 55 - SUFFOLK COUNTY

PRESENT:

Hon. GEORGE M. NOLAN
Justice of the Supreme Court

MOTION DATE 11/30/20
ADJ. DATE 1/7/21
Mot. Seq. # 006 MG

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ROMANA CZYZYK,

Plaintiff,

- against -

VICTOR L. TYSON, DIANA GATTI, THOMAS KATSELIANOS, DINA KATSELLIANOS, JOSE R. ROGUL, and DAMON RUSSO LANDSCAPING COMPANY,

Defendants.

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Upon the following e-filed papers read on this motion for summary judgment: Notice of Motion and supporting papers by defendant Victor Tison s/h/aVictor L. Tyson, dated November 13, 2020; Answering Affidavits and supporting papers by defendants Thomas Katselianos and Dina Katselianos, dated November 16, 2020; Answering Affidavits and supporting papers by plaintiff, dated November 17, 2020; Answering Affidavits and supporting papers by defendants Jose P. Rogul and Damon Russo Landscaping Company, dated November 27, 2020; Replying Affidavits and supporting papers by

defendant Victor Tison s/h/a Victor L. Tyson, dated January 4, 2021; Replying Affidavits and supporting papers by defendant Victor Tison s/h/a Victor L. Tyson, dated January 4, 2021; Other Letter; it is,

ORDERED that the motion by defendant Victor Tison for summary judgment dismissing the complaint and cross claims against him is granted.

This action was commenced by plaintiff Romana Czyzyk to recover damages for injuries she allegedly sustained on July 17, 2016, when, while a passenger in a motor vehicle owned and operated by defendant Victor Tison s/h/a Victor L. Tyson, such vehicle was involved in a multi-vehicle accident on the Northern State Parkway in the Town of North Hempstead, New York. Defendants assert cross claims against one another for indemnification and contribution. By a letter dated January 6, 2021, the Court was informed that a settlement has been reached between plaintiff and defendants Jose P. Rogul and Damon Russo Landscaping Company.

Defendant Victor Tison now moves for summary judgment in his favor, arguing that he was not negligent in the happening of the accident in question. In support of his arguments, Mr. Tison submits, among other things, transcripts of the parties' deposition testimony and a certified copy of an MV-104A police accident report.

It is undisputed that on the date in question, four motor vehicles were traveling eastbound in the left lane of the Northern State Parkway near Exit 28S. Plaintiff was a front-seat passenger in the lead vehicle, which was owned and operated by Mr. Tison. The other vehicles alleged to be involved in the incident include a vehicle operated by defendant Diana Gatti, a vehicle operated by defendant Jose P. Rogul and owned by defendant Damon Russo Landscaping Company (collectively, "the Rogul defendants"), and a vehicle owned by defendant Dina Katselianos and operated by defendant Thomas Katselianos (collectively, "the Katselianos defendants").

Plaintiff testified that at approximately 4:30 p.m. on the incident date traffic on the Northern State Parkway was "moderate," and that the weather was "clear and beautiful." She stated that Mr. Tison's vehicle, in which she was a seatbelted front-seat passenger, was suddenly struck in the rear by another vehicle. Plaintiff indicated that she heard screeching brakes immediately prior to the collision, which was immediately followed by two additional impacts to the rear of Mr. Tison's vehicle. Asked to describe the severity of each of the impacts, she explained that the first and the third were "hard," but that the second was "unimaginably hard." Plaintiff testified that she believes the same vehicle hit the rear of Mr. Tison's vehicle all three times, but that in the second two instances, such vehicle was forced into Mr. Tison's vehicle by other vehicles striking it from behind. Upon questioning, she denied hearing any impacts prior to the first impact to the rear of Mr. Tison's vehicle. Plaintiff further testified that Mr. Tison did nothing to cause the accident.

Mr. Tison testified that prior to the time of the subject accident he was operating his vehicle at approximately 55 or 60 miles per hour, but that he had brought it to a complete stop in response to traffic ahead stopping suddenly. He indicated that he saw the taillights of the vehicle in front of his, approximately 150 feet away, illuminate and that he "had to really step on the brakes" in response. Mr. Tison stated that he successfully brought his vehicle to a halt 50 feet from the rear of the vehicle ahead. He testified that three seconds elapsed, then his vehicle was struck for the first time in the rear, pushing

it five or six feet forward. Four to five seconds after the first impact, there was a "[v]ery bad" second impact, pushing his vehicle an additional 20 to 30 feet forward and to the left, causing the front of his vehicle to strike the concrete divider. Mr. Tison indicated that another three to four seconds passed, at which time a third, less severe, impact to the rear of his vehicle occurred.

Diana Gatti testified that at the time of the subject incident she was operating a black 2016 Jeep Renegade owned by herself and her husband. She stated that while traveling in the left lane of the Northern State Parkway, she observed a black Jeep a "few hundred feet" ahead, apparently stopped following its collision with the rear of a gold-colored vehicle. Mrs. Gatti indicated that she gradually slowed her vehicle to less than 30 miles per hour in response to the stopped vehicles ahead and four or five seconds later, when she was between five and 10 car lengths behind the black Jeep, her vehicle was struck in the rear by a black pickup truck. She stated that the impact forced her vehicle forward and to the left, and caused her vehicle to collide with the rear of the black Jeep "[p]retty hard," which then moved forward, struck the gold vehicle, and stopped in the center lane. Mrs. Gatti testified that while her vehicle came to rest approximately one car length behind the gold vehicle, her vehicle never contacted such vehicle directly.

Thomas Katselianos testified that at the time in question he was operating a black Jeep Compass registered to his mother, Dina Katselianos, in the left lane of the Northern State Parkway at approximately 45 miles per hour. He stated that he noticed that "all the cars in front of [him] were braking hard, so [he] proceeded to brake hard as well." Mr. Katselianos indicated that he was approximately 50 feet behind the vehicle ahead of him when he began his braking, but that a black SUV came from behind and "flew past [him] on the shoulder [to his left]." He testified that he did not see the vehicle that "flew past" him strike any vehicles, nor did he hear any impact, but that his still-slowing vehicle was immediately thereafter struck in the rear by a pickup truck, pushing it forward and to the left. Mr. Katselianos stated that he immediately exited his vehicle, called 911, and attempted to render aid to the two male occupants of the pickup truck to his rear. Upon questioning, he denied that his vehicle struck any vehicles ahead of him, either before or after his vehicle was struck in the rear.

Jose Rogul testified that on the incident date and at the incident location he was operating a black 2017 Ford F-150 pickup truck owned by his employer, Damon Russo. He indicated that his friend Alfredo Aguilar was his front-seat passenger. Asked to describe the circumstances of the 30 seconds immediately prior to any collision, Mr. Rogul stated that he was traveling in the left lane of the Northern State Parkway approximately 40 feet behind the vehicle ahead of his when a "small" four-door vehicle "cut in front of [him] and hit the barrier." Upon questioning as to whether such vehicle had its turn signal activated, he replied in the negative. He testified that the vehicle then reentered the left lane, "hit the vehicle that was traveling in front of [Mr. Rogul]," turned, "ricocheted" backward from the impact, and then hit the front of his stopped pickup truck with its rear. Mr. Rogul denied having the ability to describe the vehicle that entered his lane of travel without signaling.

A party moving for summary judgment "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" (***Alvarez v Prospect Hosp.***, 68 NY2d 320, 324, 508 NYS2d 923, 925 [1986]). Failure to make such showing requires denial of the motion, regardless of the sufficiency of the opposing papers

(***Winegrad v New York Univ. Med. Ctr.***, 64 NY2d 851, 853, 487 NYS2d 316, 318 [1985]). If the moving party produces the requisite evidence, the burden then shifts to the nonmoving party to establish the existence of material issues of fact which require a trial of the action (*see* ***Vega v Restani Constr. Corp.***, 18 NY3d 499, 942 NYS2d 13 [2012]). Mere conclusions, expressions of hope, or unsubstantiated allegations are insufficient to raise a triable issue (*see* ***Zuckerman v City of New York***, 49 NY2d 557, 427 NYS2d 595 [1980]). In deciding the motion, the Court must view all evidence in the light most favorable to the nonmoving party (*see* ***Ortiz v Varsity Holdings, LLC***, 18 NY3d 335, 339, 937 NYS2d 157, 159 [2011]).

The Vehicle and Traffic Law establishes standards of care for motorists, and an unexcused violation of such standards of care constitutes negligence per se (*see* ***Brodney v Picinic***, 172 AD3d 673, 99 NYS3d 399 [2d Dept 2019]). A driver of a vehicle approaching another vehicle from the rear "is required to maintain a reasonably safe distance and rate of speed under the prevailing conditions to avoid colliding with the other vehicle" (***Auguste v Jeter***, 167 AD3d 560, 560, 88 NYS3d 509 [2d Dept 2018], quoting ***Nsiah-Ababio v Hunter***, 78 AD3d 672, 672, 913 NYS2d 659 [2d Dept 2010]; *see* Vehicle and Traffic Law § 1129 [a]). "A rear-end collision with a stopped or stopping vehicle creates a prima facie case of negligence with respect to the operator of the rearmost vehicle, requiring that operator to rebut the inference of negligence by providing a non-negligent explanation for the collision" (***Lopez v Suggs***, 186 AD3d 589, 589-590, 126 NYS3d 676 [2d Dept 2020]; *see* ***Tutrani v County of Suffolk***, 10 NY3d 906, 861 NYS2d 610 [2008]). Examples of such non-negligent explanations include mechanical failure, a sudden, unexplained stop of the vehicle ahead, an unavoidable skidding on wet pavement, or any other reasonable cause (***Tumminello v City of New York***, 148 AD3d 1084, 49 NYS3d 739 [2d Dept 2017]). "[A]n assertion "that the lead vehicle came to a sudden stop, standing alone, is insufficient to rebut the presumption of negligence on the part of the operator of the rear vehicle" (***Perez v Persad***, 183 AD3d 771, 772, 123 NYS3d 683 [2d Dept 2020]). Further, an operator of a motor vehicle has a "common-law duty to see that which [he or she] should have seen through the proper use of [his or her] senses" (***Botero v Erraez***, 289 AD2d 274, 275, 734 NYS2d 565, 566 [2d Dept 2001]; *see also* ***Ferrara v Castro***, 283 AD2d 392, 724 NYS2d 81 [2d Dept 2001]).

Here, Mr. Tison established a prima facie case of entitlement to summary judgment in his favor (*see* ***Staskiv v Shlayan***, 132 AD3d 971, 18 NYS3d 686 [2d Dept 2015]; ***Gavrilova v Stark***, 129 AD3d 907, 11 NYS3d 656 [2d Dept 2015]; *see generally* ***Alvarez v Prospect Hosp.***, *supra*). Through the deposition testimony of the parties, he demonstrated that he was operating the lead vehicle in a chain collision, and that he did nothing to cause the accident. The burden then shifted to any opposing party to raise a triable issue (*see generally* ***Vega v Restani Constr. Corp.***, *supra*).

The Katselianos defendants oppose Mr. Tison's motion, arguing that there are conflicting accounts of the manner in which the subject accident occurred, and that Thomas Katselianos provided a non-negligent explanation for the collision. They submit only their attorney's affirmation.

The Rogul defendants also oppose Mr. Tison's motion, submitting only their attorney's affirmation, arguing that it is not supported by an affidavit– only transcripts of deposition testimony– and is, therefore, "procedurally defective." This argument is without merit (*see generally* ***Notskas v Longwood Assoc., LLC***, 112 AD3d 599, 976 NYS2d 176 [2d Dept 2013]). The Rogul defendants

further argue that the certified police accident report is inadmissible hearsay and cannot be considered. However, the police accident report was unnecessary to establish Mr. Tison's *prima facie* case. Finally, the Rogul defendants, like the Katselianos defendants, argue that Mr. Tison failed to meet his *prima facie* burden because there are multiple conflicting accounts of the how the accident occurred. This argument is unavailing. Mr. Tison's prima facie burden did not require that he unify all testimony into a coherent narrative. Rather, he merely needed to establish, prima facie, that he was not negligent. The opposing parties fail to adduce any evidence that a negligent act by Mr. Tison caused the subject accident and, thus, do not raise a triable issue. Plaintiff offers no opposition. Accordingly, the motion by defendant Victor Tison for summary judgment dismissing the complaint and cross claims against him is granted.

Dated: February 23, 2021

J.S.C.

____ FINAL DISPOSITION ___X__ NON-FINAL DISPOSITION