

**Metzger v DL Peterson Trust**

2021 NY Slip Op 34033(U)

August 5, 2021

Supreme Court, Bronx County

Docket Number: Index No. 20990/2019E

Judge: Veronica G. Hummel

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

**To commence the statutory time for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.**

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX IAS PART 31**

-----X  
VALERIE METZGER and ROBERT METZGER,  
Plaintiffs

-against -

**Index No. 20990/2019E  
DECISION/ORDER  
Motion Seqs. 3,4, 5, 6**

DL PETERSON TRUST, JACK BONURA, ANJAM SIDDIQUI,  
And FAISAL ULLAH,

Defendants.

-----X  
**VERONICA G. HUMMEL, A.S.C.J.**

In accordance with CPLR 2219 (a), the decision herein is made upon consideration of all papers filed by the parties in NYSCEF regarding: the motion by defendants ANJAM SIDDIQUI and FAISAL ULLAH (jointly defendant Ullah)[Mot. Seq. 3], made pursuant CPLR 3212, for an order granting defendant Ullah summary judgment dismissing the complaint and all cross-claims alleged against them based on liability; the motions by defendants JACK BONURA and DL PETERSON TRUST (defendant Bonura) for an order compelling the depositions of defendants Ullah [Mot. Seq. 4], and for an order precluding plaintiffs from providing evidence of damages at trial or, in the alternative, compelling the payment of IME fees [Mot. Seq. 5]; and the motion of defendant Bonura [Mot. Seq. 6] seeking an order consolidating this action with another action.

This is a personal injury action arising out of a multi-vehicle rear-end accident that occurred on June 26, 2018, on the westbound Southern State Parkway at or near exit 19N, Hempstead, Nassau County, N.Y. At the time of the Accident, plaintiff Valerie Metzger was driving the front car and plaintiff Robert Metzger was a passenger (the Plaintiffs' Vehicle). Defendant Ullah was driving the car behind the Plaintiffs' Vehicle, in the second position (the Ullah Vehicle). Behind the Ullah Vehicle was a vehicle driven by co-defendant Bonura and owned by DL Peterson Trust (the Bonura Vehicle).

*Motion Seq. 3-Summary judgment*

Defendant Ullah moves for summary judgment. The proponent of a summary judgment motion must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact “ (*Winegrad v New York Univ. Med Ctr.*, 64 NY2d 851 [1985]). The moving party is entitled to summary judgment only if it tenders evidence sufficient to eliminate all material issues of fact from the case (*Winegrad v New York University Medical Center, supra*; *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]) If a party makes a *prima facie* showing of its entitlement to summary judgment, the opposing party bears the burden of establishing the existence of a triable issue of fact (*Zuckerman v City of New York, supra*). Only then does the burden shift to the motion's opponent to "present evidentiary facts in admissible form sufficient to raise a genuine, triable issue of fact" (*Casper v Cushman & Wakefield*, 74 AD3d 669 [1st Dept 2010]; *Mazurek v Metropolitan Museum of Art*, 27 AD3d 227 [1st Dept (2006)]).

Since there can be more than one proximate cause of an accident, a defendant moving for summary judgment is required to make a *prima facie* showing that he or she is free from fault (*see Harrigan v Sow*, 165 AD3d 463 [1st Dept 2018]; *Hilago v Vasquez*, 187 AD3d 683 [1st Dept 2020]). In order for a defendant driver to establish entitlement to summary judgment on the issue of liability in a motor vehicle collision case, therefore, the driver must demonstrate, *prima facie*, that he or she kept the proper lookout, or that his or her alleged negligence, if any, did not contribute to the accident (*see Harrigan v Sow, supra*; *Hilago v Vasquez, supra*).

It is well settled that a rear-end collision with a stopped or stopping vehicle establishes a *prima facie* case of negligence on the part of the driver of the rear vehicle, and imposes a duty on the part of the operator of the moving vehicle to come forward with an adequate non-negligent explanation for the accident (*see Cabrera v Rodriguez*, 72 AD3d 553 [1st Dept 2010]; *Tutrani v County of Suffolk*, 10 NY3d 906, 908 [2008]; *Agramonte v City of New York*, 288 AD2d 75, 76 [1st Dept 2001]). Furthermore, in a chain reaction collision, responsibility presumptively rests with the rearmost driver (*Mustafaj v Driscoll*, 5 AD3d 138 [1st Dept 2004]). In a chain collision accident, the operator of the middle vehicle may establish *prima facie* entitlement to judgment as

a matter of law by demonstrating that the middle vehicle was properly stopped behind the lead vehicle when it was struck from behind by the rear vehicle and propelled into the lead vehicle (*Chuk Hwa Shin v Correale*, 142 AD3d 518, 519 [2d Dept 2016]; *Skura v Wojtowski*, 165 AD3d 1196, 1199 [2d Dept 2018]).

As the middle car in the chain-reaction accident, defendant Ullah now moves for summary judgment dismissing the complaint and all cross-claims against him. Defendant Ullah has not been deposed and does not submit an affidavit on the motion. Instead, movants rely on the deposition testimony of the plaintiff and defendant and a certified copy of the police report.

Plaintiff testified that on the day of the Accident, she was operating her vehicle at below the speed limit due to traffic conditions. She stated that she was moving when her vehicle was suddenly struck from behind. She did not hear any horns or skidding of tires before impact and she felt a double impact. She specifically testified that she felt two impacts, one immediately after the other.

For his part, defendant Bonura testified that approximately two minutes before the Accident, he was traveling, on a clear weather morning, in stop and go, heavy traffic. He testified that he does not recall seeing Ullah Vehicle before his car hit the Ullah Vehicle in the rear. He did not see the Ullah Vehicle hit the Plaintiffs' Vehicle. Defendant Bonura claimed that there was sun in his eyes, and that the sun in his eyes caused his vehicle to collide with the Ullah Vehicle.

Defendant Ullah also submits a copy of the police report. The report provides that vehicle 1 was operated by defendant Bonura, vehicle 2 was operated by defendant Ullah and vehicle 3 was operated by plaintiff. The police report states that vehicle 1 struck the rear of vehicle 2 as vehicle 1 was following too close to vehicle 2. Vehicle 2 in turn struck the rear of vehicle 3.

Plaintiffs oppose the motion solely on the grounds that it is premature as defendant Ullah has not been deposed. Defendant Bonura opposes the motion arguing that the motion is premature, defendant Bonura has given a non-negligent explanation for the accident based on sun glare, and that a factual issue exists as plaintiff felt two impacts, implying that the movant hit plaintiff in the

rear before defendant Bonura hit the movant's car.

Based on the submissions, defendant Ullah fails to set forth a *prima facie* showing warranting the grant of summary judgment, and therefore the court need not consider the opposition papers. Plaintiff testified that she felt two impacts. Plaintiff's testimony, therefore, uncontradicted by any testimony, generates a question of fact as to whether the Ullah Vehicle struck the Plaintiffs' Vehicle before the Ullah Vehicle was rear-ended by the Bonura Vehicle. Based on defendant Ullah's submissions, therefore, questions of fact exist as to whether negligence by him contributed to causing the Accident. As such, the motion is denied.

*Mot. Seq. 3- Joinder*

Defendant Bonura's motion [Mot. Seq. 3] for an order granting joinder of this action (Index No. 20990/2019e) ("Action #1") and the action captioned *Faisal Ullah v D.L. Peterson Trust, Syneos Health US, Inc., Syneos Health Communications, Inc., and Jack Bonura*. (Index No. 34680/2020e) ("Action #2") for discovery and trial is granted without opposition. Both actions arise out of the same motor vehicle incident that occurred on June 26, 2018, and involve common questions of law and fact, so that joinder for purposes of discovery and trial is warranted.

*Motions 4 and 5-Discovery*

In light of the joinder of the two actions for discovery and trial, discovery shall proceed in the two actions jointly and the matter is set down for a discovery conference that is to include all parties. Motions sequence 4 and 5 are denied, with leave to renew if appropriate, after the joint compliance conference. The parties are reminded that before making or renewing any motion all parties must comply with the Uniform Trial Court Rules 202.20-f:

"Disclosure Disputes

(a) To the maximum extent possible, discovery disputes should be resolved through informal procedures, such as conferences, as opposed to motion practice.

(b) Absent exigent circumstances, prior to contacting the court regarding a disclosure dispute, counsel must first consult with one another in a good faith effort to resolve all disputes about disclosure. Such consultation must take place by an in-person or telephonic conference. In the event that a discovery dispute cannot be resolved other than through motion practice, each such discovery motion shall be supported by an affidavit or affirmation from counsel attesting to counsel having conducted an in-person or telephonic conference, setting forth the date and time of such conference, persons participating, and the length of time of the conference. The unreasonable failure or

refusal of counsel to participate in a conference requested by another party may relieve the requesting party of the obligation to comply with this paragraph and may be addressed by the imposition of sanctions pursuant to Part 130. If the moving party was unable to conduct a conference due to the unreasonable failure or refusal of an adverse party to participate, then such moving party shall, in an affidavit or affirmation, detail the efforts made by the moving party to obtain such a conference and set forth the responses received”.

Failure to satisfy the requirements of this provision will result in denial of any discovery motion. Of note, any motion for discovery must include an affirmation of good faith that outlines, in detail, the dates and times of the efforts made to resolve the issue. Multiple attempts to reach the parties via telephone and email must be included.<sup>1</sup>

The court has considered the additional contentions of the parties not specifically addressed herein. To the extent any relief requested by either party was not addressed by the court, it is hereby denied. Accordingly, it is hereby

ORDERED that the motion by defendants ANJAM SIDDIQUI and FAISAL ULLAH (jointly defendant Ullah) [Mot. Seq. 3], made pursuant CPLR 3212, for an order granting defendant Ullah summary judgment dismissing the complaint and all cross-claims alleged against them is denied; and it is further

ORDERED the motion by defendants JACK BONURA and DL PETERSON TRUST (jointly defendant Bonura) [Mot. Seq. 4] for an order compelling the depositions of defendants Ullah [Mot. Seq. 4] is denied; and it is further

---

<sup>1</sup> *Furthermore, the parties will be held to their obligations set forth under Uniform Rule 202.20-e. That provision provide that: a) Parties shall strictly comply with discovery obligations by the dates set forth in all case scheduling orders. Applications for extension of a discovery deadline shall be made as soon as practicable and prior to the expiration of such deadline. Non-compliance with such an order may result in the imposition of an appropriate sanction against that party or for other relief pursuant to CPLR 3126.*

ORDERED that the motion by defendant Bonura [Mot. Seq. 5] for an order precluding plaintiffs from providing evidence of damages at trial or, in the alternative, compelling the payment of IME fees is denied; and it is

ORDERED that the motion of defendant Bonura [Mot. Seq. 6] seeking joinder of this action (Index No. 20990/2019e) (“Action #1”) and the action captioned *Faisal Ullah v D.L. Peterson Trust, Syneos Health US, Inc., Syneos Health Communications, Inc., and Jack Bonura*. (Index No. 34680/2020e) (“Action #2”) for discovery and trial is granted without opposition; and it is further

ORDERED that Action #1 shall be jointly tried with Action #2; and it is further

ORDERED that Action #2 shall be assigned to the undersigned and the Clerk shall place the joined actions on the compliance calendar of IAS Part 31 for a joint discovery conference; and it is further

ORDERED that a copy of this order shall be served by movants upon the Clerk of the Motion Support Office (Room 217), who is hereby directed to mark the Court’s records to reflect this joint trial ORDER; and it is further

ORDERED that the Clerk shall upload a copy of this decision in the NYSCEF records for Action#1 and Action #2; and it is further

ORDERED that upon filing of the Notes of Issue and Statements of Readiness in each of the above actions in NYSCEF and the service of a copy of said documents on the Clerk of the Motion Support Office, Room 217, the Clerk shall place the aforesaid joined actions upon the trial calendar for joint trial; and it is further

ORDERED that the Clerk shall schedule the joined actions for a compliance conference on October 27, 2021. The attorneys are expected to review the revised Part 31 rules for compliance conferences (available on the homepage of the 12<sup>th</sup> J.D.), well ahead of that date and to follow the

guidelines for using NYSCEF, rather than appearing in court, to meet their compliance conference obligations.

The foregoing constitutes the Decision/Order of the court.

Dated: Bronx, New York

August 5, 2021

ENTER,

s/Hon. Veronica G. Hummel/signed 08/05/2021

HON. VERONICA G. HUMMEL, A.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