

Gelwicks v 1&1 Transp. Inc.

2021 NY Slip Op 34206(U)

May 3, 2021

Supreme Court, Kings County

Docket Number: Index No. 502349/2019

Judge: Lara J. Genovesi

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At an IAS Term, Part 34 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse thereof at 360 Adams St., Brooklyn, New York on the 3rd day of May 2021.

P R E S E N T:

HON. LARA J. GENOVESI,
J.S.C.

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CHRISTINE GELWICKS a/k/a CHRISTINA
GELWICKS,

Index No.: 502349/2019

Plaintiff,

DECISION & ORDER

-against-

1&1 TRANSPORTATION INC., GEORGIY
LEVENOVICH SRAPIONOV, SENA TRUCKING
INCORPORATED, and JOAO MARTINS SENA.,

Defendants.

-----X

Recitation, as required by CPLR §2219(a), of the papers considered in the review of this motion:

	<u>NYSCEF Doc. No.:</u>
Notice of Motion/Cross Motion/Order to Show Cause and Affidavits (Affirmations) Annexed _____	<u>86, 87, 94, 95</u>
Opposing Affidavits (Affirmations) _____	<u>95, 98</u>
Reply Affidavits (Affirmations) _____	<u>102</u>

Introduction

Plaintiff, Christine Gelwicks, moves, by notice of motion, sequence number four, pursuant to CPLR § 3212, for partial summary judgment on the issue of liability against all defendants. All defendants oppose this motion.

Defendants, 1&1 Transportation, Inc., and Georgiy Levenovich Srapionov, move, by cross-motion, sequence number five, pursuant to CPLR § 3212, for summary judgment. Plaintiff and defendants Sena Trucking Incorporated and Joao Martins Sena oppose this motion.

Background

This action involves a rear-end chain collision between four vehicles that occurred on September 14, 2018 in the southbound right lane on Interstate 95 (I-95).

Vehicle:	Owned and operated by:
1	A non-party
2	Plaintiff Christine Gelwicks
3	Defendant 1&1 Transportation Inc. Defendant Georgiy Srapionov
4	Defendant Sena Trucking Inc. Defendant Joao Martins Sena

It is undisputed that the traffic conditions on I-95 slowed. Plaintiff's vehicle came to a complete stop in the right lane. At that time, she wore her seatbelt and she was not using her cell phone. Vehicle 4 struck vehicle 3, which then struck vehicle 2, and pushed vehicle 2 into vehicle 1. Before the collision, vehicle 3, an 18-wheel tractor trailer, changed into the right lane in front of vehicle 4, also an 18-wheel tractor trailer.

Plaintiff, Christine Gelwicks, testified at an examination before trial (EBT) on January 14, 2020, with a Portuguese interpreter. After traffic "suddenly slow[ed] down" and vehicle 1's brake lights turned on, plaintiff reduced her speed to 10 miles per hour for

approximately “one or two seconds” (NYSCEF Doc. # 90, Plaintiff EBT at 39, 40, 118). Plaintiff’s vehicle was approximately “two to ten car lengths” behind vehicle 1 (*id.* at 45). Vehicle 3 was “super close” behind plaintiff, and plaintiff heard “screeching” and “saw smoke” behind her (*id.* at 36, 37, 56). Plaintiff heard an impact behind her (*see id.* at 58). Plaintiff then felt two impacts separated by about “one to four seconds”; the first when she was struck in the rear by vehicle 3, and the second impact when she was “pushed into” vehicle 1 (*id.* at 35, 39, 119). After the accident, the driver of vehicle 3 said to plaintiff “‘I tried to get out of –’ He said, ‘I saw it coming. I tried to get –’ you know – ‘out of the way,’ or whatever” (*id.* at 55).

Defendant Georgiy Srapionov (Srapionov) testified at an EBT on July 29, 2020, with a Russian interpreter. He merged into the right lane behind vehicle 2, which was stopped “about 2, 3 meters” in front of him, and in front of vehicle 4, which was “about 15 to 20 meters” behind him (*see* NYSCEF Doc. # 92, Srapionov EBT at 28, 31, 33, 37). Although Srapionov testified that his vehicle was stopped for about “two to three minutes,”¹ he further testified that:

Q. So when you got in the right lane did your vehicle come to a stop right away?

A. Yes, I pushed the brakes and the vehicle stops right away.

Q. How far did you travel in the right lane before the accident happened?

A. Okay. It's not clear to me because I was not moving in the right lane, I was standing.

¹ This court notes that Srapionov and Sena testified at EBTs with the use of interpreters. At oral argument, counsel for both defendants stated that they believed Srapionov’s testimony that he stopped for “two to three minutes” to mean that he was stopped for “two to three seconds.” However, no errata sheet was provided.

Q. At any time before the accident happened, were you moving in the right lane?

A. No, I stopped.

(*id.* at 26-27, 42).

Srapionov testified that vehicle 4 then struck him in the rear, which caused Srapionov to “impact[] the SUV vehicle which was in front of [him]” (*id.* at 27, 28). Srapionov believes vehicle 4 was traveling at a “very high” speed because “the impact was very severe” (*id.* at 32). Vehicle 2 did not do anything to cause the accident (*see id.* at 43).

Defendant Joao Martins Sena (Sena) testified at an EBT on July 29, 2020, with a Portuguese interpreter. He was driving about 20 miles per hour and vehicle 2 was “very far” ahead of him (NYSCEF Doc. # 91, Sena EBT at 38, 43). Vehicle 3 “cut in front” of him from the middle lane “very close” and “stopped quickly” (*id.* at 33, 50). Sena applied “medium” pressure to his brakes because he “didn’t think anything was going to happen” and “if you step on it too hard the car kind of bucks” (*id.* at 52, 53). Sena would have braked harder if he thought that he would have gotten into an accident (*see id.* at 82). Sena struck vehicle 3 because he “didn’t even have time to stop” (*see id.* at 50). The accident happened “very fast,” and although Sena striking vehicle 3 was the first impact involved in this accident, he is not sure if he caused vehicle 3 to be pushed into vehicle 2 (*see id.* at 33, 34, 55-57). Sena further testified that “[w]hen the accident happened, [] [vehicle 3] was already in the right lane.” (*id.* at 41). Sena was not sure how much time passed from the moment vehicle 3 moved into the right lane up until there was a contact (*id.* at 42). Sena was not sure if vehicle 2 was traveling or stopped when vehicle 3

changed lanes (*id.* at 40, 41). He stated “I had to stop suddenly and that's why the accident happened. I don't know what happened then. I don't know how long (*id.* at 44).

Q. When this impact occurred, the truck in front of you was stopped, correct?

A. We stopped at the same time, you understand. He started to stop and I started to slow down and then all of a sudden he stopped and we crashed.

Q. At the moment of impact between your vehicle and the truck in front of you, was the other vehicle moving or standing still?

A. No, he was stopped.”

(*id.* at 56).

Following the accident, Sena was given a summons and received a fine (*see id.* at 12-14). Sena testified that “the summons was because when the truck cut in front of me I stepped on the brake. So when I stepped on the brake – because I was about to get off the road – so when I stepped on the brake, the truck was over the lane a little bit” (*id.* at 13). The certified Police Accident Report indicates that Sena was given Ticket/Arrest Number IT138P5CV5 for a violation of Vehicle Traffic Law § 1229(A), which requires drivers to “keep a safe distance between themselves and the vehicle in front of them” (VTL § 1229(A); *see also* NYSCEF Doc. # 93, Certified Police Accident Report). Sena does not know why he was issued a fine (*see* Sena EBT at 14).

Plaintiff annexed a copy of the certified Police Accident Report to her motion. The report identifies four vehicles: the vehicle operated by Sena (V-1), the vehicle operated by Srapionov (V-2), the vehicle operated by plaintiff (V-3), and the vehicle operated by non-party John Joseph Harrison (V-4) (*see* Certified Police Accident

Report)². The “Accident Description/Officer’s Notes” portion of the report reads: “V-1, V-2, V-3, and V-4 all traveling in the right lane of I-95 southbound at MPM 14.7. V-4, V-3, and V-2 all start to slow due to traffic. V-1 unable to stop in time strikes V-2 in the rear causing V-2 to be pushed into the rear of V-3. V-3 is then pushed into the rear of V-4 causing damage to all vehicles” (*id.*).

This action was commenced by the filing of the summons and complaint on February 2, 2019 (*see* NYSCEF Doc. # 1). Issue was joined on March 12, 2019, and April 4, 2019 (*see* NYSCEF Doc. # 3, 8). The note of issue was filed on August 27, 2020 (*see* NYSCEF Doc. # 86).

Discussion

Summary Judgment

“[T]he 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 demonstrate the absence of any material issues of fact” (*Stonehill Capital Mgmt., LLC v. Bank of the W.*, 28 N.Y.3d 439, 68 N.E.3d 683 [2016], citing *Alvarez v. Prospect Hospital*, 68 N.Y.2d 320, 501 N.E.2d 572 [1986]). Failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers (*see Chiara v. Town of New Castle*, 126 A.D.3d 111, 2 N.Y.S.3d 132 [2 Dept., 2015], citing *Vega v. Restani Const. Corp.*, 18 N.Y.3d 499, 965 N.E.2d 240 [2012]; *see also Lee v. Nassau Health Care Corp.*, 162 A.D.3d 628, 78 N.Y.S.3d 239 [2 Dept., 2018]).

² The Police Accident Report numbers the vehicles from the rear of the chain collision to the front.

“A plaintiff does not need to demonstrate the absence of their own comparative negligence to be entitled to partial summary judgment as to a defendant's liability (*see Rodriguez v City of New York*, 31 N.Y.3d 312, 76 N.Y.S.3d 898 [2018 N.Y. Slip Op. 02287]). However, the issue of a plaintiff's comparative negligence may be decided in the context of a summary judgment motion where the plaintiff moved for summary judgment dismissing a defendant's affirmative defense of comparative negligence (*see Poon v. Nisanov*, 162 A.D.3d 804, 808, 79 N.Y.S.3d 227 [2 Dept., 2018]).

Since there can be more than one proximate cause of an accident, a defendant moving for summary judgment has the burden of establishing freedom from comparative negligence as a matter of law “In order for a defendant driver to establish entitlement to summary judgment on the issue of liability in a motor vehicle collision case, the driver must demonstrate, prima facie, inter alia, that he or she kept the proper lookout, or that his or her alleged negligence, if any, did not contribute to the accident”. The issue of comparative fault is generally a question for the trier of fact.

(*Ballentine v. Perrone*, 179 A.D.3d 993, 114 N.Y.S.3d 696 [2 Dept., 2020] [internal citation omitted]).

“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” A rear-end collision with a stopped or stopping vehicle establishes a prima facie case of negligence on the part of the operator of the rear vehicle, thereby requiring that operator to rebut the inference of negligence by providing a nonnegligent explanation for the collision (*Resnick v. Wainwright*, - AD3d-, 2021 WL

1112699 [2 Dept., 2021] [internal citations omitted]; see *Toala v. EAN Holdings, LLC*, 191 A.D.3d 724, 137 N.Y.S.3d 713, 714 [2 Dept., 2021]).

Once a moving party has made a prima facie showing of its entitlement to summary judgment, the burden shifts to the opposing party to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action (see *Fairlane Fin. Corp. v. Longspaugh*, 144 A.D.3d 858, 41 N.Y.S.3d 284 [2 Dept., 2016], citing *Alvarez v. Prospect Hospital*, 68 N.Y.2d 320, *supra*; see also *Hoover v. New Holland N. Am., Inc.*, 23 N.Y.3d 41, 11 N.E.3d 693 [2014]).

“Vehicle stops which are foreseeable under the prevailing traffic conditions, even if sudden and frequent, must be anticipated by the driver who follows, since he or she is under a duty to maintain a safe distance between his or her car and the car ahead” (*Taing v. Drewery*, 100 A.D.3d 740, 954 N.Y.S.2d 175 [2 Dept., 2012], quoting *Shamah v. Richmond County Ambulance Serv.*, 279 A.D.2d 564, 719 N.Y.S.2d 287 [2 Dept., 2001]; see also VTL § 1229(a)).

“[I]n 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 A.D.3d 518, 36 N.Y.S.3d 213 [2 Dept., 2016], citing *Niosi v. Jones*, 113 A.D.3d 578, 19 N.Y.S.3d 550 [2 Dept., 2015]; *Fonteboa v. Nugget Cab Corp.*, 123 A.D.3d 759, 999 N.Y.S.2d 113 [2 Dept., 2014]; *Kuris v. El Sol Contracting and Const. Corp.*, 116 A.D.3d 675, 983 N.Y.S.2d 580 [2 Dept., 2014]). However, “a nonnegligent explanation may

include that a vehicle made a sudden lane change in front of a defendant's vehicle," (*Cruz v. Valentine Packing Corp*, 167 A.D.3d 707, 89 N.Y.S.3d 316 [2 Dept., 2018], *citing*, *Fajardo v. City of New York*, 95 A.D.3d 820, 943 N.Y.S.2d 587 [2 Dept., 2012]; *Ortiz v. Hub Truck Rental Corp.*, 82 A.D.3d 725, 918 N.Y.S.2d 156 [2 Dept., 2011]; *Reitz v. Seagate Trucking, Inc.*, 71 A.D.3d 975, 898 N.Y.S.2d 173 [2 Dept., 2010]).

Here, plaintiff established her entitlement to judgment as a matter of law by demonstrating that her vehicle, vehicle 2, was stopped when it was struck in the rear by defendant Srapionov (*see Egerton v. City of New York*, 160 A.D.3d 809, 74 N.Y.S.3d 617 [2 Dept., 2018]; *see generally Poon v. Nisanov*, 162 A.D.3d 804, *supra*; *see also Ortiz v. Welna*, 152 A.D.3d 709, 58 N.Y.S.3d 556 [2 Dept., 2017]). Plaintiff also provided the certified Police Accident Report, which indicates that she was struck in the rear after Sena's vehicle propelled Srapionov's vehicle into the rear of her vehicle (*see Certified Police Accident Report, see also Yassin v. Blackman*, 188 A.D.3d 62, 131 N.Y.S.3d 53 [2 Dept., 2020]). Plaintiff's testimony that she was wearing her seatbelt and not using her cell phone demonstrates that she was not negligent in the happening of the accident. Accordingly, the actions of vehicle 3 and/or 4 were the proximate cause(s) of the accident, and plaintiff is free of comparative fault (*see generally Poon v. Nisanov*, 162 A.D.3d 804, *supra*; *see also Ortiz v Welna*, 152 A.D.3d 709, *supra*).

In opposition, there is a triable issue of fact. Srapionov testified that his vehicle, vehicle 3, changed lanes from the middle moving lane to the right moving lane, and was fully stopped behind plaintiff's vehicle for a period of 2 to 3 minutes prior to being struck in the rear by co-defendant Sena, vehicle 4. However, he further stated that he did not

travel in the right lane. Although the driver of vehicle 4 admits to striking the rear of vehicle 3's stopped vehicle, he contends that when vehicle 3 changed lanes in front of him and then came to a sudden stop due to traffic conditions, vehicle 3 caused vehicle 4 to strike the rear of vehicle 3. Although the contention that vehicle 3 suddenly stopped his vehicle prior to the accident alone is not a non-negligent explanation for defendant striking the rear of co-defendants' vehicle, a nonnegligent explanation may include that a vehicle 3 made a sudden lane change in front of a vehicle 4. Here, the driver of vehicle 4 repeatedly testified that the vehicle 3 and 4 stopped simultaneously and immediately after vehicle 3 completed his lane change. The conflicting testimony of the drivers of vehicles 3 and 4, both tractor trailers, as to the sudden lane change and the time stopped raises triable issues of fact.


In light of this conflicting testimony, triable issues of fact exist as to whether defendants 1&1 and Srapionov, and/or defendants Sena Trucking and Sena, were at fault for the happening of this accident (*see Cruz v. Valentine Packing Corp*, 167 A.D.3d 707, *supra*, citing, *Goulet v. Anastasio*, 148 A.D.3d 783, 48 N.Y.S.3d 731 [2 Dept., 2017]; *Fajardo v. City of New York*, 95 A.D.3d 820, *supra*; *Martinez v. Martinez*, 93 A.D.3d 767, 941 N.Y.S.2d 189 [2 Dept., 2012]; *Camarillo v. Sandoval*, 90 A.D.3d 593, 933 N.Y.S.2d 906 [2 Dept., 2011]; *see also Kuris v. El Sol Contracting and Const. Corp*, 116 A.D.3d 675, *supra*).

Conclusion

Accordingly, plaintiff's motion (sequence four) for summary judgment is granted as to her own comparative liability and denied as to defendants' liability. Defendant 1&1

Transportation Incorporated and Georgiy Levenovich Srapionov's motion (sequence five) for summary judgment is denied. This constitutes the decision and order of this case.

ENTER:


Hon. Lara J. Genovesi
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