Garcia v PV Holding Corp.
2022 NY Slip Op 32311(U)
January 7, 2022
Supreme Court, Bronx County
Docket Number: Index No. 29816-2020e
Judge: Veronica G. Hummel
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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

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HOMERO GARCIA and GLORIA GARCIA,

Plaintiffs

-against -

PV HOLDING CORP. and CRIS JUAN N. CRAWFORD
Defendants.

Index No. 29816-2020e
DECISION/ORDER
Motion Seq. 1

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PV HOLDING CORP. and CRIS JUAN N. CRAWFORD,
Third-party Plaintiffs,
-against-
HOMERO GARCIA
Third-party Defendant.

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In accordance with CPLR 2219(a), the decision herein is made upon consideration of all papers filed by the parties in NYSCEF in regard to the motion of plaintiff GLORIA GARCIA (Mot. Seq. 1) seeking an order, pursuant to CPLR 3212, granting plaintiff partial summary judgment as to liability against defendants PV HOLDING CORP. ("PV Holding")and CRIS JUAN N. CRAWFORD (defendants), or in the alternative, finding plaintiff innocent of negligence for the relevant accident as a passenger and a determination of liability as against defendants; and the cross-motion by third-party defendant HOMERO GARCIA (Garcia) for an order, pursuant to the CPLR 3212, granting Garcia summary judgment dismissing the third-party complaint. On November 3, 2021, Garcia, as a plaintiff, executed a stipulation of discontinuance of his personal injury causes of action as against defendants and Garcia therefore remains in the action only as a third-party defendant. [NYSCEF No.57].

This is a personal-injury action arising out of a two-vehicle rear-end accident that occurred on March 15, 2020, on University Avenue at or near its intersection with West Tremont Avenue in Bronx County (the "Accident"). At the time of the Accident, plaintiff was a passenger in the vehicle driven by Garcia ("the Plaintiff's Vehicle"). The vehicle driven by defendant Crawford and owned by defendant PV Holding ("the Defendants' Vehicle") rear-ended the Plaintiff's Vehicle.

"The proponent of a summary judgment motion must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering evidence sufficient to eliminate any material issues of fact from the case." *Winegrad v. N.Y. Univ. Med. Ctr.*, 64 N.Y.2d 851, 853 (1985). Upon such a showing, the burden then shifts to the nonmovant to "present evidentiary facts in admissible form sufficient to raise a genuine, triable issue of fact." *Mazurek v. Metro. Museum of Art*, 27 A.D.3d 227, 228 (1st Dep't 2006). A plaintiff in a negligence action moving for summary judgment on the issue of liability must, therefore, establish, *prima facie*, that the defendant breached a duty owed to the plaintiff and that the defendant's negligence was a proximate cause of the alleged injuries. *Fernandez v. Ortiz*, 183 A.D.3d 443 (1st Dep't 2020). A plaintiff is not required to demonstrate his or her freedom from comparative fault in order to establish a *prima facie* entitlement to summary judgment on the issue of liability. *Rodriguez v. City of N.Y.*, 31 N.Y.3d 312, 324-25 (2018).

In support of the motion, plaintiff submits an attorney affirmation, copies of the pleadings, copies of the plaintiff's and Garcia's deposition transcripts, a certified copy of the police report,[1] and photographs. Defendants have yet to appear for deposition.

At deposition, Garcia testified that he was driving with plaintiff, his wife, in the Plaintiff's Vehicle. The Accident occurred at the intersection of University Avenue and Tremont Avenue, while the Plaintiff Vehicle was traveling on University at approximately 15 mph. The weather conditions were good. There were two vehicles in front of the Plaintiff's Vehicle. Garcia observed a non-party vehicle in an emergency lane that was trying to enter Garcia's lane. Garcia slowed down so as to not hit the non-party vehicle. Approximately three seconds passed from the time Garcia observed the non-party vehicle in the emergency lane until said vehicle entered into the Plaintiff's Vehicle's lane of traffic. Plaintiff's Vehicle moved 4 to 6 feet from the time that Garcia first saw the non-party vehicle in the emergency lane until being hit in the rear by Defendants' Vehicle. The Plaintiff's Vehicle was suddenly struck from behind by Defendants' Vehicle. The Plaintiff's Vehicle did not collide with the non-party vehicle.

Plaintiff testified that she was not paying attention as a passenger as her husband was a

[1] While the police report submitted with the moving papers is certified, the statements therein are hearsay and do not qualify for an exception. As such, the statements are not considered by the court. In any event, plaintiff sets forth a *prima facie* case based on the other submitted evidence. *Yassin v. Blackman*, 188 A.D.3d 62 (2d Dep't 2020); *Dong v. Cruz-Marte*, 189 A.D.3d 613 (1st Dep't 2020).

good driver. The Accident occurred after a "very very strong impact" from the car behind.

In opposition to the motion, defendants submit an attorney affirmation, and a copy of a rental agreement.

Plaintiff's motion as a passenger

That part of plaintiff's motion seeking partial summary judgment against defendants based on her own lack of fault for the Accident is granted. Plaintiff has made a *prima facie* showing that she was an innocent passenger, and did not distract the driver in the moments preceding the Accident. Any dispute between defendants or third-party defendant Garcia concerning their comparative fault for the Accident does not preclude the granting of partial summary judgment to plaintiff on the matter of her liability. *See Garcia v. Tri-Cty. Ambulette Serv., Inc.*, 282 A.D.2d 206, 207 (1st Dept 2001) (holding that "it is well settled that the right of an innocent passenger to summary judgment is not in any way restricted by potential issues of comparative negligence as between the drivers of . . . two vehicles."). Here, plaintiff was an innocent passenger, and "there is no basis for finding that plaintiff ... did anything to cause the accident or could have prevented it", and as such there is no culpable conduct by a plaintiff passenger on the issue of liability. *Mello v Narco Cab Corp.*, 105 A.D.3d 634, 635 (1st Dep't 2013). "CPLR 3212 (g) permits the court to limit issues of fact for trial, by specifying which facts are not in dispute or are incontrovertible, and such facts shall be deemed established for all purposes in the action" (*Garcia v. Tri County Ambulette Serv., supra.*

Plaintiff's motion as against defendants based on defendants' negligence

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, nonnegligent explanation for the accident." *Urena v. GVC Ltd.*, 160 A.D.3d 467, 467 (1st Dep't 2018); *Matos v. Sanchez*, 147 A.D.3d 585, 586 (1st Dep't 2017); *Santos v. Booth*, 126 A.D.3d 506, 506 (1st Dep't 2015); *Woodley v. Ramirez*, 25 A.D.3d 451, 452 (1st Dep't 2006). Under New York Vehicle and Traffic Law ("VTL") § 1129(a), "a driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicle and traffic upon the condition of the highway." In other words, a driver must maintain a safe distance between his vehicle and the one in front of her. A violation of VTL § 1129(a) is *prima facie*

evidence of negligence, and "[t]his rule has been applied when the front vehicle stops suddenly in slow-moving traffic." *Rodriguez v. Budget Rent-A-Car Sys., Inc.*, 44 A.D.3d 216, 223-24 (1st Dep't 2007) (quoting *Johnson v. Phillips*, 261 A.D.2d 269, 271 (1st Dep't 1999); *Mascitti v Greene*, 250 A.D.2d 821, 822 (2d Dep't 1998). In a rear-end collision, there is a presumption of non-negligence of the driver of the lead vehicle. *See Soto-Maroquin v. Mellet*, 63 A.D.3d 449, 450 (1st Dept 2009).

First Department caselaw is also clear that a claim by the rear driver that the lead vehicle made a sudden stop, standing alone, is insufficient to rebut the presumption of negligence on the part of the rear driver. *Ly Giap v. Hathi Son Pham*, 159 A.D.3d 484, 485 (1st Dep't 2018); *Bajrami v. Twinkle Cab Corp.*, 147 A.D.3d 649 (1st Dep't 2017); *see also Earl v Hill*, 2021 N.Y. Slip Op. 06948 (1st Dep't 2021).

Here, based on the submitted testimony, plaintiff establishes *prima facie* entitlement to partial summary judgment against defendants as it demonstrates that the Plaintiff's Vehicle, driven by Garcia, was stopped or stopping when it was hit by Defendants' Vehicle in the rear, in violation of VTL §1129(a). *Darmento v. Pacific Molasses Co.*, 81 N.Y.2d 985, 988 (1993). Of note, the Plaintiff's Vehicle, despite the actions of the non-party vehicle, was able to stop without impacting the car in front of it.

In opposition, defendants fail to come forward with an adequate non-negligent explanation for the Accident. The affirmation by the attorney in opposition to the motion fails to generate an issue of fact as to the cause of the accident as the affirmation has no probative value. *Thompson v. Pizzaro*, 155 A.D.3d 423 (1st Dep't 2017). Furthermore, First Department caselaw is also clear that a claim by the rear driver that the lead vehicle made a sudden stop, standing alone, is insufficient to rebut the presumption of negligence on the part of the rear driver. *Ly Giap v. Hathi Son Pham*, *supra*. A claim of a sudden stop in "stop-and-go traffic is not a sufficient non-negligent explanation for [the Accident]." *Elihu v Nicoleau*, 173 A.D.3d 578, 578 (1st Dep't 2019); Moreover, any contention by the opposing attorney that the driver of the Plaintiff's Vehicle negligently failed to evade the collision is purely speculative (*Harrigan v Sow*, 165 A.D.3d 463 (1st Dep't 2018); *Hilago v Vasquez*, 187 A.D.3d 683 [1st Dep't 2020]; *Jenkins v. Alexander*, 9 A.D.3d 286, 288 (1st Dep't 2018)), and no other evidence was proffered to support a claim that said drivers failed to take reasonable steps to avoid the collision. As such, there are no facts

showing that the driver of Plaintiff's Vehicle's failure to avoid being hit in the rear was negligence. *Harrigan v. Sow, supra*; *Gonzalez v. Bishop*, 157 A.D.3d 460 (1st Dep't 2018). Nor is the motion premature, as defense counsel declined to submit an affidavit from a person with personal knowledge.

To the extent that defendant PV Holding apparently seek to assert the Graves Amendment and its applicability to plaintiff's claims against said defendant as the owner of defendants' vehicle as an affirmative defense warranting denial of the motion, the contention lacks merit. In the answer, the Graves Amendment is alleged as an affirmative defense on behalf of "EAN Holdings LLC", not defendant PV Holding and, therefore based on the pleadings, the affirmative defense is unavailable to prevent the grant of plaintiff's motion.

In any event, on the motion, PV Holding fails to establish the applicability of the Graves Amendment to the facts at issue. Under the Graves Amendment, the owner of a leased or rented motor vehicle cannot be held vicariously liable "for harm to persons or property that results or arises out of the use, operation, or possession of the vehicle during the period of the rental or lease, if—(1) the owner (or an affiliate of the owner) is engaged in the trade or business of renting or leasing motor vehicles; and (2) there is no negligence or criminal wrongdoing on the part of the owner (or an affiliate of the owner)" (49 USC § 30106 [a]).

Here, PV Holding fails to submit an affidavit or any other evidence showing that the vehicle involved in this accident was rented by PV Holding to defendant Crawford. Nor does the company submit any proof that PV Holding is in the business of renting and leasing motor vehicles, and that the defendant Crawford was not an employee of PV Holding or that PV Holding's records reflect that there were no mechanical complaints or issues regarding the rented vehicle involved in the accident. *see Cioffi v. S.M. Foods, Inc*., 178 A.D.3d 1006 (2d Dep't 2019).

In fact, the purported the rental agreement submitted in support the opposition is entirely inadequate to generate an issue of fact. The rental agreement is not authenticated as reliable evidence in any manner. Furthermore, the agreement is between defendant Crawford and "Budget Rental", and PV Holding is not mentioned in the document. There is no evidence showing any legal connection, therefore, between PV Holding and Budget Rental.

As such, the competent evidence on the record demonstrates that defendants were solely liable for causing the Accident. Accordingly, plaintiff's motion for partial summary judgment as against the defendants is granted.

Third-party defendant Garcia's cross-motion for summary judgment dismissing the third-party complaint

Based on the foregoing conclusions, third-party defendant Garcia's cross-motion is granted. 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. So, supra; Hilago v. Vasquez, supra.* 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*).

Based on the legal principles governing a hit-in-rear accident and the undisputed facts set forth above, Garcia establishes *prima facie* entitlement to judgment as a matter of law by submitting evidence that the Plaintiff's Vehicle was driving safely when it, the first in the chain, was struck in the rear by the Defendants' Vehicle (*Vasquez v Chimborazo, supra; Smyth v Murphy*, *supra*; *Corrigan v Porter Cab Corp*., 101 A.D.3d 471 (1st Dept 2012)*; LaMasa v Bachman, supra*; *see Martinez v Kuhl*, 165 A.D.3d 774 (2d Dept 2018]). Furthermore, no evidence is submitted to show that the movant driver acted negligently or that any of his actions contributed to causing the Accident and the evidence establishes that the defendants were solely responsible for the Accident.

No party has submitted opposition to the cross-motion, and as such it is granted without opposition.

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 part of the motion of plaintiff GLORIA GARCIA (Mot. Seq. 1) that seeks an order, pursuant to CPLR 3212, finding plaintiff innocent of negligence for the relevant accident as a passenger is granted; and it is further

ORDERED that the part of the motion of plaintiff (mot. seq. 1) that seeks an order granting plaintiff partial summary judgment against the defendants PV HOLDING CORP. and CRIS JUAN CRAWFORD based on their liability for the Accident is granted; and is further

ORDERED that the cross-motion by third-party defendant HOMERO GARCIA (Garcia) for an order, pursuant to the CPLR 3212, granting Garcia summary judgment dismissing the third-party complaint based on the determination that defendants are solely responsible for the accident is granted without opposition; and it is further

ORDERED that the Clerk shall enter judgment dismissing the third-party complaint and severing the remining action; and it is further

ORDERED that on November 3, 2021, Garcia, as a plaintiff, executed a stipulation of discontinuance of his personal injury causes of action as against defendants and as such the caption in the action shall henceforth read as:

GLORIA GARCIA, Plaintiff, -against- PV HOLDING CORP. and CRIS JUAN N. CRAWFORD, Defendants.	Index No. 29816/2020E

and it is further

ORDERED that the Clerk shall mark the motion and cross-motion [Mot. Seq. 1] disposed in all Court records.

This constitutes the decision and order of the Court.

Dated: January 7 2022 **Hon.** ***s/Hon. Veronica G. Hummel/signed 01/07/2022***
VERONICA G. HUMMEL, A.J.S.C.

1.	CHECK ONE.....	☐ CASE DISPOSED IN ITS ENTIRETY			☒ CASE STILL ACTIVE		
2.	MOTION IS.....	x GRANTED	☐ DENIED	GRANTED IN PART		☐ OTHER	
3.	CROSS-MOTION IS.....	☒ GRANTED	☐ DENIED	☐ GRANTED IN PART		☐ OTHER	AMEND CAPTION

4. CHECK IF APPROPRIATE.....	☐ SETTLE ORDER	☐ SUBMIT ORDER	☐ SCHEDULE APPEARANCE
	☐ FIDUCIARY APPOINTMENT		☐ REFEREE APPOINTMENT
	☐ CONVERT TO ELECTRONIC FILING		☒ EDIT CAPTION