Collins v Mujic
2022 NY Slip Op 32312(U)
January 12, 2022
Supreme Court, Bronx County
Docket Number: Index No. 30379/2019E
Judge: Veronica G. Hummel
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX, IAS PART 31

JASON COLLINS,

Plaintiff,

-against-

SABRIJA MUJIC and EDWARD NEECK,

Defendants.

Index No. 30379/2019E

HON. VERONICA G. HUMMEL, A.J.S.C.

DECISION AND ORDER

Mot. Seq. No. 2

In accordance with CPLR 2219(a), the decision herein is made upon consideration of all papers filed by the parties in NYSCEF in support of and in opposition to: (a) defendant EDWARD NEECK's ("Defendant Neeck") motion (Seq. No. 2) seeking an order, pursuant to CPLR 3212, granting him summary judgment dismissing plaintiff JASON COLLIN's ("Plaintiff") complaint as against Defendant Neeck; and (b) Plaintiff's cross-motion (Seq. No. 2) seeking an order, pursuant to CPLR 3212, granting him partial summary judgment against defendant SABRIJA MUJIC ("Defendant Mujic") on the issue of liability and setting the matter down for an assessment of damages.

Plaintiff commenced this action to recover for personal injuries arising out of a multi-vehicle accident that occurred on June 21, 2019, at approximately 5:45-6:00 a.m., on the Henry Hudson Parkway (a/k/a the West Side Highway) (the "Henry Hudson"), at or near W. 79th Street in Manhattan, New York. According to the deposition testimony of the three parties, while travelling in the southbound middle lane of the Henry Hudson, Defendant Mujic lost control of his vehicle and swerved into the left lane and struck Plaintiff's vehicle in the front passenger side. Defendant Mujic's vehicle then collided with the rear of Defendant Neeck's vehicle in the middle lane.

In support of the motion, Defendant Neeck submits an attorney affirmation; copies of the transcripts of the parties' depositions; an uncertified copy of the police accident report; and copies of photographs from the scene of the accident. Because the police accident report is not certified, however, the Court cannot consider it as competent evidence in deciding the motion. *Coleman v. Maclas*, 61 A.D.3d 569, 569 (1st Dep't 2009).

In opposition to the motion, Defendant Mujic submits only an attorney affirmation, which, in turn, relies on the parties' deposition testimony.

Plaintiff does not oppose the motion. Instead, Plaintiff cross-moves for summary judgment against Defendant Mujic on the issue of liability and, in support of that cross-motion, submits an attorney affirmation along with the same materials that Defendant Neeck submits in support of the motion. In opposition to the cross-motion, Defendant Mujic again submits only an attorney affirmation relying on the parties' deposition testimony.

Defendant Neeck testified at his deposition that, on June 21, 2019, he was driving his vehicle in the southbound middle lane of the Henry Hudson on his way to work in Manhattan. At the time, it was daylight but raining, and traffic was "light to medium, as it was during the rush hour." Responding to traffic slowing in front of him, with the vehicle directly in front of him coming to a complete or near complete stop, Defendant Neeck brought his own vehicle to a complete or near complete stop—although defendant could not specifically recall which. Defendant Neeck was traveling under the speed limit of 50 miles per hour when he initiated his stop. Less than five (5) seconds after coming to a complete or near complete stop, Defendant Neeck felt a single impact to the rear of his vehicle. Defendant Neeck did not hear any horns honk or brakes screech prior to the impact. Nor did Defendant Neeck recall seeing Defendant Mujic's or Plaintiff's vehicles prior to the accident. In the two weeks before the accident, Defendant Neeck did not experience any mechanical difficulties, including any brake, indicator, steering, or transmission problems, with his vehicle.

Plaintiff testified at his deposition that, on June 21, 2019, he was driving his vehicle in the southbound left lane of the Henry Hudson on his way to work. At the time, it was daylight and raining heavily, and the roads were wet. While moving at approximately 50 mph within the left lane, Plaintiff suddenly felt a single heavy impact to the right front and middle passenger side of his vehicle. The impact caused Plaintiff's airbag to deploy. Plaintiff's vehicle had been struck by Defendant Mujic's vehicle, which Plaintiff had not seen prior to the accident. Plaintiff did not know that Defendant Neeck's vehicle was also involved in the accident until Defendant Neeck approached both Plaintiff and Defendant Mujic after the accident and indicated that he had been struck. Plaintiff's and Defendant Neeck's vehicles never came into contact with each other; rather,

Plaintiff's vehicle only came into contact with Defendant Mujic's vehicle during the accident. Plaintiff did not experience any issues with his vehicle's brakes or steering during the three (3) months preceding the accident, and he did not experience any such issues on the day of the accident.

Defendant Mujic testified at his deposition that, on June 21, 2019, he was driving his vehicle in the southbound middle lane of the Henry Hudson on his way to work. At the time, it was raining heavily, and traffic was "medium," causing his commute that morning to be slower than usual. While traveling between approximately 40 and 50 miles per hour in the middle lane, Defendant Mujic observed that the brake lights of Defendant Neeck's vehicle, which was then at a distance of approximately 40 or 50 feet in front of Defendant Mujic's vehicle, had illuminated and that Defendant Neeck's vehicle had begun coming to a stop. Defendant Mujic immediately applied his brakes to bring his vehicle to a stop to avoid hitting Defendant Neeck's vehicle. According to Defendant Mujic, upon applying his brakes, he began to skid on the roadway "because of [the] heavy rain, [and] [his] car is very light." Defendant Mujic lost control of his vehicle, which began to turn into the left lane of the Henry Hudson. Approximately 20 to 30 seconds after Defendant Mujic began braking and lost control of his vehicle, Defendant Mujic's vehicle was struck in the left passenger side by Plaintiff's vehicle, which was then traveling in the left lane. The impact caused Defendant Mujic's passenger door airbag to deploy. According to Defendant Mujic, the impact from Plaintiff's vehicle pushed Defendant Mujic's vehicle into the back of Defendant Neeck's vehicle, causing the right front side of Defendant Mujic's vehicle to impact the rear of Defendant Neeck's vehicle. Defendant Mujic claims that he may have been able to come to a complete stop and avoid striking Defendant Neeck's vehicle had he not been pushed forward by the impact with Plaintiff's vehicle. Defendant Mujic did not see Plaintiff's vehicle prior to the accident, because he claims to have been focused on Defendant Neeck's vehicle braking in front of him.

Defendant Neeck's Motion

Because summary judgment is a drastic remedy, "[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 eliminate any material issues of fact." *Winegrad v. N.Y. Univ. Med. Ctr.*, 64

N.Y.2d 851, 853 (1985). If the movant makes a *prima facie* showing of its entitlement to summary, the burden shifts to the motion's opponent 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).

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. *Hilago v. Vasquez*, 187 A.D.3d 683, 684 (1st Dep't 2020); *Harrigan v. Sow*, 165 A.D.3d 463, 464 (1st Dep't 2018). 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 she kept the proper lookout, or that her alleged negligence, if any, did not contribute to the accident. *Hilago*, 187 A.D.3d at 684; *Harrigan*, 165 A.D.3d at 464.

As an initial matter, it is undisputed that Defendant Neeck's vehicle *never* came into contact with Plaintiff's vehicle, and Plaintiff does not oppose Defendant Neeck's motion. Therefore, the only reason that Defendant Neeck might bear some responsibility for the collision between Plaintiff's and Defendant Mujic's vehicles is if Defendant Neeck's actions were negligent and, as such, somehow caused or contributed to Defendant Mujic's actions leading to his collision with Plaintiff.

In New York, 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) (quoting *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 Dep't 2009).

Similarly, in a chain-reaction collision, responsibility presumptively rests with the rear-most driver. *Ferguson v. Honda Lease Trust*, 34 A.D.3d 356, 357 (1st Dep't 2006); *Mustafaj v. Driscoll*, 5 A.D.3d 138 (1st Dep't 2004).

Further, First Department caselaw is 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); *Santos*, 126 A.D.3d at 506; *Soto-Maroquin*, 63 A.D.3d at 450; *Woodley*, 25 A.D.3d at 452; *see also Earl v. Hill*, 2021 N.Y. Slip Op. 06948 (1st Dep't Dec. 14, 2021) (holding that sudden stop has no bearing on the rear driver's liability where the rear driver "could not have reasonably anticipated an unimpeded flow of traffic"). Other reasonable excuses, such as mechanical failure or unavoidable skidding on wet pavement, may, however, rebut the inference of negligence. *See Baule v. Lanzzarini*, 222 A.D.2d 635, 636 (2d Dep't 1995). Such excuses must, nevertheless, be supported by evidence that rebuts the inference of negligence, not mere conclusory allegations. *Rainford v. Han*, 18 A.D.3d 638, 639 (2d Dep't 2005).

Here, Defendant Neeck has established *prima facie* entitlement to judgment as a matter of law by submitting evidence that he slowed his vehicle to a complete or near complete stop in response to the slowing of traffic in front of him when he was struck in the rear by Defendant Mujic's vehicle. By that same token, Defendant Neeck has also made a *prima facie* showing that he did not negligently contribute to the cause of the accident. Defendant Neeck's slowing—whether gradual or sudden—to avoid collision with the vehicles on the road in front of him is consistent with his obligations under the VTL and New York's common-law principles of negligence.

Plaintiff does not oppose the motion.

In opposition, Defendant Mujic fails to come forward with evidence generating a triable issue of material fact as to Defendant Neeck's negligence. Defendant Mujic argues that the parties' testimony raise questions of fact—specifically, whether Defendant Neeck was fully stopped or stopping, whether his stop was abrupt or gradual, and whether his negligence was a contributing factor in the accident. But, whether Defendant Neeck was *fully* stopped or only slowing at the moment of impact (something Defendant Neeck does not specifically recall), and whether his stop was abrupt or gradual, are immaterial in light of Defendant Neeck's testimony that his slowing or stopping, as the case may be, was due to traffic slowing or stopping in front of him, in compliance with his legal obligations. Defendant Mujic has offered no credible evidence calling Defendant Neeck's explanation for his slowing or stopping into question. Moreover, Defendant Mujic has failed to come forward with any other evidence of negligence on Defendant Neeck's part, and it is well settled that mere speculation is insufficient to defeat a motion for summary judgment. *See Cabrera v. Rodriguez*, 72 A.D.3d 553, 554 (1st Dep't 2010) (citing *Alvord & Swift v. Muller Constr. Co.*, 46 N.Y.2d 276, 281-82 (1978)); *Garcia v. Verizon N.Y., Inc.*, 10 A.D.3d 339, 340 (1st Dep't 2004).

As there are no triable issues of fact concerning Defendant Neeck's negligence, Defendant Neeck is entitled to summary judgment as a matter of law and a dismissal of Plaintiff's claims against him. It is noted that, in the Notice of Motion, Defendant Neeck moves for summary judgment to dismiss *Plaintiff's* complaint and not for summary judgment on the cross-claim between Defendant Neeck and Defendant Mujic. In light of the finding herein that movant's actions were not negligent and did not contribute to causing the Accident, the court will, upon a search of the record, also grant movant summary judgment dismissing the cross-claim by Defendant Mujic as well.

Plaintiff's Cross-Motion

A plaintiff in a negligence action moving for summary judgment on the issue of liability must 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, however, is not required to demonstrate 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).

VTL § 1128 provides that a driver shall not move from a single lane "until the driver has first ascertained that such movement can be made with safety." Pursuant to VTL § 1128, a driver is prohibited from suddenly crossing lanes without a signal and without warning. A violation of the VTL constitutes negligence *per se*. *See Drummond v. Perez*, 146 A.D.3d 645 (1st Dep't 2017); *Davis v. Turner*, 132 A.D.3d 603 (1st Dep't 2015); *Flores v. City of N.Y.*, 66 A.D.3d 599 (1st Dep't 2009).

Here, Plaintiff has established *prima facie* entitlement to partial summary judgment as to liability against Defendant Mujic by submitting undisputed evidence that he crossed into Plaintiff's lane without signal or warning, and struck Plaintiff's vehicle, which had the right of way and was travelling at a legal speed. As such, Defendant Mujic violated his duty not to enter a lane of moving traffic until it was safe to do so (*Castro v. Hatim*, 174 A.D.3d 464 (1st Dep't 2019); *Davis*, 132 A.D.3d 603), and his failure to heed this duty constitutes negligence *per se*, *Castro*, 174 A.D.3d 464.

Defendant Mujic, in turn, fails to generate a genuine issue of material fact sufficient to warrant denial of the cross-motion. For the reasons previously stated, Defendant Neeck's slowing or stopping was not negligent and, therefore, cannot be a basis on which to deny the cross-motion. Further, while Defendant Mujic vaguely argues that Plaintiff's contributing negligence presents a triable issue of fact, as held in *Rodriguez*, 31 N.Y.3d at 324-25, a plaintiff need not "demonstrate the absence of his own comparative fault" to be entitled to partial summary judgment as to a defendant's liability.

Finally, Defendant Mujic notes that "unavoidable skidding on wet pavement" has been cited as a "reasonable" non-negligent cause for a rear-end collision, citing the snow and ice-covered roadways of *DeLouise v. S.K.I. Wholesale Beer Corp.*, 75 A.D.3d 489 (2d Dep't 2010), and *Miller v. Steinberg*, 164 A.D.3d 492 (2d Dep't 2018). Initially, both of those cases arise in the context of a rear-end collision, while this case arises from Defendant Mujic's crossing into Plaintiff's lane and striking him. Thus, both cases are inapposite here. Moreover, even if the relevant accident were a rear-end collision, Defendant Mujic overlooks his own obligation to "maintain enough distance between himself and cars ahead of him so as to avoid collisions with stopped vehicles, *taking into account weather and road conditions*." *Williams v. Kadri*, 112

A.D.3d 442, 443 (1st Dep't 2013) (emphasis added). Defendant Mujic himself testified that it was raining heavily during his trip leading up to the accident and at the time of the accident. He should, therefore, have taken those conditions into account when driving so that he could maintain control of his vehicle should stopping become necessary.

To the extent that Defendant Mujic's reliance on his loss of control of his vehicle on the wet road is an attempt to invoke the emergency doctrine, the emergency doctrine is inapplicable here because Defendant Mujic was aware of the road conditions and should have accounted for them properly. *Id.*

The Court has considered the additional contentions of the parties not specifically addressed herein. To the extent that any relief requested by the movant was not addressed by the Court, it is hereby denied.

Accordingly, it is hereby:

ORDERED that defendant EDWARD NEECK's motion (Seq. No. 2) seeking an order, pursuant to CPLR 3212, granting him summary judgment dismissing plaintiff JASON COLLIN's (plaintiff) complaint as against him is **GRANTED**; and it is further

ORDERED that the court, upon a search of the record and the determinations reached herein, grants Defendant Neeck summary judgment dismissing the cross-claims alleged against him; and it is further

ORDERED that the Clerk shall enter judgment dismissing the complaint and all cross-claims as against defendant Neeck and severing the remaining action; and it is further

ORDERED that the caption in the matter shall henceforth read as:

----------x
JASON COLLINS,

Plaintiff,

-against-

SABRIJA MUJIC,

Defendant.
----------x

; and it is further

ORDERED that plaintiff's cross-motion (Seq. No. 2) seeking an order, pursuant to CPLR 3212, granting him partial summary judgment against defendant SABRIJA MUJIC on the issue of liability is **GRANTED**; and it is further

ORDERED that the Clerk shall mark the motion and cross-motion (Seq. No. 2) disposed in all court records.

This constitutes the decision and order of the Court.

Dated: January 12, 2022 **Hon.** *s/Hon. Veronica G. Hummel/signed 01/12/2022*
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.	CROSS-MOTION IS.....	☒ GRANTED	☐ DENIED	☐ GRANTED IN PART	☐ OTHER
3.	CHECK IF APPROPRIATE.....	☐ SETTLE ORDER	☐ SUBMIT ORDER	☐ SCHEDULE APPEARANCE	
		☐ FIDUCIARY APPOINTMENT		☐ REFEREE APPOINTMENT	
		☐ ISSUE A PRELIMINARY CONFERENCE/CASE SCHEDULING ORDER			
		☐ CONVERT TO ELECTRONIC FILING		☒ EDIT CAPTION	