

<b>Alvarez v Bracchitta</b>
2022 NY Slip Op 32337(U)
January 11, 2022
Supreme Court, Bronx County
Docket Number: Index No. 34274/2019E
Judge: Bianka Perez
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**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX, PART 14**

-----X  
MARYANN ALVAREZ and MARIANO  
ALVAREZ,

Index No. 34274/2019E

Plaintiff,

-against-

**Hon. Bianka Perez**

Justice Supreme Court

ROBERT BRACCHITTA, EDGAR J.  
FERNANDEZ and MEDLEY PHARMACY,

Defendants.

-----X  
The following **NYSCEF docs** numbered **15-70** were read on this motion (Mot Seq **No. 001**) for **SUMMARY JUDGMENT LIABILITY** noticed on **December 21, 2020**.

Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed	Nyscef No(s). 15-27	
Cross Motion-Exhibits and Affidavits	Nyscef No(s). 29-38, 46-51, 60-61	
Answering Affidavit and Exhibits	Nyscef No(s). 52-53, 55-58, 64-66	
Reply Affidavit and Exhibits	Nyscef No(s). 63, 67-70	

Upon the foregoing papers, plaintiffs move for summary judgment on the issue of liability against defendants Edgar J. Fernandez and Robert Bracchitta. Defendant Edgar J. Fernandez (Fernandez) cross moves for summary judgment on the issue of liability dismissing as asserted against him the complaint and crossclaims. Plaintiffs cross move for summary judgment as against defendant Medley Pharmacy, Inc., on the basis that Medley Pharmacy is vicariously liable for the actions of its employee defendant Fernandez.

Plaintiffs commenced this action to recover damages for injuries allegedly sustained in a multi-vehicle accident on August 26, 2019, on the Major Deegan Expressway, Bronx, New York. Plaintiffs were the lead vehicle involved in the collision, defendant Fernandez (employed by defendant Medley Pharmacy) was the middle vehicle, and defendant Bracchitta was the rear most vehicle. Plaintiffs testified at their depositions that while in heavy, slow-moving traffic, defendant Fernandez's vehicle rear ended them. Defendant Bracchitta testified that defendant Fernandez

stopped short, causing Bracchitta to rear-end Fernandez. Fernandez testified that he was pushed into plaintiffs' vehicle as a result of being rear-ended.

*Plaintiffs' Motion and Defendant Fernandez' Cross Motion*

On a motion for summary judgment, the proponent 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 from the case. (*Winegrad v New York Univ. Med. Center*, 64 NY2d 851, 852 [1985]). Once the proponent has made this showing, the burden of proof shifts to the party opposing the motion to produce evidentiary proof in admissible form to establish that material issues of fact exist which requires a jury trial (*Alvarez v Prospect Hospital*, 68 NY2d 320, 324 [1986]). A motorist is under a "duty to see that which under the circumstances he [or she] should have seen by the proper use of his [or her] senses (VTL § 1141). Each driver in the exercise of ordinary prudence ought to have observed and used such care to avoid the collision as an ordinarily prudent person would have used under the circumstances (see *Shea v Judson*, 283 NY 393 [1940]; *Rennie v Barbarosa Transp.*, 151 AD2d 379, 380 [1<sup>st</sup> Dept 1989]; *Costalas v City of New York*, 143 AD2d 573 [1<sup>st</sup> Dept 1988]; also see, 1 NY PJI 2:79 [2d ed]). VTL § 1129 requires a driver to maintain sufficient space between vehicles to avoid a collision. In a rear-end collision, the burden shifts to the rear driver to come forward with a non-negligent explanation for the crash (*Abbott v Picture Cars E., Inc.*, 78 AD3d 869 [2<sup>nd</sup> Dept 2010]; *Costa v. Eramo*, 76 A.D.3d 942 [2<sup>nd</sup> Dept. 2010]). Only if the operator of the rear vehicle cannot come forward with any evidence to rebut the inference of negligence, may the plaintiff properly be awarded judgment as a matter of law (*D'Agostino v YRC, Inc.*, 120 AD3d 1291, 1292 [2d Dept 2014]; citing, *Barile v. Lazzarini*, 222 A.D.2d 635, 636 [2nd Dept 1995]).

In support of plaintiffs' motion, plaintiffs submit copy of the pleadings, an uncertified police accident report, and the deposition transcripts of all parties, which provide the facts necessary to trigger the prima-facie-case principle in this case with respect to plaintiffs. Plaintiffs established that while stopped or stopping in heavy traffic, they were rear-ended by Fernandez's vehicle, after Fernandez allegedly stopped short in front of defendant Bracchitta, causing the chain collision.

In opposition to plaintiffs' motion, defendant Fernandez and Medley Pharmacy allege that summary judgment against him is improper as defendant Bracchitta, the rearmost vehicle, is the proximate cause of the accident. Defendant Bracchitta opposes, alleging that defendant Fernandez

stopped short, causing Bracchitta to strike Fernandez's vehicle, and that Fernandez had sufficient time, five to ten seconds, to avoid colliding with plaintiffs' vehicle. Statements of a sudden stop, standing alone, are insufficient to rebut the presumption of negligence imputed on the rearmost vehicle involved in a rear-end collision (*Ly Giap v Hathi Son Pham*, 159 AD3d 484, 485 [1st Dept. 2018]; *Cruz v Lise*, 123 AD3d 514 [1st Dept 2014]). The First Department has consistently granted summary judgment in plaintiff's favor where defendant has failed to show that he maintained a safe following distance behind plaintiff's vehicle. (*Morgan v Browner*, 138 AD3d 560 [1st Dept 2016]).

Here a review of the parties' testimony failed to reveal a non-negligent explanation for the accident or for the failure of defendant Bracchitta, the rearmost driver, to keep a safe distance from the defendant Fernandez's vehicle in front of him. Accordingly, plaintiffs' motion on liability must be granted as to defendant Bracchitta only. Similarly, defendant Fernandez's cross motion for summary judgment on liability must be granted as to defendant Bracchitta.

*Plaintiffs' Cross Motion as to Defendant Medley Pharmacy*

Plaintiffs cross move for partial summary judgment on the issue of liability against defendant Medley Pharmacy, alleging Medley was vicariously liable for the actions of defendant Fernandez, its employee. As the Court has previously determined that defendant Fernandez is entitled to summary judgment on the issue of liability, as he was not a proximate cause of the accident, plaintiff's cross motion as to defendant Medley Pharmacy is denied as moot and academic.

Accordingly, it is hereby

ORDERED, that plaintiffs' motion for summary judgment on the issue of liability against defendants Edgar J. Fernandez and Robert Bracchitta is granted as to defendant Robert Bracchitta ONLY, and it is further

ORDERED, that plaintiffs' cross motion for summary judgment on the issue of liability as against defendant Medley Pharmacy is denied, and it is further

ORDERED, that defendant Fernandez's cross motion for summary judgment on the issue of liability is granted, and it is further

ORDERED, that the Clerk of the Court is directed to enter judgment in favor of defendant Edgar J. Fernandez and against plaintiff and co-defendants dismissing the complaint and cross-claims asserted as against defendant Fernandez ONLY, it is further

it is further

ORDERED, that movants shall serve a copy of this order, together with notice of entry, on the defendants within 30 days of the date of entry of this order.

This constitutes the decision and order of the Court.

**Dated: January 11, 2022**

**Hon.** *BP*  
**BIANKA PEREZ, J.S.C.**

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- 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