

Armenia v Smirnoff Taxi, LLC
2022 NY Slip Op 33620(U)
October 17, 2022
Supreme Court, New York County
Docket Number: Index No. 158744/2018
Judge: James G. Clynnes
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. JAMES G. CLYNES PART 22M

Justice

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KRISTIN ARMENIA,	INDEX NO. <u>158744/2018</u>
Plaintiff,	MOTION DATE <u>11/02/2020, 01/11/2021</u>
- v -	MOTION SEQ. NO. <u>001 002</u>

SMIRNOFF TAXI, LLC, MD MURSALIN, FIRST ULTIMATE
TRANS CORP., IBRAHIMA KANTE, MYG HACKING
CORP., IBRAHIM MORO

**DECISION + ORDER ON
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 37, 38, 39, 40, 41, 42, 52, 53

were read on this motion to/for JUDGMENT - SUMMARY

The following e-filed documents, listed by NYSCEF document number (Motion 002) 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 43, 44, 45, 46, 47, 48, 49, 50, 51

were read on this motion to/for JUDGMENT - SUMMARY

Upon the foregoing documents and following oral argument the motions for summary judgment and dismissal of the complaint and cross-claims against them by defendants First Ultimate Trans Corp (First Ultimate) and Ibrahim Kante (Kante) (Motion Sequence #1) and by defendants MYG Hacking Corp (MYG) and Ibrahim Moro (Moro) (Motion Sequence #2) are consolidated and decided as follows:

Plaintiff Kristin Armenia (Plaintiff) seeks recovery for injuries allegedly sustained when she was a passenger in a vehicle owned and operated by defendants Smirnoff Taxi, LLC (Smirnoff) and Md. Mursalin (Mursalin),¹ the third or last of three vehicles involved in an August 10, 2016, motor vehicle accident. There is no dispute concerning the identity of the owners and operators of the three vehicles and the order in which they were traveling as set forth in the certified police accident report attached to both motions: The first vehicle was owned and operated by MYG and Moro; the second vehicle was owned and operated by First Ultimate and

¹ Although referred to in the pleadings as "Mursalin," the opposition papers of defendants Smirnoff and Mursalin refer to defendant Mursalin as "Morsalin."

Kante; and the third vehicle, in which plaintiff was a passenger, was owned and operated by Smirnoff and Mursalin.

“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 from the case” (*Winegrad v N.Y. Univ. Med. Ctr.*, 64 NY2d 851 [1985]). “Once this showing is made, the burden shifts to the opposing party to produce evidentiary proof in admissible form sufficient to establish the existence of triable issues of fact” (*Melendez v Parkchester Med. Servs., P.C.*, 76 AD3d 927 [1st Dept 2010], citing *Zuckerman v New York*, 49 NY2d 557, 562 [1980]). “[T]he opposing party must assemble and lay bare its affirmative proof to demonstrate that genuine triable issues of fact exist” and “the issue must be shown to be real, not feigned since a sham or frivolous issue will not preclude summary relief” (*Kornfeld v NRX Technologies, Inc.*, 93 AD2d 772 [1st Dept 1983], *affd* 62 NY2d 686 [1984]). The evidence submitted on a motion for summary judgment is construed in the light most favorable to the opponent of the motion (*see Branham v Loews Orpheum Cinemas, Inc.*, 8 N.Y.3d 931, 932 [2007]).

“It is well established that a rear-end collision with a stopped or stopping vehicle establishes a prima facie case of negligence on the part of the rear vehicle's driver and imposes a duty upon the driver of the rear vehicle to come forward with an adequate nonnegligent explanation for the accident” (*Quiros v Hawkins*, 180 AD3d 500 [1st Dept 2020], citing *Williams v Kadri*, 112 AD3d 422 [1st Dept 2013]).

Summary judgment is the procedural equivalent of a trial (*Mendoza v Highpoint Associates, IX, LLC*, 83 AD3d 1 [1st Dept 2011]). It is a drastic remedy and should not be granted where there is any doubt as to the existence of a triable issue (*See, Rotuba Extruders Inc., v Ceppos*, 46 NY2d 223 [1978]). The proponent of a motion for summary judgment must make a *prima facie* showing of entitlement to judgment as a matter of law, presenting sufficient evidence, in admissible form, to eliminate any material issues of fact from the case (*Winegrad v New York University Medical Center*, 64 NY2d 851 [1985]). Failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers (*Id.*, at 853).

First Ultimate and Kante's Motion (Motion Sequence #1)

Kante's affidavit, wherein he avers that he was operating a vehicle traveling northbound in the right lane on 1st Avenue behind a yellow cab (the MYG/Moro vehicle) in heavy traffic;

that the yellow cab (the MYG/Moro vehicle) began to slow down due to traffic; that Kante applied his brake to slow down when he felt an impact to the rear of his vehicle, and that the impact pushed Kante's vehicle forward into the rear of the yellow cab in front (the MYG/Moro vehicle) established prima facie negligence by Smirnoff and Mursalin, the owner and operator of the third vehicle, and imposes upon Smirnoff and Mursalin a duty to provide a non-negligent explanation for the rear-end collision (*Quiros v Hawkins*, 180 AD3d 500 [1st Dept 2020]).

Plaintiff's opposition to the motion by First Ultimate and Kante contends that the motion is premature and should be denied with leave to renew after completion of discovery. Plaintiff also contends the conflicting affidavits of Kante and Mursalin establish triable issues of fact sufficient to preclude summary judgment on liability in favor of First Ultimate and Kante.

In opposition, Smirnoff and Mursalin submit Mursalin's affidavit, in which he avers, among other things, that he was the third vehicle stopped at a red traffic signal; that when the light changed he proceeded forward when the second vehicle in front of him moved forward; that the second vehicle suddenly rear-ended the first vehicle; that he immediately pressed on his brake to avoid contact; and that his vehicle slightly tapped the second vehicle as a result of the second vehicle rear-ending the first vehicle. Mursalin's affidavit contradicts the allegation in Kante's affidavit that Kante's vehicle was pushed forward into Moro's vehicle after it was struck in the rear by Mursalin, providing a non-negligent explanation for the rear-end collision between the rear of the First Ultimate/Kante vehicle and the front of the Smirnoff/Mursalin vehicle, in which plaintiff was a passenger, and therefore raising an issue of fact as to liability for the collision in which plaintiff was allegedly injured. Accordingly, the motion for summary judgment on liability in favor of First Ultimate and Kante and against Smirnoff and Mursalin (Motion Sequence #1) and for the dismissal of the complaint and any cross-claims against defendants Kante and Mursalin is denied with leave to renew upon the completion of discovery.

MYG and Moro's Motion (Motion Sequence #2)

MYG and Moro seek an order granting them summary judgment on liability in their favor and dismissing the complaint and all cross-claims against them based upon their freedom from liability for the rear-end collision as the lead vehicle that was struck in the rear by the second vehicle. In support of the motion MYG and Moro rely on the affidavits of defendant drivers Kante and Mursalin and the certified police accident report. MYG and Moro contend that the Kante and Mursalin affidavits both establish that the MYG and Moro vehicle is free from

negligence because it was struck in the rear by the First Ultimate and Kante vehicle and because no non-negligent explanation for this rear-end collision has been provided by the parties opposing the motion. MYG and Moro contend that any conflicts between the facts as averred in the affidavits of Kante and Mursalin do not provide a non-negligent explanation for the rear-end collision sufficient to raise an issue of fact as to the liability of MYG and Moro. MYG and Moro contend that if Kante's affidavit in which he avers that he was struck in the rear by the Smirnoff and Mursalin vehicle is correct, MYG and Moro are free from liability and that if Mursalin's affidavit, in which he avers that Kante abruptly rear-ended the MYG and Moro vehicle is correct, MYG and Moro are free from liability. However, MYG and Moro submission does not offer a first hand account of the accident from the perspective of the defendant driver Moro and therefore does not establish prima facie entitlement to summary judgment on the issue of liability in favor of MYG and Moro and against the other defendants. The actions of defendants MYG and Moro are not discussed in the affidavits of Kante and Mursalin. The submission of MYG and Moro fails to establish prima facie entitlement to summary judgment in their favor as a matter of law. Accordingly, the motion by MYG and Moro for summary judgment on liability must be denied with leave to renew upon the completion of discovery.

Both motions are denied in their entirety. Accordingly, it is

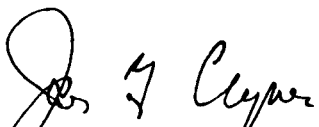
ORDERED that the motion by First Ultimate and Kante for summary judgment on liability in their favor and dismissal of the complaint and any cross-claims against them (Motion Sequence #1) is denied; and it is further

ORDERED that the motion by defendants MYG and Moro for summary judgment on liability in their favor and for dismissal of the complaint and any cross-claims against them (Motion Sequence #2) is denied.

This constitutes the Decision and Order of the Court.

10/17/2022

DATE


JAMES G. CLYNES, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE