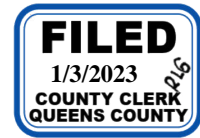


<b>Paupaw v Duchatelier</b>
2022 NY Slip Op 35047(U)
December 23, 2022
Supreme Court, Queens County
Docket Number: Index No. 705687/2021
Judge: Maurice E. Muir
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Short Form Order

NEW YORK SUPREME COURT – QUEENS COUNTY

Present: HONORABLE MAURICE E. MUIR  
Justice



NORMA PAUPAW,

IAS Part - 42

Plaintiff,

Index No.: 705687/2021

-against-

Motion Date: 9/15/22

RENE DUCHATELIER, ROSA AUGUSTIN,  
RUKSANA PARVIN and MD A RAHIM,

Motion Cal. No. 39

Defendants.

Motion Seq. No. 2

The following electronically filed (“EF”) documents read on this motion by Rosa Augustin (“Ms. Augustin”) and Rene Duchatelier (“Mr. Duchatellier”) (collectively the “movants”) for an order pursuant to CPLR § 3212 dismissing the complaint and any and all cross claims against them on the basis that they did not breach any duty owed to the plaintiff, and, therefore, are not a proximate cause of the subject accident; and granting such other and further relief as deemed necessary and proper by this Court.

	Papers <u>Numbered</u>
Notice of Motion-Affirmation-Exhibits.....	EF 44 – 48
Affirmation in Opposition-Exhibits.....	EF 65 – 69
Affirmation in Reply-Exhibit.....	EF 70 – 71

Upon the foregoing papers, it is ordered that this motion is determined as follows:

This is an action for damages for personal injuries allegedly sustained by Norma Paupaw (“Ms. Paupaw” or “plaintiff”) in a motor vehicle collision. The plaintiff alleges that on January 23, 2020, she was a passenger in Access-A-Ride vehicle owned by MD A Rahim (“Mr. Rahim”) and operated by Ruksana Parvin (“Ms. Parvin”), who struck a motor vehicle owned by Ms. Augustin and operated by Mr. Duchatelier, which occurred on Canal Street in the county, city and state of New York (“subject accident”). As a result, on March 11, 2021, plaintiff

commenced the instant action; and on March 26, 2021, issue was joined, wherein Ms. Augustin and Mr. Duchatellier interposed an answer with crossclaims. Moreover, on July 20, 2021, co-defendants, Ms. Parvin and Mr. Rahim, interposed an answer with crossclaims.

Now, the movants seek summary judgment to dismiss the complaint and crossclaim, pursuant to CPLR § 3211(b). In support of the instant motion, Mr. Duchatelier provides his deposition testimony, wherein testified that he was traveling, east within the right lane, on Canal Street, at approximately 20 miles per hour, when Ms. Parvin bumped his vehicle in the rear. As a result, his quarter panel in the back towards the passenger door was impacted by the accident. Moreover, Mr. Duchatelier testified that he asked Ms. Parvin was she crazy; and she said that she did not see him. Moreover, Mr. Duchatelier testified that Ms. Parvin was willing to pay for the damage to his vehicle. Additionally, Ms. Paupaw testified that “[Ms. Parvin] hit - - she ran into the man in front of us.”

It is well settled law that “[a] defendant moving for summary judgment in a negligence action has the burden of establishing, *prima facie*, that he or she was not at fault in the happening of the subject accident” (*Boulos v. Lerner-Harrington*, 124 AD3d 709 [2d Dept 2015]; *see Aponte v. Vani*, 155 AD3d 929 [2d Dept 2017]; *Baulete v. L & N Car Serv., Inc.*, 134 AD3d 753 [2d Dept 2015]; *Miron v. Pappas*, 161 AD3d 1063 [2d Dept 2018]; *see also Chan Pok Kim v. Jurado*, 203 AD3d 694 [2d Dept 2022]). “There can be more than one proximate cause of an accident.” (*Lopez v. Reyes-Flores*, 52 AD3d 785, 786 [2d Dept 2008] quoting *Cox v. Nunez*, 23 AD3d 427 [2d Dept 2005]; and “[g]enerally, it is for the trier of fact to determine the issue of proximate cause” (*Kalland v. Hungry Habor Assoc., LLC*, 84 AD3d 889 [2d Dept 2011]). Furthermore, it is well settled law that “[a] rear-end collision with a stopped or stopping vehicle creates a *prima facie* case of negligence with respect to the operator of the rearmost vehicle, thereby requiring that operator to rebut the inference of negligence by providing a non-negligent explanation for the collision” (*Edgerton v. City of New York*, 160 AD3d 809 [2d Dept 2018]; *Arslan v. Costello*, 164 AD3d 1408 [2d Dept 2018]; *Buchanan v. Keller*, 169 AD3d 989 [2d Dept 2019]; *see Rodriguez v. City of New York*, 31 NY3d 312 [2018]; *Xiao v. Martinez*, 185 AD3d 1014 [2d Dept 2020]).

Here, the court finds that the movants established their *prima facie* entitlement to judgment as a matter of law by submitting, *inter alia*, Mr. Duchatelier’s uncontroverted testimony, which demonstrates that he was traveling within the right when Ms. Parvin bumped his vehicle in the rear. Mr. Duchatelier also testified that Ms. Parvin indicated that she did not

see him; and she was willing to pay for the damage. Moreover, the plaintiff corroborated Mr. Duchatelier's version of the subject accident, wherein she testified that "[Ms. Parvin] hit -- she ran into the man in front of us." Additionally, Ms. Parvin failed to articulate a non-negligent reason for striking Mr. Duchatelier's vehicle in the rear. (*Pollet v. Charyn*, 200 AD3d 728 [2d Dept 2021]; *Munoz v. Agenus, Inc.*, 207 AD3d 643 [2d Dept 2022]): In fact, Ms. Parvin failed to submit an affidavit rebutting Mr. Duchatelier's testimony. Furthermore, defense counsel's affirmation has no probative value: It is well settled law that an attorney's affirmation that is not based on personal knowledge or supported by documentary evidence is of no probative value and cannot defeat a motion for summary judgment. (*Nerayoff v. Khorshad*, 168 AD3d 866 [2d Dept 2019]; *Warrington v. Ryder Truck Rental, Inc.*, 35 AD3d 455 [2d Dept 2006]; *Amato v. Fast Repair, Inc.*, 15 AD3d 429 [2d Dept 2005]). Under the circumstances, the court finds that the co-defendants failed to raise a triable issue of fact as to whether the movants were the proximate cause of the subject accident. (*see Wingegrad v. New York Univ. Med. Ctr.*, 64 NY2d 851 [1985]).

Lastly, the co-defendant's (i.e., Ruksana Parvin and MD A Rahim) contentions that the instant motion for summary judgment is premature is unavailing. Here, the co-defendants failed to offer an evidentiary basis to suggest that further discovery might lead to relevant evidence and that facts essential to justify opposition to the motion is exclusively within the knowledge and control of the movants. (*Harrinarain v. Sisters of St. Joseph*, 173 AD3d 983 [2d Dept 2019]; *Lopez v. Suggs*, 186 AD3d 589 [2d Dept 2020]; *Theresa Striano Revocable Trust v. Hoffman*, 71 AD3d 993 [2d Dept 2010]; *Gil v. Manhattan Bar Distribs, LLC*, 207 AD2d3d 525 [2d Dept 2022]). As the Appellate Division has repeatedly held "[t]he mere hope or speculation that evidence sufficient to defeat a motion for summary judgment may be uncovered during the discovery process is an insufficient basis for denying the motion." (*Pierre v. Demoura*, 148 AD3d 736 [2d Dept 2017]; *see also Martinez v. Kuhl*, 165 AD3d 7784 [2d Dept 2018]; *Niyazov v. Hunter, EMS, Inc.*, 154 AD3d 954 [2d Dept 2017]). As such, the court finds that the co-defendants' contention that the instant motion for summary judgment is premature lacks merit. (*Sooklall v. Morisseav-Lafague*, 185 AD3d 1079 [2d Dept 2020]; *Edgerton v. City of New York*, 160 AD3d 809 [2d Dept 2018]).

Accordingly, it is hereby

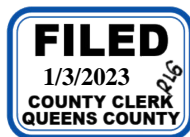
ORDERED that Defendants, Rosa Augustin and Rene Duchateliers, motion for summary judgment, pursuant to CPLR § 3212, is granted; and it is further,

ORDERED that the complaint and crossclaims against Rosa Augustin and Rene Duchatelier is dismissed with prejudice; and it is further,

ORDERED that Defendants, Rosa Augustin and Rene Duchateliers, shall serve a copy of this decision and order with notice of entry upon all parties, via certified mail and NYSCEF, on or before January 10, 2023.

The foregoing constitutes the decision and order of the court.

Dated: December 23, 2022  
Long Island City, New York



*Maurice E. Muir*  
MAURICE E. MUIR, J.S.C.