

<b>Velasquez v Famiglietti</b>
2022 NY Slip Op 35056(U)
December 19, 2022
Supreme Court, Bronx County
Docket Number: Index No. 29337/2019E
Judge: Bianka Perez
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**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX, PART 14**

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ALEJANDRA VELASQUEZ and DESTINY  
ESTRADA,

Action No. 1  
Index No. 29337/2019E

Plaintiffs,

-against-

**Hon. Bianka Perez**

Justice Supreme Court

JAUQUELINE A. FAMIGLIETTI, NILT, INC., MEI  
LI, JEANNE M. LANG, WILLIAM J. BUZZONE,  
TIANA MICHELLE CINTRON, and ANA M.  
SOJO,

Defendants.

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MEI LI,

Plaintiff,

Action No. 2  
Index No. 30559/2019E

-against

NILT, INC., and JACQUELINE A. FAMIGLIETTI,

Defendants.

-----X

The following documents were read on these motions and cross-motions in the following joint actions for trial (Action 1: Index No. 29337/2019E, **Mot. Seq. #3** and action 2: Index No. 30559/2019E, **Mot. Seq. 2**), which were noticed on **July 26, 2022**.

Notice of Motion Seq #3(29337/2019E)- Exhibits and Affidavits Annexed	No(s). 85-106
Cross-Motions- Exhibits and Affidavits Annexed	107-110, 119-126, 137-139
Answering Affidavit and Exhibits	No(s). 111-113, 127-129, 130-131, 134-136, 143-144
Reply Affidavit and Exhibits	No(s). 116-117, 118, 133, 145, 150
Notice of Motion Seq #2 (30559/2019E)- Exhibits and Affidavits Annexed	No(s). 43-51
Answering Affidavit and Exhibits	No(s). 56-57
Reply Affidavit and Exhibits	N/A

Upon the foregoing papers filed under Action 1, defendants Jeanne M. Lang (Lang) and William J. Buzzone (Buzzone) move for an Order pursuant to CPLR §3212, granting summary judgment in their favor, dismissing plaintiffs Alejandra Velasquez (Velasquez) and Destiny Estrada's (Estrada) Complaint and all cross-claims asserted against them. Defendant Jaqueline A. Famiglietti (Famiglietti) opposes defendants Lang and Buzzone's motion. Plaintiffs Velasquez and Estrada also oppose defendants Lang and Buzzone's motion.

Defendants Michelle Cintron (Cintron) and Ana M. Sojo (Sojo) cross move for an Order pursuant to CPLR § 3212 for summary judgment on the issue of liability, and dismissing the Complaint asserted against them. Defendants Lang, Buzzone, and Mei Li (Li), oppose defendants Cintron and Sojo's cross motion. Plaintiffs Velasquez and Estrada also oppose.

Defendant Li, who is also the plaintiff in Action 2 under index number 30559/2019E, cross moves for an Order granting defendant Li summary judgment pursuant to CPLR §3212, dismissing the complaint and all cross claims asserted against her. Defendants Lang and Bruzzone oppose defendant Li's cross motion. Plaintiffs Velasquez and Estrada also oppose defendant Li's cross motion.

Plaintiffs Velasquez and Estrada cross move for an Order pursuant to CPLR §3212(b) granting plaintiffs' partial motion for summary judgment on the issue of liability. Defendants Lang and Buzzone oppose plaintiffs' cross motion.

Further, in action 2, under index number 30559/2019E, plaintiff/defendant Li moves for an Order pursuant to CPLR 3212, granting her partial summary judgment on the issue of liability, setting this matter down for an assessment of damages, and pursuant to 3211(b), striking defendant Famiglietti's First affirmative defense alleging comparative negligence. Defendant Famiglietti opposes the motion.

Plaintiffs Velasquez and Estrada commenced Action 1 under index number 29337/2019E, to recover for injuries allegedly sustained in a multi-vehicle motor vehicle accident that occurred on May 8, 2018, on the Northern State Parkway, at or near Exit 27, in the County of Nassau and State of New York. This multi-vehicle motor vehicle accident occurred when defendant Famiglietti, who was traveling directly behind the vehicle owned and operated by defendant/plaintiff Li, was attempting to change from the middle lane into the right lane. When Defendant Famiglietti attempted to merge into the right lane, she looked back to check her blind spot, failed to see that defendant Li's vehicle had stopped due to traffic, and rear-ended

defendant/plaintiff Li's vehicle. As a result, defendant/plaintiff Li's vehicle was caused to be pushed forward, striking defendant Lang's vehicle in the rear. The impact then caused the Lang vehicle to be pushed forward into plaintiffs Velasquez and Estrada's vehicle, which was operated by defendant Cintron, and owned by defendant Sojo.

By Decision and Order dated December 6, 2019, Action 1 was subsequently consolidated for discovery and joint trial with Action 2 by the Hon. John R. Higgitt. Further via Decision and Order dated May 7, 2020, the Hon. John R. Higgitt granted Defendant Nilt's motion dismissing the Complaint and all cross claims asserted against it on the ground that the action was barred by the Graves Amendment (49 USC § 30106).

### Discussion

The proponent of a summary judgment motion has the burden of submitting evidence in admissible form demonstrating the absence of any triable issues of fact and establishing entitlement to judgment as a matter of law (*Giuffrida v Citibank Corp.*, 100 NY2d 72 [2003]; *Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986]). Only when the movant satisfies its prima facie burden will the burden shift to the opponent "to lay bare his or her proof and demonstrate the existence of triable issues of fact" (*Alvarez*, 68 NY2d at 324; *Zuckerman v City of New York*, 49 NY2d 557 [1980]; *Chance v Felder*, 33 AD3d 645, 645-646 [2d Dept 2006]). "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 non-negligent explanation for the accident." (*Cabrera v Rodriguez*, 72 AD3d 553 [1st Dept. 2010] citing *Tutrani v County of Suffolk*, 10 NY3d 906, 908 [2008]; *Agramonte v City of New York*, 288 AD2d 75, 76 [1st Dept. 2001]; see also *Dattilo v Best Transp. Inc* 79 AD3d 432 [1st Dept. 2010]).

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 [2nd Dept 2010]; *Costa v. Eramo*, 76 A.D.3d 942 [2nd Dept. 2010]). Only if the operator of the rear vehicle cannot come forward with any evidence to rebut the inference of negligence, will the plaintiff 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]). Further, in a chain collision accident,

responsibility presumptively rests with the rearmost driver. See, *Mustafaj v. Driscoll*, 5 A.D.3d 138 (1st Dept 2004). Lastly, the operator of the middle vehicle may establish prima facie entitlement to summary judgment by demonstrating that the middle vehicle was properly stopped behind the first vehicle when it was struck from behind by the rear vehicle and propelled into the lead vehicle. (See, *Bardizbanian v. Bhuiyan*, 181 A.D.3d 772 (2d Dept 2020)).

**Action 1: Defendants Lang and Buzzone's Motion for Summary Judgment**

In support of their motion, defendants Lang and Buzzone annexed a copy of the pleadings, a certified copy of the police report, defendant Nilt's motion to dismiss, Decision and Order of the Hon. Higgitt, and the deposition transcripts of the parties, which contained the facts necessary to establish a prima facie case of negligence on the part of defendant Famiglietti, the rearmost driver. In her deposition transcript, defendant Lang testified that she was at a complete stop when her vehicle was rear-ended, and that as a result of that impact, her vehicle was pushed into the vehicle directly in front of her vehicle, (defendant Cintron's vehicle), which was also at a complete stop. Further, in the annexed deposition transcript of defendant/plaintiff Li, she testified that she felt two impacts to the rear of her vehicle caused by the rearmost driver, defendant Famiglietti, and one impact to the front of her vehicle, caused as a result of her vehicle being pushed forward into the vehicle directly in front of her (the Lang vehicle). Specifically, in her deposition, defendant/plaintiff Li testified that the first impact she felt was to the "[b]ack" of her vehicle, and that as a result of that impact, her vehicle was pushed forward into the vehicle directly in front of her, which was driven by defendant Lang. She then testified that the second impact was to the "front of [her] car", which was caused as a result of the first impact, and the third impact was to the "back of [her] car". Lastly, in the annexed deposition transcript of defendant Famiglietti, she admitted that she rear-ended the vehicle directly in front of her, (defendant/plaintiff Li's vehicle) when she attempted to merge into the right lane from the middle lane.

In opposition, defendant Famiglietti, as the rear most driver, and the plaintiffs, failed to raise a triable issue of fact. This Court finds that in a chain-reaction collision, as is the case here, responsibility presumptively rests with the rearmost driver, in this case, defendant Famiglietti (see *Mustafaj v Driscoll*, 5 AD3d138 [2004]). Here, defendant Famiglietti failed to provide an adequate nonnegligent explanation for rear ending defendant/plaintiff Li's vehicle, causing her vehicle to be pushed forward into defendant Lang's vehicle, which in turn caused the Lang vehicle to be

pushed forward into the Cintron vehicle, in which the plaintiffs were passengers in. Further, defendant Lang's version of the accident provides a nonnegligent explanation for rear ending the Cintron vehicle, as in a chain-reaction collision, responsibility presumptively rests with the rearmost driver, in this case defendant Famiglietti, who first rear-ended defendant/plaintiff Li's vehicle. Therefore, defendants Lang and Buzzone's motion for summary judgment is granted in its entirety, and the complaint and all cross claims asserted against them in Action 1 are dismissed in their entirety.

**Action 1: Defendants Cintron and Sojo's Cross Motion for Summary Judgment**

In support of their cross motion, defendants Cintron and Sojo refer to the deposition transcript of defendant Cintron annexed to the initial motion as Exhibit P. There, defendant Cintron testified that her vehicle was at a complete stop when she was struck in the rear by the vehicle driven by defendant Lang. Here, defendants Cintron and Sojo have met their prima facie case of negligence on the part of defendant Lang, who provided a non-negligent explanation for rear ending defendant Cintron's vehicle. In opposition defendants Lang, Buzzone and Li failed to raise a triable issue of fact. Accordingly, defendants Cintron and Sojo's cross motion for summary judgment on the issue of liability, and dismissing the Complaint asserted against them is granted in its entirety.

**Action 1: Defendant Li's Cross Motion for Summary Judgment**

In support of her cross motion, defendant/plaintiff Li refers to the deposition transcripts of the parties, which were annexed to the initial motion as Exhibit M. In her deposition transcript, defendant/plaintiff Li testified that she was traveling in the middle lane when she was impacted in the rear of her vehicle by defendant Famiglietti. She testified that there were three total impacts to her vehicle, two of which were caused by the rearmost driver, defendant Famiglietti, and one to the front of her vehicle, which was caused as a result of being pushed forward by defendant Famiglietti's vehicle. Specifically, in her deposition, defendant/plaintiff Li testified that the first impact she felt was to the rear of her vehicle caused by the rearmost driver, defendant Famiglietti, and that as a result of that impact, her vehicle was pushed forward into the vehicle directly in front of her, driven by defendant Lang. She then testified that the second impact was to the "front of [her] car", which was caused as a result of being pushed into the Lang vehicle, and the last impact

was to the “back of [her] car”, caused by defendant Famiglietti. Here, defendant Li established a prima facie case of negligence on the part of defendant Famiglietti, who was rearmost driver, as defendant Li’s vehicle was first rear-ended by defendant Famiglietti’s vehicle, causing her vehicle to be pushed into the Lang vehicle in front of her. In opposition, defendants Lang and Bruzzone, and plaintiffs Velasquez and Estrada failed to raise a triable issue of fact. Accordingly, defendant/plaintiff Li’s cross motion, dismissing the complaint and all cross claims asserted against her is granted in its entirety.

**Action 1: Plaintiffs’ Cross Motion for Summary Judgment**

In support of their cross motion, plaintiffs Velasquez and Estrada refer to the certified police report attached to the motion as Exhibit A, and the parties’ deposition transcripts. Plaintiffs have established their prima facie burden that as passengers, they did not engage in any culpable conduct which contributed to the happening of the accident (*see Medina v Rodriguez*, 92 AD3d 850, 850 [2d Dept 2012]; CPLR 3212[g]). In opposition, defendants Lang and Buzzone have failed to raise a triable issue of fact. Accordingly, plaintiffs’ summary judgment motion is granted.

**Action 2: Plaintiff Li’s Motion for Summary Judgment**

In support of her motion, plaintiff/defendant Li annexed the pleadings, a compliance conference order, and the deposition transcripts of the parties, which provided the necessary facts to establish a prima facie case of negligence on the part of defendant Famiglietti. Generally, rear-end collisions with stopped or stopping vehicles create a prima facie case of negligence against the rear vehicle driver unless an adequate nonnegligent explanation for the accident is given (*Kalair v Fajerman*, 202 AD3d 625, 626 [1st Dept 2022]). In opposition, defendant Famiglietti failed to provide a nonnegligent explanation for rear ending plaintiff/defendant Li’s vehicle, or for not keeping safe distance between her vehicle and plaintiff/defendant Li’s vehicle. Accordingly, plaintiff is entitled to partial summary judgment on the issue of liability against defendant Famiglietti.

With respect to plaintiff/defendant Li’s branch of the motion asking this Court to set this matter down for an assessment of damages, that branch of the motion is denied as the parties have not stipulated that discovery is complete, and the Note of Issue has not been filed.

With respect to plaintiff/defendant Li’s branch of the motion seeking to strike defendant Famiglietti’s First affirmative defense alleging comparative negligence, plaintiff/defendant Li has

made a prima facie showing that she bears no such fault (*see SotoMaroquin v Mellet*, 63 AD3d 449 [1st Dept 2009]), and defendant Famiglietti failed to raise a triable issue of fact. As such, that branch of the motion is granted.

The court has considered the parties' remaining arguments and finds them unavailing.

Accordingly, it is hereby

**ORDERED** that defendants Lang and Buzzone's motion for summary judgment is granted in its entirety, and the Complaint and all cross claims asserted against them are dismissed in their entirety, it is further

**ORDERED**, that defendants Cintron and Sojo's cross motion for summary judgment on the issue of liability is granted, and the Complaint and any cross claims asserted against them are dismissed, it is further,

**ORDERED**, that defendant/plaintiff Li's cross motion for summary judgment in Action 1 is granted, and the Complaint and all cross claims asserted against her are dismissed, it is further,

**ORDERED**, that plaintiffs Velasquez and Estrada motion for summary judgment motion in action 1 is granted, it is further,

**ORDERED**, plaintiff/defendant Li's partial motion for summary judgment on the issue of liability against defendant Famiglietti in Action 2 is granted, and defendant Famiglietti's First affirmative defense alleging comparative negligence is dismissed, it is further,

**ORDERED** that plaintiff/defendant Li's motion in Action 2 is otherwise denied, it is further

**ORDERED**, that the Clerk of the Court is directed to enter judgment in favor of defendants Lang and Buzzone dismissing the Complaint and all cross claims asserted against them, it is further,

**ORDERED**, that the Clerk of the Court is directed to enter judgment in favor of defendants Cintron and Sojo and dismissing the Complaint and any cross claims against asserted against them, it is further,

**ORDERED**, that the Clerk of the Court is directed to enter judgment in favor of defendant/plaintiff Li and dismissing the Complaint and all cross claims asserted against her in Action 1, it is further,

**ORDERED**, that the Clerk Court is directed to enter judgment in favor of plaintiffs Velasquez and Estrada in Action 1, and it is further,

**ORDERED**, that the Clerk of the Court is directed to enter judgment in favor of the plaintiff/defendant Li in Action 2 and against defendant Famiglietti on the issue of liability and dismissing defendant Famiglietti's First affirmative defenses alleging comparative negligence.

This constitutes the decision and order of the Court.

**Dated: December 19, 2022**

HON.   
**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