

Hector v Lyft, Inc.
2022 NY Slip Op 35084(U)
June 10, 2022
Supreme Court, Bronx County
Docket Number: Index No. 28251/2020E
Judge: Veronica G. Hummel
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX, IAS PART 31

ALLYSSA HECTOR,

Plaintiff,

-against-

LYFT, INC., JOSE MURILLO, VALERIE KRAUSE,
and GLENN SLATER,

Defendants.

Index No. 28251/2020E

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

Mot. Seq. No. 1

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: (1) defendant GLENN SLATER's ("Slater") motion (Seq. No. 1) seeking an order, pursuant to CPLR 3212, granting him summary judgment dismissing the complaint and any and all cross-claims asserted against him; and (2) plaintiff ALYSSA HECTOR's ("Plaintiff") cross-motion (Seq. No. 1) seeking an order, pursuant to CPLR 3212, granting her partial summary judgment against defendant JOSE MURILLO on the issue of liability. For the reasons discussed below, the motion and the cross-motion are both **DENIED**.

This is a personal-injury action arising out of three-vehicle rear-end collision that occurred on August 5, 2018, on Route 15 southbound near Hamden, Connecticut (the "Accident"). At the time of the Accident, Plaintiff was a passenger in a vehicle driven by defendant JOSE MURILLO ("Murillo").

It is undisputed that the Accident occurred in Connecticut, not New York. Resolution of this action arising in allegations of negligent operation of a motor vehicle may, therefore, be governed by Connecticut, rather than New York, substantive law. *See Burnett v. Columbus McKinnon Corp.*, 69 A.D.3d 58, 60-63 (4th Dep't 2009) (Fahey, J.) (performing choice-of-law analysis to determine whether New York or Indiana law applied to personal-injury action and concluding that because Indiana law applied because it was the locus of the tort); *Florio v. Fisher Dev.*, 309 A.D.2d 694, 696 (1st Dep't 2003) (observing that, "[i]n circumstances like these involving [conduct-regulating laws], the proper choice of law is that of the state where the offending acts or omissions took place," and concluding that Connecticut law, rather than New York law, applied to personal-injury action). In his motion papers, however, Slater makes no attempt to conduct a choice-of-law analysis as to which state's substantive law the Court should apply in deciding the motion. Should Connecticut law apply, Slater also fails to provide the Court

with any citation to a Connecticut statute or case, instead relying entirely on New York law—without so much even as an assertion that New York law is analogous to Connecticut law on the underlying issues. As a result, the Court is constrained to hold that Slater fails to meet his *prima facie* burden and to deny the motion.

Plaintiff's cross-motion suffers from a similar defect. She cites to both Connecticut and New York law but never undertakes to determine which law should actually govern the cross-motion. Such an undertaking would involve determining whether New York and Connecticut substantive law are in conflict as to any relevant issue. While Plaintiff asserts that she is entitled to summary judgment under either state's laws, she nonetheless fails to establish Connecticut law on a determinative issue.

Murillo submits an affidavit in opposition to Plaintiff's cross-motion in which he avers, in relevant part:

The car in front of me, a pick-up truck, began to pick up speed. I started to move my car as well and maintained a distance of at least one car length behind the pick-up truck. All of a sudden, the pick-up truck in front of me stopped short. I tried to stop and position my car away from the pick-up truck, but I was unable to and I made contact with the pick-up truck.

[NYSCEF Doc. 66, ¶¶ 5-6.] It is undisputed that defendant VALERIE KRAUSE ("Krause") drove that pickup truck. Murillo's account directly contradicts Krause's account in her affidavit, in which she avers that she was at a complete stop for 10 to 15 seconds before being rear-ended by Murillo. [NYSCEF Doc. 59, ¶ 5.] The certified copy of the police accident report that Plaintiff submits in support of her cross-motion omits page 14, which—based on the Court's review of a complete, but uncertified, copy of the report that another party submits—contains Murillo's statement to the responding officer. Even considering the uncertified version of Murillo's statement, it does not contradict his averments in his affidavit. According to the responding officer, Murillo merely stated that "he was traveling in the left lane, when traffic ahead stopped quickly." [NYSCEF Doc. 68, at p. 14.] Thus, there is an issue of fact as to whether Krause stopped suddenly, thereby causing Murillo to rear-end her vehicle.

Of course, under New York law, a sudden stop by Krause would not ordinarily constitute a non-negligent excuse for Murillo's striking her vehicle in the rear. *See 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-Marouquin*, 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). But the Court does not know whether the same can be said under Connecticut law. While Plaintiff quotes and relies on Connecticut General Statutes ("CGS") § 14-240(a), which is similar to New York's Vehicle and Traffic Law ("VTL") § 1129(a), she fails to establish that CGS § 14-240(a), or any caselaw interpreting and applying it, precludes reliance on a sudden stop as non-negligent excuse for a rear-end accident. Given the similarity between CGS § 14-240(a) and VTL § 1129(a), it may well be that Connecticut and New York treat sudden stops by a lead vehicle similarly. But it was Plaintiff's burden to prove it on her cross-motion, and the scant few Connecticut cases to which she provides citation do not address that issue. Thus, Plaintiff fails to satisfy her *prima facie* burden, and the cross-motion must also be denied.¹

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 GLENN SLATER's motion (Seq. No. 1) seeking an order, pursuant to CPLR 3212, granting him summary judgment dismissing the complaint and any and all cross-claims asserted against him is **DENIED with leave to renew by September 14, 2022**; and it is further

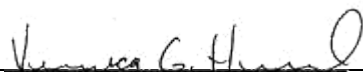
ORDERED that plaintiff ALYSSA HECTOR's cross-motion (Seq. No. 1) seeking an order, pursuant to CPLR 3212, granting her partial summary judgment against defendant JOSE MURILLO on the issue of liability is **DENIED with leave to renew by September 14, 2022**; and it is further

ORDERED that the Clerk shall mark the motion and cross-motion (Seq. No. 1) disposed in all Court records.

¹ Plaintiff's cross-motion must also be denied for the independent reason that she failed to submit the Statement of Material Facts required under Uniform Trial Court Rule 202.8g(a) along with her cross-motion. *See De Leon v. Kagansky*, 2021 WL 4537869, at *1 (N.Y. Sup. Ct. Kings Cty. Sept. 30, 2021) (citing *Amos Fin. LLC v. Crapanzano*, 73 Misc. 3d 448, 451-55 (N.Y. Sup. Ct. Rockland Cty. 2021)).

This constitutes the decision and order of the Court.

Dated: June 10, 2022

Hon. 

VERONICA G. HUMMEL, A.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. CROSS-MOTION IS..... ☐ GRANTED ☒ DENIED ☐ GRANTED IN PART ☐ OTHER
4. CHECK IF APPROPRIATE..... ☐ SETTLE ORDER ☐ SUBMIT ORDER ☐ SCHEDULE APPEARANCE
- ☐ FIDUCIARY APPOINTMENT ☐ REFEREE APPOINTMENT
- ☐ CONVERT TO ELECTRONIC FILING ☐ EDIT CAPTION