

Grigsby v Lleshi
2022 NY Slip Op 35086(U)
May 3, 2022
Supreme Court, Bronx County
Docket Number: Index No. 28696/2016E
Judge: Veronica G. Hummel
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To commence the statutory time for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX IAS PART 31

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NAJUMA GRIGSBY,

Plaintiff

-against -

NUA LLESHI and MAGALIS A. ARAUJO,

Defendants.

Index No. 28696/2016E
DECISION/ORDER
Motion Seq. 3

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

In accordance with CPLR 2219 (a), the decision herein is made upon consideration of all papers filed by the parties in NYSCEF regarding the motion by plaintiff NAJUMA GRIGSBY[Mot. Seq. 3],made pursuant to CPLR 3212, for an order granting plaintiff partial summary judgment on liability against defendants NUA LLESHI and MAGALIS A. ARAUJO and dismissing defendants' affirmative defenses based on comparative negligence and the cross-motion by defendant Araujo, made pursuant to CPLR 3212, for an order granting defendant Araujo summary judgment dismissing the complaint and all cross-claims against him.

The undisputed facts are as follows: This is a personal injury action arising out of a two car motor vehicle accident that occurred on September 5, 2015 on East 126th Street and Park Avenue at approximately 9:45p.m. Plaintiff was a passenger in defendant Araujo's vehicle. Defendant Araujo's vehicle was stopped or stopping for a red light and was rear-ended by defendant Lleshi's vehicle.

Plaintiff's motion

Plaintiff's motion seeking partial summary judgment against defendants based on plaintiff's lack of fault for the Accident is granted. Of note, there is a significant distinction

between granting a plaintiff summary judgment on plaintiff's lack of culpable conduct on liability and granting a plaintiff summary judgment on defendants' negligence. *Oluwatayo v. Dulinayan*, 142 A.D.3d 113 (1st Dep't 2016). A grant of partial summary judgment against a defendant on liability in a negligence case is the equivalent of finding that the defendant owed the plaintiff a duty of care, the defendant breached that duty by its negligence, and such breach proximately caused the plaintiff injury. *Id.*; *Ortega v. Liberty Holdings, LLC*, 111 A.D.3d 904, 905-906 (2d Dep't 2013). In contrast, a grant of partial summary judgment on the issue of the plaintiff's lack of fault or culpability is a much narrower finding. Such a finding merely establishes as a matter of law that the plaintiff is free of any negligence, as would be the case of an innocent passenger. *Campbell v. Mincello*, 184 A.D.3d 412 (1st Dep't 2020). The First Department pronouncement in *Garcia v. Tri County Ambulette Serv.*, *supra* (282 A.D.2d 206 (1st Dep't 2001)) stands for the proposition that in motor vehicle negligence actions, an innocent plaintiff is entitled to a determination that plaintiff had no culpable conduct on the issue of liability irrespective of the unresolved issue of a defendant driver's negligence. *Oluwatayo v. Dulinayan*, *supra*.

Here, as it is undisputed that plaintiff was a passenger in the defendant's vehicle and there is no claim that plaintiff contributed to causing the accident, the motion by plaintiff seeking partial summary judgment on liability is granted to the extent that plaintiff, as an innocent passenger, is found free from culpable conduct for the happening of the Accident, regardless of the issue of the defendants' alleged individual negligence. *Campbell v. Mincello*, *supra*; *Oluwatayo v. Dulinayan*, *supra*. Likewise, any affirmative defenses based on culpable conduct and comparative negligence alleged against plaintiff are dismissed. *Oluwatayo v. Dulinayan*, *supra*; *Prudente v. McBride*, 2020 WL 7091334 [Sup. Ct. New York County 2020]. "CPLR 3212 (g) permits the court to limit issues of fact for trial, by specifying which facts are not in dispute or are incontrovertible, and such facts shall be deemed established for all purposes in the action" *Garcia v. Tri County Ambulette Serv.*, *supra*.

The cross-motion of defendant Araujo

Defendant Araujo cross-moves for summary judgment dismissing the complaint and cross-claims against her. Defendant Araujo testified that she brought the Araujo vehicle to a stop at a red light. The Araujo Vehicle was behind a long line of cars. The Araujo vehicle was at a complete stop when it was rear-ended by the Lleshi vehicle.

In contrast, plaintiff testified that the Araujo vehicle was rammed in the rear by the Lleshi vehicle as the Araujo vehicle was travelling thirty miles an hour towards the traffic intersection.

Since there can be more than one proximate cause of an accident, a defendant moving for summary judgment is required to make a *prima facie* showing that he or she is free from fault. *see Harrigan v. Sow*, 165 A.D.3d 463 (1st Dep’t 2018); *Hilago v. Vasquez*, 187 A.D.3d 683 (1st Dep’t 2020). In order for a defendant driver to establish entitlement to summary judgment on the issue of liability in a motor vehicle collision case, therefore, the driver must demonstrate, *prima facie*, that he or she kept the proper lookout, or that his or her alleged negligence, if any, did not contribute to the accident. *see Harrigan v Sow, supra; Hilago v Vasquez, supra.*

Vehicle and Traffic Law §1129(a) provides that, a “driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon and the condition of the highway. *Urena v GVC Ltd.*, 160 A.D.3d 467, 467 (1st Dep’t 2018).

It is well settled, therefore, 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. *see Cabrera v Rodriguez*, 72 A.D.3d 553 (1st Dep’t 2010); *Tutrani v County of Suffolk*, 10 N.Y.3d 906, 908 (2008); *Agramonte v City of New York*, 288 A.D.2d 75, 76 (1st Dep’t 2001). Furthermore, in a chain reaction collision, responsibility presumptively rests with the rearmost driver and there is a presumption of non-negligence of the driver of the lead vehicle. *Mustafaj v Driscoll*, 5 A.D.3d 138 (1st Dept 2004); *Chuk Hwa Shin v Correale*, 142 A.D.3d 518, 519 (2d Dep’t 2016); *Skura v Wojtowski*, 165 A.D.3d 1196, 1199 (2d Dep’t 2018).

First Department case law is also clear that a claim by the rear driver that the lead vehicle made a sudden stop, standing alone, is insufficient to rebut the presumption of negligence. *Bajrami v Twinkle Cab Corp.*, 147 A.D.3d 649 (1st Dep’t 2017); *Cabrera v Rodriguez, supra; see Ly Giap v Hathi Son Pham*, 159 A.D.3d 484, 485 (1st Dep’t 2018). (“A claim that the lead driver came to a

sudden stop, standing alone, is insufficient to rebut the presumption that the rearmost driver was negligent, and the stopped vehicle was not negligent”). Hence, the happening of a rear-end collision with a vehicle slowing in traffic is itself a *prima facie* case of negligence of the rearmost driver. *Vasquez v Chimborazo*, 155 A.D.3d 432 (1st Dep’t 2017); *see Smyth v Murphy*, 177 A.D.3d 492 (1st Dep’t 2019); *Corrigan v Porter Cab Corp.*, 101 A.D.3d 471 (1st Dept 2012); *LaMasa v Bachman*, 56 A.D.3d 340 (1st Dep’t 2008).

On this motion, movant establishes *prima facie* entitlement to judgment as a matter of law by submitting evidence that the movant defendant driver was driving safely, and slowing in traffic or stopped when the movant’s vehicle, the first in the chain, was struck in the rear by defendant Lleshi’s vehicle. *Vasquez v Chimborazo*, *supra*; *Smyth v Murphy*, *supra*; *Corrigan v Porter Cab Corp.*, *supra*; *LaMasa v Bachman*, *supra*; *see Martinez v Kuhl*, 165 A.D.3d 774 (2d Dep’t 2018). Defendant Araujo therefore demonstrates that she acted without negligence and the movant defendant driver’s actions did not contribute to causing the Accident. Of note, an “innocent ... driver exists in a case where the ... driver did not contribute to the happening of the accident in any way. A typical example is the case at bar where ... [the] driver, while stopped, was rear-ended by the following driver” *Oluwatayo v Dulinayan*, 142 A.D.3d 113, 119 (1st Dep’t 2016).

Co-defendant and plaintiff, in turn, fail to raise an issue of material fact warranting denial of the motion. The attorney affirmations submitted in opposition to the motion have no evidentiary value. *see Conti v. City of Niagara Falls Water Bd.*, 82 A.D.3d 1633, 1634 (1st Dep’t 2011) (“It is well established . . . that an affirmation submitted by an attorney who has no personal knowledge of the facts is without evidentiary value.”), and are thus insufficient to defeat the motion. Furthermore, any contention that motion is premature also lacks merit. “Depositions are unnecessary [before the court determines the liability motion], since [the parties] have personal knowledge of the facts, yet failed to meet their obligation of laying bare their proof and presenting evidence sufficient to raise a triable issue of fact.” *Thompson v. Pizzaro*, 155 A.D.3d 423 (1st Dep’t 2017). Moreover, “[t]he mere hope that evidence sufficient to defeat a motion for summary judgment may be uncovered during the discovery process is insufficient to deny such a motion.” *Downey v. Mazzioli*, 137 A.D.3d 498, 499 (1st Dep’t 2016) (internal quotation marks and citation

omitted). To the extent that the opposition argues that movant made a sudden stop, such an allegation is insufficient to generate an issue of fact as a matter of law.

The court has considered the additional contentions specifically addressed herein. To the extent any relief requested was not addressed by the court, it is hereby denied. Accordingly, it is hereby

ORDERED that the motion by plaintiff NAJUMA GRIGSBY [Mot. Seq. 3], made pursuant to CPLR 3212, for an order granting plaintiff partial summary judgment on liability against defendant NUA LLESHI and dismissing defendant's affirmative defenses based on comparable negligence is granted; and it is further

ORDERED that the cross-motion by defendant Araujo, made pursuant to CPLR 3212, for an order granting defendant Araujo summary judgment dismissing the complaint and all cross-claims against her is granted; and it is further

ORDERED that the Clerk shall enter judgment dismissing the complaint and all cross-claims alleged against defendant Araujo and severing the remaining action; and it is further

ORDERED that the part of the motion of plaintiff that is directed to defendant Araujo is denied as moot; and it is further

ORDERED that the caption of this action shall henceforth read as

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NAJUMA GRIGSBY,

Plaintiff

----against-----

NUA LLESHI

Defendant.

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;and it is further

ORDERED that the Clerk shall mark mot. seq 3 decided in all court records; and it is further

ORDERED that this matter is scheduled for a virtual discovery conference on May 17, 2022 at 10:00a.m. with the link for said conference issued on the date of this decision. The parties are directed to appear fully familiar with the action and all outstanding discovery. The court will

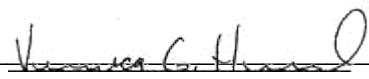
set an expediated discovery schedule for the completion of the discovery in this six year old case. Any discovery issue not raised at the discovery conference will be deemed waived. There are no adjournment of said conference.

The foregoing constitutes the Decision/Order of the court.

Dated: Bronx, New York

May 3, 2022

E N T E R,

Hon. 
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 1 IS GRANTED,
.. X Granted
3. CHECK IF APPROPRIATE..... ☐ SETTLE ORDER ☐ SUBMIT ORDER ☒ SCHEDULE APPEARANCE
☐ FIDUCIARY APPOINTMENT ☐ REFEREE APPOINTMENT

AMEND CAPTION