

Tirado-Flores v Taaseen
2022 NY Slip Op 35100(U)
May 18, 2022
Supreme Court, Queens County
Docket Number: Index No. 712724/2020
Judge: Timothy J. Dufficy
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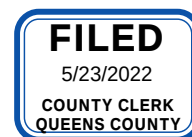
Short Form Order**NEW YORK SUPREME COURT - QUEENS COUNTY****PRESENT: HON. TIMOTHY J. DUFFICY**
Justice**PART 35**-----X
MARY TIRADO-FLORES,**Plaintiff,****Index No.: 712724/20****-against-****Mot. Date: 4/19/22****SAADAT TAASEEN, JOSE IDROVO, NORMA****Mot. Seq. 2 and 5****CHAVANNES, EFRAIN MORALES and**
JEWEL HUMAN SERVICES, INC.,**Defendants.**-----X
The following papers were read on this motion by defendant Saadat Taaseen for an order granting summary judgment in his favor, pursuant to CPLR 3212, on the issue of liability and dismissing plaintiff's Complaint and all cross-claims against him (Motion Sequence No. 5); and, on the motion by defendant Norma Chavannes for an order granting summary judgment in her favor, pursuant to CPLR 3212, dismissing plaintiff's Complaint and all cross-claim as against her; and, on the cross-motion by defendant Jose Idrovo for an order granting summary judgment in his favor, pursuant to CPLR 3212, dismissing plaintiff's Complaint and all cross-claims as against him (Motion Sequence No. 2).**PAPERS**
NUMBERED**Motion Seq. 2**

Notice of Motion-Affidavits-Exhibits.....	EF 36-39
Notice of Cross-Motion-Affidavits-Exhibits.....	EF 58-65
Answering Affidavits to Cross-Motion-Exhibits	EF 72-73
Replying Affidavits to Cross-Motion.....	EF 82

Motion Seq. 5

Notice of Motion-Affidavits-Exhibits.....	EF 36-44
Answering Affidavits-Exhibits	EF 45-49
Replying Affidavits.....	EF 52-54

Upon the foregoing papers, it is ordered that the motions and cross-motion are granted.



In this action seeking damages for personal injuries, allegedly sustained by plaintiff/passenger Mary Tirado-Flores, in a four (4) car, chain reaction motor vehicle accident, that occurred on June 29, 2018, on the Horace Harding Expressway, in Queens, New York, defendants Saadat Taaseen, Jose Idrovo, and Norma Chavaness each seek to have plaintiff Mary Tirado-Flores' Complaint and all cross-claims dismissed as against them.

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 (*Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395 [1957]). The movant has the initial burden of proving entitlement to summary judgment (*Winegrad v N.Y.U. Med. Ctr.*, 64 NY2d 851 [1985]). Failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers (*Winegrad v N.Y.U. Med. Ctr.*, *supra*). Once such proof has been offered, the burden then shifts to the opposing party, who, in order to defeat the motion for summary judgment, must proffer evidence in admissible form . . . and must "show facts sufficient to require a trial of any issue of fact" (CPLR 3212 [b]; *Zuckerman v City of New York*, 49 NY2d 557 [1980]). Since the court's function on such a motion is to determine whether issues of fact exist, not to resolve issues of fact or to determine matters of credibility, the facts alleged by the opposing party and all inferences that may be drawn are to be accepted as true (*see Roth v Barreto*, 289 AD2d 557 [2d Dept 2001]; *O'Neill v Fishkill*, 134 AD2d 487 [2d Dept 1987]).

"When the driver of an automobile approaches another automobile from the rear, he or she is bound to maintain a reasonably safe rate of speed and control over his or her vehicle, and to exercise reasonable care to avoid colliding with the other vehicle" (*Macauley v ELRAC, Inc.*, 6 AD3d 584 [2d Dept 2003]). "The 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" (Vehicle and Traffic Law § 1129[a]; *see Drakh v Levin*, 123 AD3d 1084, 1085 [2d Dept. 2014]; *see Billis v Tunjian*, 120 AD3d 1168 [2d Dept 2014]; *Cheow v Cheng Lin Jin*, 121 AD3d 1058 [2d Dept 2014]; *Napolitano v Galletta*, 85 AD3d 881, 882 [2d Dept. 2011]; *Sehgal v www.nyairportsbus.com, Inc.*, 100 AD3d 860 [2d Dept 2012]) .

It is well established law that a rear-end collision creates a *prima facie* case of negligence on the part of the driver of the rearmost vehicle, requiring the operator of that vehicle to proffer an adequate, non-negligent explanation for the accident (*see Hearn v Manzolillo*, 103 AD3d 689 [2d Dept 2013]; *Taing v Drewery*, 100 AD3d 740 [2d Dept. 2012]; *Strickland v Tirino*, 99 AD3d 888, 889-890 [2d Dept. 2012]; *Balducci v Velasquez*, 92 AD3d 626 [2d Dept 2012]; *Martinez v Martinez*, 93 AD3d 767, 768 [2d Dept 2012]; *see Denezzo v Joseph*, 95 AD3d 1060, 1060 [2012]; *Balducci v Velasquez*, 92 AD3d 626, 628 [2d Dept 2012]; *Martinez v Martinez*, 93 AD3d 768 [2d Dept 2012]; *Giangrasso v Callahan*, 87 AD3d 521, 522 [2d Dept 2011]; *Kastritsios v Marcello*, 84 AD3d 1174 [2d Dept 2011]).

The failure of the operator of the moving vehicle to come forward with an adequate explanation establishes the negligence of that operator as a matter of law, and is ordinarily sufficient for an award of summary judgment (*see Xian Hong Pan v Buglione*, 101 AD3d 706 [2d Dept 2012]; *Hakakian v McCabe*, 38 AD3d 493 [2d Dept 2007]; *Russ v Investech Secs.*, 6 AD3d 602 [2d Dept 2004]).

Evidence that a vehicle was struck in the rear and propelled into the vehicle in front of it may provide a sufficient non-negligent explanation (*see Strickland v Tirino*, 99 AD3d 888 [2d Dept. 2012]; *Ortiz v Haidar*, 68 AD3d 953, 954 [2d Dept 2009]; *see Katz v Masada II Car & Limo Serv., Inc.*, 43 AD3d 876, 877 [2d Dept 2007]).

The evidence in the record establishes that the vehicle, owned by defendant Jewel Human Services, Inc. and operated by defendant Efrain Morales (the rearmost vehicle), rear ended-the vehicle operated by defendant Norma Chavaness, which caused defendant Norma Chavaness' vehicle to rear-end the vehicle operated by defendant Jose Idrovo (in which vehicle plaintiff Mary Tirado-Flores was a passenger), which caused defendant Jose Idrovo's vehicle to rear-end the vehicle operated by defendant Saadat Taaseen (the lead vehicle).

Moving defendants Saadaat Taaseen, Norma Chavannes and cross-moving defendant Jose Idrovo all establish *prima facie* cases, via submission of, *inter alia*, their own affidavits, each stating that their vehicles were struck in the rear while stopped, causing the chain-reaction collision.

In a multiple-vehicle collision, the operator of a middle vehicle may establish his or her *prima facie* entitlement to judgment as a matter of law by submitting evidence

demonstrating that he or she had brought the middle vehicle safely to a stop behind the lead vehicle when it was struck in the rear and propelled into the lead vehicle (*see Krutul v Tanner*, 139 AD3d 1015 [2d Dept 2016]). In this case, moving defendants have established their *prima facie* case through submission of, *inter alia*, their own affidavits.

The party opposing the motion must present sufficient evidence establishing that a genuine issue of fact exists (*Zuckerman v City of New York*, 49 NY2d 557 [1980]).

Defendants Efrain Morales and Jewel Human Services, Inc., and plaintiff Mary Tirado-Flores have failed to present a triable issue of fact in opposition, as they have failed to submit any opposition papers to the motions or cross-motion.

Pursuant to Vehicle and Traffic Law § 1129(a), defendant Morales was under a duty to maintain a safe distance between his vehicle and co-defendant Chavannes' vehicle and his failure to do so in the absence of an adequate, non-negligent explanation is deemed negligence as a matter of law (*Leal v Wolff*, 224 AD2d 392 [2d Dept 1996]).

Therefore, as there are no triable issues of fact, summary judgment is warranted to movants and cross-movant. As such, the motions by defendant Taaseen and Chavannes and the cross-motion by defendant Idrovo are granted.

Accordingly, it is,

ORDERED that the motion by defendant Taaseen and the motion by defendant Chavannes are granted; and it is further

ORDERED that the cross-motion by defendant Idrovo is granted; and it is further

ORDERED that plaintiff's complaint and all cross-claims are dismissed ONLY as against defendants Taaseen, Chavannes, and Idrovo.

The foregoing constitutes the decision and order of this Court.

Dated: May 18, 2022



TIMOTHY J. DUFFICY, J.S.C.