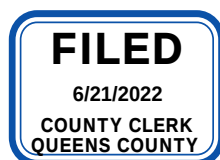


Mena v Rubin
2022 NY Slip Op 35101(U)
June 16, 2022
Supreme Court, Queens County
Docket Number: Index No. 714634/2021
Judge: Phillip Hom
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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: Honorable **PHILLIP HOM**
Justice

IA PART 14

-----X

Francisco Mena,

Plaintiff,

Index No.: 714634/21

Motion Date: 4/14/22

Motion Seq. No.: 1 & 2

-against-

Melanie Rubin, James Anastasio,
Dominick Anastasio, Jabez Han, and
Younkyoung Kim,

Defendants.

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The following e-filed documents, listed by NYSCEF document number, were read on these motions by Defendants Melanie Rubin, James Anastasio, and Dominick Anastasio, and this cross-motion by Plaintiff for summary judgment on the issue of liability.

PAPERS	NUMBERED
Notice of Motion-Statement of Material Facts-Affidavits-Exhibits.....	24 - 32
Affirmation in Partial Opposition-Response.....	52 - 54
Affirmation in Opposition-Response.....	74 - 79
Notice of Cross-Motion-Statement of Material Facts-Affidavits-Exhibits.	35 - 39
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Replying.....	86
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Affirmation in Opposition-Response.....	80 - 84
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Upon the foregoing papers, it is ordered that these summary judgment motions by Defendants Melanie Rubin, James Anastasio, and Dominick Anastasio, and this cross-motion by Plaintiff for summary judgment on the issue of liability, are determined as follows:

Plaintiff Francisco Mena ("Plaintiff") commenced this action to recover for injuries he allegedly sustained in a four-car crash that occurred on January 12, 2020, eastbound on Astoria Boulevard, near its intersection with the Brooklyn Queens Expressway ("BQE").

Defendant Melanie Rubin ("Lead-Driver") moves for summary judgment on the basis that her vehicle ("Lead-Vehicle") was rear-ended by a vehicle ("Plaintiff's Vehicle") owned and operated by Plaintiff, which was rear-ended by a third vehicle ("Anastasio-Vehicle"), owned by Defendant Dominick Anastasio and operated by Defendant James Anastasio ("Anastasio-Driver"; collectively: "Anastasio-Defendants"), which was rear-ended by a fourth vehicle ("Rear-Vehicle") owned by Defendant Younkyoung Kim ("Defendant-Kim") and operated by Defendant Jabez Han

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(“Rear-Driver”; collectively: “Rear-Defendants”). Anastasio-Defendants partially oppose the motion to the extent that Lead-Driver’s motion should not be granted if their motion is denied.

Plaintiff cross-moves for an order granting summary judgment on the issue of liability on the basis that, among other things, his vehicle was rear-ended by the Anastasio-Vehicle, which caused the former to rear-end the Lead-Vehicle. Anastasio-Defendants partially oppose the cross-motion, to the extent that Plaintiff seeks summary judgment against them.

Anastasio-Defendants move for summary judgment on the basis that their vehicle was rear-ended by the Rear-Vehicle, which caused the former to rear-end the Plaintiff’s Vehicle, which propelled the latter into the rear of the Lead-Vehicle.

Defendant-Kim opposes both motions and the cross-motion on the grounds that, among other things, they are premature. Rear-Driver does not submit any papers in opposition to the motions or the cross-motion. The Court notes that the Rear-Defendants are represented separately by different counsel.

In a summary judgment motion, the movant has the initial burden of submitting sufficient evidence eliminating any material issues of fact and demonstrating a prima facie entitlement to judgment as a matter of law (*see Giuffrida v Citibank Corp.*, 100 NY2d 72 [2003]; *Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986]; *Zuckerman v City of New York*, 49 NY2d 557 [1980]). Only when the movant satisfies this prima facie burden does the burden shift to the opponent to show that material issues of fact exist (*id.*). Thus, where the movant does not satisfy this initial burden, summary judgment is denied regardless of the sufficiency of the opposing papers (*see Voss v Netherlands Ins. Co.*, 22 NY3d 728, 734 [2014]).

A plaintiff is not required to show an absence of comparative fault to be entitled to summary judgment on the issue of liability (*see Rodriguez v City of New York*, 31 NY3d 312 [2018]; *Marks v Rieckhoff*, 172 AD3d 847, 848 [2d Dept 2019]). However, a defendant seeking summary judgment must establish that he or she did not contribute to the happening of the motor vehicle accident (*see Choo v Virginia Transportation Corp.*, 204 AD3d 743, 744 [2d Dept 2022]; *Elusma v Jackson*, 186 AD3d 1326, 1327-28 [2d Dept 2020]).

The driver of a motor vehicle that approaches another vehicle from the rear, must maintain a reasonably safe rate of speed, a reasonably safe distance, and control over his vehicle, and use reasonable care to avoid colliding with a lead vehicle (*see Sooklall v L. Morisseav-Lafague*, 185 AD3d 1079, 1081 [2d Dept 2020]; *Catanzaro v Ederly*, 172 AD3d 995, 996 [2d Dept 2019]; *Comas-Bourne v City of New York*, 146 AD3d 855, 856 [2d Dept 2017]; *Cheow v Cheng Lin Jin*, 121 AD3d 1058, 1058 [2d Dept 2014]; *Billis v Tunjian*, 120 AD3d 1168, 1169 [2d Dept 2014]).

It is well-settled law that a rear-end collision with a stopped or stopping vehicle creates a prima facie case of liability as to the rearmost vehicle, requiring that driver to rebut this inference of negligence by providing a nonnegligent explanation for the collision (*see Tutrani v County of Suffolk*, 10 NY3d 906, 908 [2008]; *Comas-Bourne*, 146 AD3d at 856; *see also* Vehicle and Traffic Law § 1129 [a]). “[A] sudden stop of the lead vehicle may constitute a nonnegligent explanation

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for a rear-end collision, [however,] ‘vehicle stops which are foreseeable under the prevailing traffic conditions, even if sudden and frequent, must be anticipated by the driver who follows’” (*Buchanan v Keller*, 169 AD3d 989, 989 [2d Dept 2019], quoting *Le Grand v Silberstein*, 123 AD3d 773, 774 [2d Dept 2014]).

“Evidence that a vehicle was rear-ended and propelled into the stopped vehicle in front of it may provide a sufficient nonnegligent explanation” (*Franco v Breceus*, 70 AD3d 767, 769 [2d Dept 2010], quoting *Katz v Masada II Car & Limo Serv., Inc.*, 43 AD3d 876, 877 [2d Dept 2007]; see *Parker v Johns*, 203 AD3d 1059 [2d Dept 2022]).

Lead-Driver’s Summary Judgment Motion Seq. No. 1

In support, Lead-Driver submits, among other things, the Pleadings (EF Doc. No. 27-29), and her affidavit (EF Doc. No. 30). Lead-Driver avers that, prior to the four-car crash, she was traveling in the left most lane on Astoria Boulevard, at a rate of 5-15 mph. Lead-Driver attests that, immediately before the collision, she gradually brought her vehicle to a complete stop, because the traffic in front of her came to a stop. She states that several seconds later, Plaintiff’s Vehicle came to a stop behind her. Lead-Driver claims that she heard a collision, and then she felt an impact to the rear of her vehicle approximately one second later. She attests that she was still stopped when she was rear-ended by Plaintiff’s Vehicle and claims that she did not contribute to the happening of the accident. Lead-Driver states that she only felt one impact to the rear of her vehicle.

The Court finds that Lead-Driver establishes that her vehicle was stopped when the Plaintiff’s Vehicle rear-ended her, and that she did not contribute to the happening of the accident (see Vehicle and Traffic Law § 1129 [a]; *Tutrani*, 10 NY3d at 908; *Choo*, 204 AD3d at 744; *Elusma*, 186 AD3d at 1327-28; *Sooklall*, 185 AD3d at 1081; *Catanzaro*, 172 AD3d at 996; *Comas-Bourne*, 146 AD3d at 856; *Cheow*, 121 AD3d at 1058; *Billis*, 120 AD3d at 1169). Thus, it is incumbent upon Plaintiff, Anastasio-Defendants, and Rear-Defendants to raise a triable issue of fact (see *Tutrani*, 10 NY3d at 908).

In opposition, Anastasio-Defendants and Defendant-Kim submit, among other things, Anastasio-Driver’s affidavit (EF Doc. No. 54) and Defendant-Kim’s affidavit (EF Doc. No. 77). The Court finds that said affidavits do not raise a triable issue of fact. Therefore, Lead-Driver’s summary judgment motion (Seq. No. 1) is granted.

Plaintiff’s Cross-Motion to Seq. No. 1 for Summary Judgment on the Issue of Liability

In support of the cross-motion, Plaintiff submits, among other things, his affidavit (EF Doc. No. 37). Plaintiff attests that, prior to the accident, he was traveling eastbound in the left most lane of Astoria Boulevard near its intersection with the BQE. He states that traffic in front him slowed, so he came to a complete stop approximately five (5) feet behind the Lead-Vehicle. Plaintiff claims that he was stopped for several seconds before he heard a collision, and then felt

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an impact to the rear of his vehicle. He states that the force of the impact propelled his vehicle into the rear of the Lead-Vehicle. Plaintiff claims that he did not contribute the accident. The Court finds that Plaintiff establishes that its prima facie burden by showing that he was completely stopped when he was rear-ended by the Anastasio-Vehicle and pushed into the rear of the Lead-Vehicle (*see* Vehicle and Traffic Law § 1129 [a]; *Tutrani*, 10 NY3d at 908; *Choo*, 204 AD3d at 744; *Parker*, 203 AD3d at 1059; *Elusma*, 186 AD3d at 1327-28; *Sooklall*, 185 AD3d at 1081; *Catanzaro*, 172 AD3d at 996; *Comas-Bourne*, 146 AD3d at 856; *Cheow*, 121 AD3d at 1058; *Billis*, 120 AD3d at 1169; *Franco*, 70 AD3d at 769; *Smith v Seskin*, 49 AD3d 628, 628-29 [2d Dept 2008]).

In opposition, Anastasio-Defendants submit, among other things, Anastasio-Driver's affidavit (EF Doc. No. 48). Anastasio-Driver avers that, immediately prior to the crash, he was completely stopped behind Plaintiff's Vehicle at a red traffic light on Astoria Boulevard. He states that traffic was heavy at the time of the accident. Anastasio-Driver attests that he was rear-ended by the Rear-Vehicle, while he was completely stopped. He claims that the impact of the crash propelled his vehicle into the rear of Plaintiff's Vehicle. Anastasio-Driver testifies that there was not enough time to take any evasive measures, because he was completely stopped behind Plaintiff's Vehicle at the time of impact. He further attests that he did not contribute to the crash, which occurred without warning. The Court finds that Anastasio-Defendants rebut the inference of negligence by providing a nonnegligent explanation for the collision between their vehicle and Plaintiff's Vehicle (*id.*). Conversely, the Court finds that Defendant-Kim's affidavit in opposition (EF Doc. No. 71) fails to raise triable issue of fact as to the issue of liability against Rear-Defendants (*id.*). Thus, Plaintiff's cross-motion for summary judgment on the issue of liability is granted against Rear-Defendants.

Anastasio-Defendants' Summary Judgment Motion Seq. No. 2

In support, Anastasio-Defendants submit, among other things, Anastasio-Driver's affidavit (EF Doc. No. 48), which is identical to his affidavits in opposition to Plaintiff's cross-motion and Lead-Driver's motion. The Court finds that Anastasio-Defendants establish they are entitled to summary judgment by demonstrating that their vehicle was completely stopped when they were rear-ended by the Rear-Vehicle and pushed into the rear of the Plaintiff's Vehicle (*see* Vehicle and Traffic Law § 1129 [a]; *Tutrani*, 10 NY3d at 908; *Choo*, 204 AD3d at 744; *Parker*, 203 AD3d at 1059; *Elusma*, 186 AD3d at 1327-28; *Sooklall*, 185 AD3d at 1081; *Catanzaro*, 172 AD3d at 996; *Comas-Bourne*, 146 AD3d at 856; *Cheow*, 121 AD3d at 1058; *Billis*, 120 AD3d at 1169; *Franco*, 70 AD3d at 769; *Smith v Seskin*, 49 AD3d 628, 628-29 [2d Dept 2008]).

In opposition, Defendant-Kim submits his affidavit (EF Doc. No. 82), which the Court finds insufficient to raise a triable issue of fact (*id.*). Furthermore, the Court finds Defendant-Kim's argument, i.e., that the motions and cross-motion are premature, unavailing (*see Sapienza v Harrison*, 191 AD3d 1028, 1028 [2d Dept 2021]; *Figueroa v MTLR Corp.*, 157 AD3d 861, 862-63 [2d Dept 2018]). The Court notes that there are no discrepancies between the accounts provided, and the Rear-Driver, who appeared in this action through counsel and has personal knowledge of the events, does not oppose these motions or cross-motion. The Court also notes that sequence of

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collisions is undisputed (see *Mahieddine-Benziane v O'Connor*, 140 AD3d 1125, 1126 [2d Dept 2016]; *Vavoulis v Adler*, 43 AD3d 1154, 1156 [2d Dept 2007]). Thus, Anastasio-Defendants' motion (Seq. No. 2) is granted.

In accordance with the foregoing, it is hereby

ORDERED that Defendant Melanie Rubin's summary judgment motion (Seq. No. 1) is granted; and it is further

ORDERED that Plaintiff's Complaint and any crossclaims are hereby dismissed against Defendant Melanie Rubin; and it is further

ORDERED that Plaintiff's cross-motion for summary judgment on the issue of liability is granted only against Defendants Younkyoung Kim and Jabez Han, and is otherwise denied; and it is further

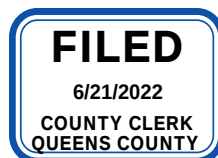
ORDERED that the summary judgment motion (Seq. No. 2) by Defendants, Dominick Anastasio and James Anastasio, is hereby granted; and it is further

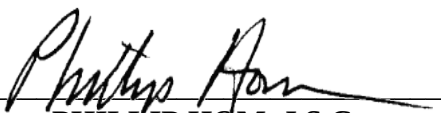
ORDERED that Plaintiff's Complaint and any crossclaims are hereby dismissed against Defendants, Dominick Anastasio and James Anastasio; and it is further

ORDERED that Plaintiff shall serve a copy of this Order with Notice of Entry upon Defendants, within twenty (20) days of the date of entry.

This constitutes the Decision and Order of this Court.

Dated: June 16, 2022




PHILIP HOM, J.S.C.