

Linares v Barbour
2022 NY Slip Op 35152(U)
March 8, 2022
Supreme Court, Bronx County
Docket Number: Index No. 24618/2020E
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**

-----X
CLAUDIA LINARES,

Plaintiff,

-against -

JAMES BARBOUR, MAKEIA MITCHELL, and
CONSTANCE CLARK,

Defendants.
-----X

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

**Index No. 24618/2020E
DECISION/ORDER
Motion 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 regarding the motion [Mot. Seq. 1] by defendants MAKEIA MITCHELL and CONSTANCE CLARK (moving defendants), made pursuant CPLR 3212, for an order granting moving defendants summary judgment dismissing the complaint, and the cross-motion of plaintiff CLAUDIA LINARES, made pursuant to CPLR 3212, seeking an order granting plaintiff partial summary judgment on liability against the moving defendants and defendant JAMES BARBOUR.

This is a personal injury action arising out of a five-vehicle rear-end accident that occurred on May 2, 2017, in the right lane of the Bronx River Parkway, in Bronx County. At the time of the Accident, plaintiff was a passenger in the first vehicle, a bus (the Plaintiff's Vehicle). Defendant Mitchell was driving behind the Plaintiff's Vehicle, in the second position (the Mitchell Vehicle). Behind the Mitchell Vehicle was a vehicle driven by co-defendant Barbour (the Barbour Vehicle). The two vehicles behind the Barbour are not a part of this litigation. This action is joined for purposes of discovery and trial with an action commenced by defendant Mitchell as plaintiff against defendant Barbour (Index No.24345-2019e).

As the middle car in the chain-reaction accident, the moving defendants now move for summary judgment dismissing the complaint against them. In his affidavit in support of the motion, defendant driver Mitchell avers that he was traveling northbound on the Bronx River Parkway, which is a two-way road. There are four lanes of moving traffic in the northbound direction at the area where the Accident happened. He was driving in the far right lane, in heavy, stop and go traffic. The Mitchell Vehicle came to a complete stop in the far right lane, several feet behind the Plaintiff's Vehicle. While stopped, the Mitchell Vehicle was struck in the rear by the Barbour Vehicle. At the moment of impact, defendant driver Mitchell had his foot on the brake. As result of the heavy impact in the rear, the Mitchell Vehicle was pushed forward into the rear of the

Plaintiff's Vehicle. There were two impacts to the Mitchell Vehicle, the first to the rear, and the second to the front. There were no action that he could have taken to avoid the collision and the collision was unexpected.

Defendant Barbour does not oppose the motion.

Plaintiff opposes the motion on the grounds that it is premature as discovery has not been completed. In addition, plaintiff cross-moves for partial summary judgment against the moving defendants and defendant Barbour. In the affirmation in support of the cross-motion, plaintiff's attorney states that plaintiff felt one impact, and did not hear any noise prior to the rear impact. Plaintiff acknowledges that the Mitchell Vehicle was rear-ended by defendant Barbour. The attorney argues that the moving defendants and defendant Barbour were following too closely and were speeding.

The moving defendants opposite the cross-motion and defendant Barbour does not submit opposition papers.

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 . . ." (*Winegrad v New York Univ. Med Ctr.*, 64 NY2d 851 [1985]). The moving party is entitled to summary judgment only if it tenders evidence sufficient to eliminate all material issues of fact from the case (*Winegrad v New York University Medical Center, supra*; *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]) If a party makes a *prima facie* showing of its entitlement to summary judgment, the opposing party bears the burden of establishing the existence of a triable issue of fact (*Zuckerman v City of New York, supra*). The burden then shifts to the motion's opponent to "present evidentiary facts in admissible form sufficient to raise a genuine, triable issue of fact" (*Casper v Cushman & Wakefield*, 74 AD3d 669 [1st Dept 2010]; *Mazurek v Metropolitan Museum of Art*, 27 AD3d 227 [1st 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 (*see Cabrera v Rodriguez*, 72 AD3d 553 [1st Dept 2010]; *Tutrani v County of Suffolk*, 10 NY3d 906, 908 [2008]; *Agramonte v City of New York*, 288 AD2d 75, 76 [1st Dept 2001]). Furthermore, "[i]n a chain reaction collision, responsibility presumptively rests with the rearmost driver" (*Mustafaj v Driscoll*, 5 AD3d 138 [1st Dept 2004])[internal citations omitted]).

The affidavit of defendant Mitchell and the testimony of the plaintiff set forth a *prima facie* showing warranting the grant of summary judgment. "In a chain collision accident, the operator of the middle vehicle

may establish *prima facie* entitlement to judgment as a matter of law by demonstrating that the middle vehicle was properly stopped behind the lead vehicle when it was struck from behind by the rear vehicle and propelled into the lead vehicle” (*Chuk Hwa Shin v Correale*, 142 AD3d 518, 519 [2d Dept 2016]) . Whether the middle vehicle was fully stopped or moving “very slowly,” the same rule applies to a stopped or stopping vehicle which is struck in the rear and propelled into another vehicle (*Skura v Wojtowski*, 165 AD3d 1196, 1199 [2d Dept 2018]).

In opposition, plaintiff fails to contradict this version of events and therefore fails to generate an issue of fact sufficient to require the denial of the motion for summary judgment (*Ferguson v Honda Lease Trust*, 34 AD3d 356 [1st Dept 2006]). As for plaintiff’s reliance on attorney’s affirmations, not based on personal knowledge, in opposition to the motion and in support of the cross-motion, said affirmations fail to generate an issue of fact as to the cause of the accident as the affirmations have no probative value (*Thompson v Pizzaro*, 155 AD3d 423 [1st Dept 2017]; *Bendik v Dybowski*, 227 AD2d 228 [1st Dept 1996]; see *Brown v Nocella*, 149 AD3d 470 [1st Dept 2017]). Simply stated, to the extent that the plaintiff’s attorney speculates that the moving defendants’ vehicle was speeding, there is no sworn testimony or other competent evidence to support that allegation and it is without evidentiary value.

Nor does the argument that the motion is premature warrant the denial of the motion. The mere hope that a party might be able to uncover some evidence during the discovery process is insufficient to deny summary judgment (*Downey v Mazzioli*, 137 AD3d 498 [1st Dept 2016]). Of note, defendant Barbour does not oppose either motion (*Thompson v Pizzaro*, 155 AD3d 423 [1st Dept 2017]; *Avant v Cepin Livery Corp.*, 74 AD3d 533, 534 [1st Dept 2010]).

In contrast, as defendant Barbour does not oppose the cross-motion, plaintiff’s motion for partial summary judgment on liability against said defendant is granted without opposition.

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

Accordingly, it is hereby

ORDERED that the motion [Mot. Seq. 1] by defendants MAKEIA MITCHELL and CONSTANCE CLARK (the moving defendants) , made pursuant CPLR 3212, for an order granting the moving defendants summary judgment dismissing the complaint is granted; and it is further

ORDERED that the part of the cross-motion of plaintiff, made pursuant to CPLR 3212, seeking an order granting plaintiff partial summary judgment on liability against the moving defendants is denied; and it is further

ORDERED that the part of the cross-motion of plaintiff, made pursuant to CPLR 3212, that seeks an order granting plaintiff partial summary judgment on liability against defendant JAMES BARBOUR is granted without opposition; and it is further

ORDERED that the Clerk shall enter judgment dismissing the complaint and all cross-claims as against defendants Makeia Mitchell and Constance Clark and severing the remaining action; and is it further

ORDERED the caption in this action shall be amended to read as follows:

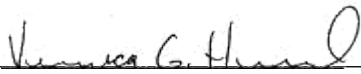
-----X
CLAUDIA LINARES,
Plaintiff, Index No. 24618/2020E
-against -
JAMES BARBOUR,
Defendant.
-----X

The foregoing constitutes the Decision/Order of the court.

Dated: Bronx, New York

March 8, 2022

E N T E R,

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

1. CHECK ONE.....
2. MOTION IS.....
3. CHECK IF APPROPRIATE.....

☐ CASE DISPOSED IN ITS ENTIRETY ☒ CASE STILL ACTIVE
GRANTED ☐ DENIED ☒ GRANTED IN PART ☐ OTHER
☐ SETTLE ORDER ☐ SUBMIT ORDER ☐ SCHEDULE APPEARANCE
☐ FIDUCIARY APPOINTMENT ☐ REFEREE APPOINTMENT
X AMEND CAPTION