

Salama v Piccirillo
2022 NY Slip Op 35200(U)
February 18, 2022
Supreme Court, Suffolk County
Docket Number: Index No. 601221/2020
Judge: Joseph A. Santorelli
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SHORT FORM ORDER

ORIGINALINDEX No. 601221/2020CAL. No. 202100865MVSUPREME COURT - STATE OF NEW YORK
I.A.S. PART 10 - SUFFOLK COUNTY**PRESENT:**Hon. JOSEPH A. SANTORELLI
Justice of the Supreme CourtMOTION DATE 1/19/22ADJ. DATE 1/20/22

Mot. Seq. # 004 MG

-----X
FAHD SALAMA,

Plaintiff,

- against -

TANA T. PICCIRILLO and RANDA SORYAL,

Defendants.
-----XGRUENBERG KELLY DELLA
Attorney for Plaintiff
700 Koehler Avenue
Ronkonkoma, New York 11779SCAHILL LAW GROUP, P.C.
Attorney for Defendant/Third-Party
Plaintiff Piccirillo
1065 Stewart Avenue, Suite 210
Bethpage, New York 11714GENTILE & TAMBASCO
Attorney for Defendant/Third-Party
Defendant Soryal
115 Broad Hollow Road, Suite 300
Melville, New York 11747-----X
TANA T. PICCIRILLO,

Third-Party Plaintiff,

- against -

RANDA SORYAL,

Third-Party Defendant.
-----X

Upon the following papers read on this e-filed motion for summary judgment: Notice of Motion/Order to Show Cause and supporting papers by defendant/third-party plaintiff Piccirillo, filed on December 9, 2021; Notice of Cross Motion and supporting papers _____; Answering Affidavits and supporting papers by defendant/third-party defendant Soryal, filed on December 28, 2021; by plaintiff, filed on January 7, 2022; Replying Affidavits and supporting papers by defendant/third-party plaintiff Piccirillo, filed on January 3, 2022; by defendant/third-party plaintiff Piccirillo, filed on January 3, 2022; it is

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ORDERED that the motion by defendant/third-party plaintiff Tana Piccirillo for summary judgment dismissing the complaint and cross claims against her is granted.

Plaintiff Fahd Salama commenced this action to recover damages for personal injuries he allegedly sustained as a result of a motor vehicle accident, which occurred on November 10, 2018, in Bohemia, New York. The accident allegedly occurred when a vehicle owned and operated by defendant/third-party plaintiff Tana Piccirillo collided with a vehicle owned and operated by defendant/third-party defendant Randa Soryal, in which plaintiff was a passenger. Based on a review of the docket entries for this action, counsel for plaintiff and Soryal executed a stipulation discontinuing this action as against her, which was uploaded to the New York State Courts Electronic Filing System on January 20, 2022.

Piccirillo now moves for summary judgment dismissing the complaint and cross claims against her. Piccirillo argues, among other things, that Soryal's negligence in, inter alia, violating Vehicle and Traffic Law § 1128 was the sole proximate cause of the subject accident. In support of her motion, Piccirillo submits, among other things, the transcripts of the deposition testimony of the parties and nonparty witness, Officer Brittany Roche, and the certified police accident report.

In opposition, Soryal contends, in part, that triable issues of fact remain as to how the accident occurred, namely, whether the "excessive" speed of Piccirillo's vehicle contributed to the accident. Soryal also argues that the unsigned transcripts of her own and Officer Roche's deposition testimony should be disregarded, since there is no proof that they were forwarded to them for signature. Soryal further contends that the police accident report, as it was marked during Officer Roche's deposition, should also be disregarded.

Plaintiff also opposes the motion. He argues, among other things, that Piccirillo failed to demonstrate, prima facie, that she was free from fault in the happening of the subject accident. In particular, plaintiff contends that Piccirillo's vehicle was traveling at an "excessive" speed. Plaintiff, in opposition, submits, among other things, the transcripts of the parties' deposition testimony.

At plaintiff's deposition, he testified that he was a passenger in Soryal's vehicle, which was traveling southbound on Lakeland Avenue, at the time of the accident. Plaintiff described Lakeland Avenue as a two-way street, with two lanes of travel in each direction and a center turning lane. According to his deposition testimony, prior to the accident, Soryal's vehicle was completely stopped in the center turning lane. Plaintiff testified that he initially observed Piccirillo's vehicle, which was traveling at a rate of speed of at least 60 miles per hour, "[n]o more than two seconds" before the subject accident. He explained that the accident occurred when Soryal's vehicle, which was traveling at a rate of speed between 5 and 10 miles per hour, attempted to move into the right southbound lane. The front passenger's door of Soryal's vehicle allegedly was in the path of Piccirillo's vehicle at the moment of impact. Plaintiff testified that the impact occurred between the front passenger's door of Soryal's vehicle and the front of Piccirillo's vehicle. Plaintiff allegedly did not hear Piccirillo sound her vehicle's horn before the collision.

According to Soryal's deposition testimony, prior to the accident, she brought her vehicle to a

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stop in the center turning lane on Lakeland Avenue, with its turning signal activated, for two seconds before attempting to make a right turn into a shopping center. Soryal testified that she looked in her rear-view and side-view mirrors and over her shoulder before attempting to turn right. While Soryal testified that she initially observed Piccirillo's vehicle, which was "flying" at a rate of speed of "[o]ver six, five," approximately five seconds before she turned right, she subsequently testified that she did not see Piccirillo's vehicle before she attempted to turn right. She further testified that she thought she could "make it but [Piccirillo] was flying." While Soryal's deposition testimony indicates that the speed limit on Lakeland Avenue in the vicinity of the accident site was approximately 45 to 50 miles per hour, Soryal also conceded that she was uncertain of the relevant speed limit. Soryal stated that a police officer never asked her about how the accident occurred.

At her deposition, Piccirillo testified that she initially observed Soryal's vehicle stopped in the middle turning lane, approximately one-tenth of a mile away from her own vehicle, which was traveling in the left southbound lane of Lakeland Avenue, at a rate of speed of approximately 45 miles per hour. The speed limit on Lakeland Avenue in the vicinity of the subject accident allegedly was 50 miles per hour. Piccirillo testified that the accident occurred when Soryal's vehicle moved to the right, with no turning signal activated, toward the path of her vehicle. According to Piccirillo's deposition testimony, when she initially observed Soryal's vehicle attempting to turn right, she applied the brakes to her vehicle, sounded her horn, and attempted to move her vehicle further to the right "to get out of [Soryal's] way," but she was unable to avoid the collision. Piccirillo elaborated that the impact occurred between the front driver's side of her vehicle, which was located in between the right and left lanes at the moment of impact, and the door of the passenger's side door of Soryal's vehicle. She further described that Soryal's vehicle was positioned perpendicular to her vehicle.

At Officer Roche's deposition, she testified that she was one of the police officers responding to the subject accident. Officer Roche testified that she did not witness the subject accident, and that she prepared a police accident report for the subject accident as part of her police duty. At her deposition, she identified a police accident report, which was marked as an exhibit, that fairly and accurately depicted the police accident report that she prepared in connection with the subject accident. While Officer Roche explained that she usually reported the "sum and substance" of the information communicated by each driver to her in the police accident report in connection with an accident, she testified that she had no independent recollection of her interaction with the drivers involved in the subject accident. She further explained that the contributing factors listed in the police accident report were based on her post-accident investigation. According to her deposition testimony, Officer Roche's training in accident reconstruction consisted of an approximately six-hour class on the topic during the police academy. Officer Roche clarified that she received no certification or further training accident in accident reconstruction prior to the accident.

As an initial matter, contrary to Soryal's contention, the unsigned transcripts of the deposition testimony of Soryal and Officer Roche are admissible, since they were certified by the court reporter, and no party disputed their accuracy (*see Celestin v 40 Empire Boulevard, Inc.*, 168 AD3d 805, 92 NYS3d 319 [2d Dept 2019]; *Thomas v City of New York*, 124 AD3d 872, 2 NYS3d 578 [2d Dept 2015]; *Vetrano v J. Kokolakis Contr.*, 100 AD3d 984, 954 NYS2d 646 [2d Dept 2012]). As such, Soryal's argument challenging the admissibility of the police accident report, which was marked during Officer

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Roche's deposition, itself is unavailing. In any event, along with her submissions, Piccirillo also submits a certified police accident report.

Information set forth in a police report that is hearsay is not admissible unless such information falls within an exception to the hearsay rule (*see Matter of Country-Wide Ins. Co. v Lobello*, 186 AD3d 1213, 130 NYS3d 67 [2d Dept 2020]; *Memenza v Cole*, 131 AD3d 1020, 16 NYS3d 287 [2d Dept 2015]). "Pursuant to CPLR 4518(a), a police accident report is admissible as a business record so long as the report is made based upon the officer's personal observations and while carrying out police duties" (*Matter of Country-Wide Ins. Co. v Lobello*, *supra* at 1215, 130 NYS3d at 69, quoting *Memenza v Cole*, *supra* at 1022, 16 NYS3d at 289; *see Shehab v Powers*, 150 AD3d 918, 54 NYS3d 104 [2d Dept 2017]; *Matter of Chu Man Woo v Qiong Yun Xi*, 106 AD3d 818, 964 NYS2d 647 [2d Dept 2013]). Conversely, information contained in a police accident report is inadmissible where the information is attributed to a witness not engaged in the police business in the course of which the memorandum was made, and the information does not qualify under any other hearsay exception (*see Shehab v Powers*, *supra*; *Memenza v Cole*, *supra*; *Matter of Chu Man Woo v Qiong Yun Xi*, *surpa*).

Here, Piccirillo cannot rely on certain portions of the police accident reports to meet her initial prima burden, since they are inadmissible. For instance, Piccirillo's self-serving statement to the effect that the collision occurred when Soryal's vehicle made an unsafe lane change into her vehicle's lane of travel is inadmissible (*see Noakes v Rosa*, 54 AD3d 317, 862 NYS2d 573 [2d Dept 2008]; *Bates v Yasin*, 13 AD3d 474, 788 NYS2d 397 [2d Dept 2004]; *Casey v Tierno*, 127 AD2d 727, 512 NYS2d 123 [2d Dept 1987]). In addition, the notation that lists "[d]river [i]nattention/[d]istractiion" and "[p]assing or [l]ane [u]sage [i]mproper" as contributing factors is inadmissible, since Officer Roche testified that she did not witness the subject accident, and there is no indication that those portions of the reports fall within an exception to the hearsay rule (*see Bloechle v Heritage Catering, Ltd.*, 172 AD3d 1294, 101 NYS3d 424 [2d Dept 2019]; *Ardanuy v RB Juice, LLC*, 164 AD3d 1296, 83 NYS3d 634 [2d Dept 2018]; *Memenza v Cole*, *supra*). Piccirillo further failed to demonstrate that Officer Roche was an expert in accident reconstruction (*see Casey v Tierno*, *supra*; *see also Szymanski v Robinson*, 234 AD2d 992, 651 NYS2d 826 [4th Dept 1996]). Piccirillo also cannot rely on the portion of the police accident reports indicating that Soryal was issued a ticket for a violation of Vehicle and Traffic Law § 1128 (a) to meet her initial prima facie burden on the motion (*see Englington Med., P.C. v Motor Veh. Acc. Indem. Corp.*, 81 AD3d 223, 916 NYS2d 122 [2d Dept 2011]; *see also Nunez v Cortegiano*, 63 AD3d 704, 880 NYS2d 161 [2d Dept 2009]), since "[t]he mere issuance of a Vehicle and Traffic Law summons proves only that the recipient of the summons has been accused of the violation[] alleged therein, not that he or she has committed the alleged violation[]" (*Englington Med., P.C. v Motor Veh. Acc. Indem. Corp.*, *supra* at 230, 916 NYS2d at 127).

Notwithstanding Piccirillo's misplaced reliance on certain evidence, as previously set forth in greater detail, Piccirillo still established her prima facie entitlement to summary judgment dismissing the complaint and cross claims against her (*see Pipinias v Ferreira*, 155 AD3d 1073, 65 NYS3d 533 [2d Dept 2017]; *Park v Sanchez*, 155 AD3d 970, 64 NYS3d 118 [2d Dept 2017]; *Leonard v Pomarico*, 137 AD3d 1085, 27 NYS3d 670 [2d Dept 2016]; *Walker v Patrix Trucking N.Y. Corp.*, 115 AD3d 943, 982 NYS2d 552 [2d Dept 2014]). "A defendant moving for summary judgment in a negligence action has the burden of establishing, prima facie, that he or she was not at fault in the happening of the subject

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accident” (*Sage v Taylor*, 195 AD3d 971, 972, 146 NYS3d 496, 497 [2d Dept 2021], quoting *Boulos v Lerner-Harrington*, 124 AD3d 709, 709, 2 NYS3d 526, 527 [2d Dept 2015]; see *Kante v Tong Fei Chen*, 176 AD3d 928, 111 NYS3d 612 [2d Dept 2019]; *Green v Masterson*, 172 AD3d 826, 98 NYS3d 443 [2d Dept 2019]). “A violation of the Vehicle and Traffic Law constitutes negligence as a matter of law” (*Atkins v City of New York*, 196 AD3d 622, 624, 151 NYS3d 680, 681 [2d Dept 2021], quoting *Vainer v DiSalvo*, 79 AD3d 1023, 1024, 914 NYS2d 236, 237 [2d Dept 2010]; see *Callahan v Glennon*, 193 AD3d 1029, 147 NYS3d 665 [2d Dept 2021]; *Abtey v Trivigno*, 188 AD3d 629, 134 NYS3d 401 [2d Dept 2020]). Pursuant to Vehicle and Traffic Law § 1128 (a), when a roadway has been divided into two or more clearly marked lanes of travel, “[a] vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety.” In addition, “[a] driver is bound to see what is there to be seen with the proper use of his [or her] senses” (*Sage v Taylor*, *supra* at 972, 146 NYS3d at 497, quoting *Topalis v Zwolski*, 76 AD3d 524, 525, 906 NYS2d 317, 318 [2d Dept 2010]; see *Gaudio v City of New York*, 189 AD3d 1546, 140 NYS3d 102 [2d Dept 2020]; *Tornabene v Seickel*, 186 AD3d 645, 129 NYS3d 110 [2d Dept 2020]). While the issue of proximate cause generally is for the trier of fact to determine, it may be decided as a matter of law where only one conclusion may be drawn from the established facts (see *Enriquez v Joseph*, 169 AD3d 1008, 94 NYS3d 599 [2d Dept 2019]; *Nesbitt v Gallant*, 149 AD3d 763, 51 NYS3d 568 [2d Dept 2017]; *Cook v Gomez*, 138 AD3d 675, 30 NYS3d 148 [2d Dept 2016]).

Through the submission of, among other things, the transcripts of the deposition testimony of the parties, Piccirillo established, prima facie, that Soryal’s negligence in making an unsafe lane change into the path of Piccirillo’s vehicle in violation of Vehicle and Traffic Law § 1128 (a) was the sole proximate cause of the subject accident, and that Piccirillo was free from comparative fault (see *Pipinias v Ferreira*, *supra*; *Park v Sanchez*, *supra*; *Leonard v Pomarico*, *supra*; *Walker v Patrix Trucking N.Y. Corp.*, *supra*). Based on Piccirillo’s submissions, both her vehicle and Soryal’s vehicle were traveling southbound on Lakeland Avenue, when Soryal’s vehicle, which was in the center turning lane, attempted to cross over two lanes of traffic to turn right into a shopping center, and struck the front of Piccirillo’s vehicle. Piccirillo further established, prima facie, that her response, which included applying the brakes to her vehicle, was reasonable under the emergency doctrine (see *Leonard v Pomarico*, *supra*; see also *Minor v C & J Energy Savers, Inc.*, 65 AD3d 532, 883 NYS2d 587 [2d Dept 2009]). Piccirillo having established her prima facie burden on the motion, the burden now shifts to plaintiff and Soryal to raise a triable issue of fact (see *Alvarez v Prospect Hosp.*, 68 NY2d 320, 508 NYS2d 923 [1986]).

In opposition, plaintiff and Soryal failed to raise a triable issue of fact (see *Pipinias v Ferreira*, *supra*; *Leonard v Pomarico*, *supra*; *Walker v Patrix Trucking N.Y. Corp.*, *supra*). Contrary to their contentions, any discrepancies in the parties’ accounts of how the accident occurred did not raise a material issue of fact regarding Piccirillo’s liability (see *Minor v C & J Energy Savers, Inc.*, *supra*). Whether Piccirillo may have been traveling in excess of the speed limit is inconsequential inasmuch as plaintiff and Soryal did not raise a triable issue as to whether Piccirillo could have avoided the subject accident even if she had been traveling at or below the posted speed limit (see *Rohn v Aly*, 167 AD3d 1054, 91 NYS3d 256 [2d Dept 2018]; *Foley v Santucci*, 135 AD3d 813, 23 NYS3d 338 [2d Dept 2016]; *Foster v Kelly*, 119 AD3d 1250, 990 NYS2d 693 [3d Dept 2014]). Mere speculation that Piccirillo may have failed to take reasonable evasive action to avoid the accident is insufficient to defeat her prima

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facie showing on the motion (*see McDaniel v Codi Transport, Ltd.*, 149 AD3d 595, 50 NYS3d 286 [1st Dept 2017]; *Thompson v Schmitt*, 74 AD3d 789, 902 NYS2d 606 [2d Dept 2010]; *Barbaruolo v DiFede*, 73 AD3d 957, 900 NYS2d 671 [2d Dept 2010]).

Accordingly, Piccirillo's motion for summary judgment dismissing the complaint and cross claims against her is granted.

Dated: FEB 18 2022



HON. JOSEPH A. SANTORELLI
J.S.C.

 FINAL DISPOSITION X NON-FINAL DISPOSITION