

<b>White v Euro Design &amp; Maintenance Corp.</b>
2023 NY Slip Op 30086(U)
January 10, 2023
Supreme Court, Kings County
Docket Number: Index No. 505192/2020
Judge: Debra Silber
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS : PART 9**

X

**TREVOR WHITE,**

**Plaintiff,**

**DECISION/ORDER**

**-against-**

**Index No. 505192/2020**

**EURO DESIGN & MAINTENANCE CORP.,  
PEDRO NUNO ESCALEIRA  
and BOBAN MILUTINOVIC,**

**Motion Seq. No. 8 & 9**

**Date Sub.: 12/1/22**

**Defendants.**

X

***Recitation, as required by CPLR 2219(a), of the papers considered in the review of defendant Milutinovic's motion and plaintiff's cross motion for summary judgment on liability.***

<b>Papers</b>	<b>NYSCEF Doc.</b>
Notice of Motion, Affirmations, Affidavits, and Exhibits Annexed.....	<u>116-125</u>
Notice of Cross Motion, Affirmations, Affidavits, and Exhibits Annexed...	<u>130-135</u>
Affirmations in Opposition and Exhibits Annexed.....	<u>126-128; 138-139</u>
Reply Affirmation.....	<u>136-137</u>

**Upon the foregoing cited papers, the Decision/Order on these motions is as**

**follows:**

In this personal injury action arising from a motor vehicle accident, defendant Milutinovic moves, and plaintiff cross-moves, for summary judgment on the issue of liability. The accident in question occurred on January 28, 2020, on Willoughby Avenue near its intersection with Sandford Street, in Brooklyn, New York. In this three-car chain collision, the plaintiff claims that at the time of the accident, he was a rear-seat passenger in the cab driven by defendant Milutinovic when it was hit in the rear by a pick-up truck driven by defendant Escaleira and owned by defendant Euro Designs, and was then pushed into the front vehicle, owned and driven by non-party Glenn Glover.

Milutinovic supports his motion (motion seq. #8) with the pleadings, a certified police report and the EBT transcripts of plaintiff and of himself. According to the police report,

defendant Escaleira stated to the responding police officer that he “was distracted when he rear ended” the Milutinovic vehicle. This is an admission. Thus, Milutinovic makes a prima facie case for summary judgment. The burden of proof then shifts to defendant Escaleira to provide a non-negligent explanation for rear-ending the Milutinovic vehicle.

In opposition to the motion, counsel for defendant Escaleira provides an attorney’s affirmation and a response to Milutinovic’s statement of material facts. As correctly pointed out in Milutinovic’s Reply affirmation, no admissible evidence is offered to overcome the motion. Therefore, the motion is granted and the complaint and any cross-claims against defendant Milutinovic are dismissed.

A driver of a vehicle approaching another vehicle from the rear is required to maintain a reasonably safe distance and rate of speed under the prevailing conditions to avoid colliding with the other vehicle (see *Mihalatos v Barnett*, 175 AD3d 492, 492-493 [2d Dept 2019]). A rear-end collision with a stopped or stopping vehicle establishes a prima facie case of negligence on the part of the operator of the rear vehicle, thereby requiring that operator to rebut the inference of negligence by providing a nonnegligent explanation for the collision (see *De Castillo v Sormeley*, 140 AD3d 918, 918 [2d Dept 2016]). Further, “[w]hile a nonnegligent explanation for a rear-end collision may include evidence of a sudden stop of the lead vehicle, ‘vehicle stops which are foreseeable under the prevailing traffic conditions, even if sudden and frequent, must be anticipated by the driver who follows, since he or she is under a duty to maintain a safe distance between his or her car and the car ahead’” (*Theo v Vasquez*, 136 AD3d at 796, quoting *Brothers v Bartling*, 130 AD3d 554, 556, 13 NYS3d 202 [2015]). Finally, “[i]n 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" (*Mihalatos v Barnett*, 175 AD3d 492, 493 [2d Dept 2019]).

Plaintiff cross-moves (motion sequence #9) for summary judgment against the remaining defendants, Escalera and Euro Design, and for an order striking all affirmative defenses of comparative fault asserted against him. The Court notes that although designated as a cross motion, this is not a cross motion, as it is not made against the moving party. Plaintiff supports his motion with an attorney's affirmation and copies of both his and defendant Escalera's deposition transcripts. The motion is opposed by defendants Escalera and Euro Design.

As a passenger, plaintiff is certainly entitled to "innocent passenger" status, and the dismissal of the affirmative defenses of comparative fault. But he seeks a determination of fault against the driver and owner of the sole remaining vehicle in the action.

In opposition, counsel for defendants Escalera and Euro Design argues that "as a matter of law, while the plaintiff, a passenger, may be entitled to a summary determination on his own lack of liability; plaintiff is not entitled to summary judgment as against defendants, on the issue of liability." This is no longer the law in the Second Department.

In a recent case, the Second Department awarded summary judgment on the issue of liability to a passenger, stating that the defendant, who was not the only defendant driver, had violated VTL §1141 by turning left when it was not safe to do so, and "a violation of this statute constitutes negligence per se. Here, the evidence submitted by the plaintiff in support of her motion, which included the deposition testimony of Gabriel Katz as to the happening of the accident, established, prima facie, that Gabriel Katz was negligent in making a left turn when it was not safe for him to do so in violation of Vehicle and Traffic Law §§ 1141 and 1163, and that his negligence was a proximate cause of the collision"

(*Lindo v Katz*, 205 AD3d 1016, 1017 [2d Dept 2022] [internal citations omitted]). It is noted that the court's decision still left for trial the co-defendant's comparative fault.

Here, defendant Escalera testified at his EBT that he had one impact with the "black Uber," and it was "a very light impact" [Doc 135 Page 57]. He stated that he was driving a Dodge Ram pick-up truck. When asked [Page 21] "can you describe the vehicle that you hit?" Escalera answered "It was a black Toyota. It was an Uber." The accident took place in the morning, the weather was clear and the roads were dry [Page 22]. Escalera had left a Home Depot and was going to work. Before the block where the accident occurred, the black Uber was in front of him for about four minutes. They both stopped for a red light [Page 45]. He could see the black Uber in front of him. His car was higher up, and he could also see the cars in front of the Uber. There were four or five. The light turned green and he started to move [Page 46]. When asked "did you observe the black Uber in front of you begin to move his vehicle?" Escalera said "I'm not sure if he moved" [Page 46]. Probed further, he said "I believe there was a FedEx or UPS at the front" which he saw move. He then rear-ended the black Uber. He called the police and observed the plaintiff was removed from the scene in an ambulance [Page 62].

Plaintiff has made a prima facie case for summary judgment. He has established, with his and defendant Escalera's deposition testimony, that he was a passenger in a vehicle which was rear-ended by Escalera's vehicle, and that he bears no fault for the happening of the accident. Plaintiff has also established that Escalera was negligent. Again, "[a] rear-end collision with a stopped or stopping vehicle establishes a prima facie case of negligence on the part of the operator of the rear vehicle, thereby requiring that operator to rebut the inference of negligence by providing a nonnegligent explanation for the

collision" (see *De Castillo v Sormeley*, 140 AD3d 918, 918 [2d Dept 2016]). Defendant Escaleira has not done so.

Accordingly, it is **ORDERED** that defendant Milutinovic's motion for summary judgment (#8) is granted, and the complaint and any cross claims are dismissed as against him *only*. Plaintiff's motion for summary judgment (#9) is also granted, and, as he was an innocent passenger, he is granted summary judgment against defendants Escaleira and Euro Design on the issue of liability. Any affirmative defenses of comparative fault are stricken. This action shall proceed to trial solely on the issue of damages.

This constitutes the decision and order of the court.

Dated: January 10, 2023

ENTER:



---

Hon. Debra Silber, J.S.C.