

Guzman v Smith

2023 NY Slip Op 34991(U)

January 20, 2023

Supreme Court, Bronx County

Docket Number: Index No. 31826/2020E

Judge: Veronica G. Hummel

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This opinion is uncorrected and not selected for official publication.

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**

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FRANCISCO COCA GUZMAN,

Plaintiff

-against -

**Index No. 31826/2020E
DECISION/ORDER
Motion Seq. 1**

MICHELLE SMITH,

Defendant.

-----X

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

In accordance with CPLR 2219 (a), the decision herein is made upon consideration of all papers filed in NYSCEF regarding the motion by defendant MICHELLE SMITH (movant) [Mot. Seq. 1], made pursuant to CPLR 3212, seeking an order dismissing the complaint and all crossclaims against defendant.

The motion is supported by an attorney affirmation, a statement of material facts, copies of the pleadings, and the parties' deposition transcripts.

Plaintiff fails to oppose the motion.

This is a personal injury action arising out of a two-vehicle accident that occurred on March 2, 2020 (the Accident). Defendant's vehicle was stopped in traffic when it was hit in the rear by Plaintiff's vehicle.

Since there can be more than one proximate cause of an accident, a defendant moving for summary judgment is required to make a *prima facie* showing that he or she is free from fault. *see Harrigan v. Sow*, 165 A.D.3d 463 (1st Dep't 2018); *Hilago v. Vasquez*, 187 A.D.3d 683 (1st Dep't 2020). In order for a defendant driver to establish entitlement to summary judgment on the issue

of liability in a motor vehicle collision case, therefore, the driver must demonstrate, *prima facie*, that he or she kept the proper lookout, or that his or her alleged negligence, if any, did not contribute to the accident. *see Harrigan v. Sow, supra; Hilago v. Vasquez, supra.*

Vehicle and Traffic Law §1129(a) provides that, a 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. *Urena v. GVC Ltd.*, 160 A.D.3d 467, 467 (1st Dep't 2018).

It is well settled, therefore, 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 A.D.3d 553 (1st Dep't 2010); *Tutrani v. County of Suffolk*, 10 N.Y.3d 906, 908 (2008); *Agramonte v. City of New York*, 288 A.D.2d 75, 76 (1st Dep't 2001). Furthermore, in a chain reaction collision, responsibility presumptively rests with the rearmost driver and there is a presumption of non-negligence of the driver of the lead vehicle. *Mustafaj v. Driscoll*, 5 A.D.3d 138 (1st Dep't 2004); *Chuk Hwa Shin v. Correale*, 142 A.D.3d 518, 519 (2d Dep't 2016); *Skura v. Wojtowski*, 165 A.D.3d 1196, 1199 (2d Dep't 2018).

First Department case law is also clear that a claim by the rear driver that the lead vehicle made a sudden stop, standing alone, is insufficient to rebut the presumption of negligence. *Bajrami v. Twinkle Cab Corp.*, 147 A.D.3d 649 (1st Dep't 2017); *Cabrera v. Rodriguez, supra; see Ly Giap v. Hathi Son Pham*, 159 A.D.3d 484, 485 (1st Dep't 2018) (“A claim that the lead driver came to a sudden stop, standing alone, is insufficient to rebut the presumption that the rearmost driver was negligent, and the stopped vehicle was not negligent”). Hence, the happening of a rear-end collision with a vehicle slowing in traffic is itself a *prima facie* case of negligence of the rearmost driver. *Vasquez v. Chimborazo*, 155 A.D.3d 432 (1st Dep't 2017); *see Smyth v. Murphy*, 177 A.D.3d 492 (1st Dep't 2019); *Corrigan v. Porter Cab Corp.*, 101 A.D.3d 471 (1st Dep't 2012); *LaMasa v. Bachman*, 56 A.D.3d 340 (1st Dep't 2008).

On this motion, movant establishes *prima facie* entitlement to judgment as a matter of law by submitting evidence that the movant defendant driver was stopped safely in traffic when the movant's vehicle was struck in the rear by Plaintiff's vehicle. *Vasquez v. Chimborazo, supra; Smyth v. Murphy, supra; Corrigan v. Porter Cab Corp., supra; LaMasa v. Bachman, supra; see Martinez v. Kuhl*, 165 A.D.3d 774 (2d Dep't 2018). The moving papers therefore demonstrate that movant acted without negligence and the movant defendant driver's actions did not contribute to causing the Accident. Of note, an "innocent ... driver exists in a case where the ... driver did not contribute to the happening of the accident in any way. A typical example is the case at bar where ... [the] driver, while stopped, was rear-ended by the following driver". *Oluwatayo v. Dulinayan*, 142 A.D.3d 113, 119 (1st Dep't 2016).

Plaintiff failed to oppose the motion, and it is therefore granted without opposition.

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

ORDERED that the motion by defendant MICHELLE SMITH (movant) [Mot. Seq. 1], made pursuant to CPLR 3212, seeking an order dismissing the complaint and all crossclaims against defendant is granted without opposition; and it is further

ORDERED that the Clerk shall enter judgment in favor of movant dismissing the complaint in its entirety; and it is further

ORDERED that the Clerk shall mark motion seq 1 decided and the action disposed in all court records.

The foregoing constitutes the Decision/Order of the court.

Dated: Bronx, New York

January 20, 2023

E N T E R,

Hon. ~~s/Hon. Veronica G. Hummel~~/signed 01/20/2023

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

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- 1. CHECK ONE..... CASE DISPOSED IN ITS ENTIRETY CASE STILL ACTIVE
 - 2. MOTION 1 IS GRANTED, .. Granted
 - 3. CHECK IF APPROPRIATE..... SETTLE ORDER SUBMIT ORDER SCHEDULE APPEARANCE