

**L.M. v Garcia**

2024 NY Slip Op 34772(U)

June 24, 2024

Supreme Court, Queens County

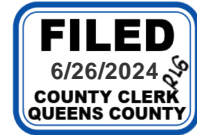
Docket Number: Index No. 710928/2020

Judge: Ulysses B. Leverett

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS



-----X  
L.M., an infant by her m/n/g ANA M. DE LOS SANTOS,  
ANA DE LOS SANTOS, Individually, ANA Y. OSORIO  
And ESTAISI SANCHEZ,

Plaintiffs,

Index No.: 710928/2020  
Motion Seq. Nos.: 14, 16, 18  
and 19

-against-

**DECISION and ORDER**

BLADMIN GARCIA, LEONARD SANDOVAL,  
ALEXANDER FERNANDEZ, PV HOLDINGS CORP.,  
ANGELINA WING YAN NGO and RANJIT  
CHITTIBABUSURIYA,

Defendants.

-----X  
Present: **HONORABLE ULYSSES B. LEVERETT**

Papers Numbered

Defendant Ranjit Chittibabusuriya’s Notice of Motion (Seq. 14)- Affirmation-Statement of Material Facts-Memorandum-Exhibits	EF 270-282
Plaintiffs’ Affirmation in Opposition (Seq. 14)-Exhibits-Memorandum- Response Statement of Material Facts	EF 386-401
Defendant PV Holdings Corp.’s Affirmation in Opposition (Seq. 14)- Exhibits-Statement of Material Facts	EF 407-409, 416
Defendant Fernandez’s Affirmation in Opposition (Seq. 14)- Response Statement of Material Facts	EF 412-413
Defendant Chittibabusuriya’s Affirmation in Reply (Seq. 14)	EF 459
Plaintiffs’ Notice of Motion (Seq. 16)-Affirmation-Exhibits- Statement of Material Facts-Memorandum	EF 311-340
Defendant Chittibabusuriya’s Affirmation in Opposition (Seq. 16)- Exhibits	EF 402-405
Defendant PV Holdings Corp.’s Affirmation in Opposition (Seq. 16)- Exhibits-Statement of Material Facts	EF 410-411, 433
Defendant Fernandez’s Affirmation in Opposition (Seq. 16)- Response Statement of Material Facts	EF 414-415
Defendant Angelina Wing Yan Ngo’s Affirmation in Opposition (Seq. 16)-Exhibits-Response Statement of Material Facts	EF 434-447
Plaintiffs’ Affirmation in Reply to Defendant Chittibabusuriya (Seq. 16)	EF 448
Plaintiffs’ Affirmation in Reply to PV Holdings Corp. (Seq. 16)-Exhibits	EF 453, 455-458
Plaintiffs’ Affirmation in Reply to Defendant Fernandez (Seq. 16)	EF 454
Defendant Angelina Wing Yan Ngo’s Notice of Cross-Motion (Seq. 18)- Affirmation-Statement of Material Facts-Exhibits	EF 417-432

Defendant Fernandez's Affirmation in Opposition (Seq. 18)- Response Statement of Material Facts	EF 461-462
Plaintiffs' Affirmation in Opposition (Seq. 18)-Exhibits-Memorandum-Response Statement of Facts	EF 465-478
Defendant PV Holdings Corp.'s Affirmation in Opposition (Seq. 18)- Statement of Material Facts	EF 479-480
Defendant Ngo's Affirmation in Reply (Seq. 18)	EF 482
Defendant Ranjit Chittibabusuriya's Notice of Motion (Seq. 19)- Affirmation-Statement of Material Facts- Exhibits	EF 449-451
Defendant Fernandez's Affirmation in Opposition (Seq. 19)- Response Statement of Material Facts	EF 463-464
Defendant Ranjit Chittibabusuriya's Affirmation in Reply (Seq. 19)	EF 481

Upon the foregoing papers, the decision and order on Motion Sequence numbers 14, 16, 18 and 19 is as follows.

Plaintiffs commenced this action on July 20, 2017, alleging that while occupants of Defendant Bladmin Garcia's (Garcia) vehicle, they sustained serious injuries in a motor vehicle accident that took place on May 22, 2017. Plaintiffs assert that on the night of the subject accident, Defendant Angelina Wing Yan Ngo (Ngo) drove the vehicle owned by Defendant Ranjit Chittibabusuriya (Chittibabusuriya) into the left side railing of the Saw Mill River parkway due to what she claims was driver error and negligently left the vehicle in the left lane without hazard lights on to warn upcoming drivers.

Plaintiffs then allege that Defendant Alexander Fernandez (Fernandez) approached at an unreasonably safe speed and failed to keep a lookout, swerved to avoid hitting Defendant Ngo's vehicle, rear-ending Plaintiffs' vehicle causing it to roll over and causing multiple of the Plaintiffs to suffer from serious injuries.

Defendant Chittibabusuriya seeks an Order pursuant to CPLR §3212 for summary judgement under the Graves Amendment dismissing the Plaintiffs' Complaints (seq. 14), any crossclaims and to dismiss the Third-Party Complaint (Seq. 19) claiming neither him nor Defendant Ngo can be held liable for the accident under the Emergency Doctrine as the vehicle Ngo operated was disabled on the road. He argues that he is exempt from liability under the Graves Amendment. 49 U.S.C. §30106 states that "an owner of a motor vehicle that rents or leases the vehicle to a person shall not be liable ... by reason of being the owner of the vehicle for harm to persons or property that results or arises out of the use, operation, or possession of the vehicle during the period of the rental or lease if (1) the owner is engaged in the trade or business of renting or leasing motor vehicles; and (2) there is no negligence or criminal wrongdoing on the part of the owner."

Defendant Chittibabusuriya argues that he was engaged in the trade or business of renting or leasing motor vehicles; he provided the vehicle to Defendant Ngo for a fee via the Turo platform, which also charges a fee. Defendant believes that this satisfies the first element of the Graves Amendment. The Court notes that Defendant testified that he was not sure if his Turo

membership generated a written agreement for the transaction when defendant Ngo reserved his vehicle.

Defendant Fernandez in opposition argues Defendant Chittibabusuriya testified that his first attempt at renting his only vehicle was on the Turo app and was not his source of employment. There was no evidence of the rental transaction being anything but a casual or occasional endeavor. *See Joel Ventura v. Aleksey Lubman*, 192 N.Y.S.3d 92 (1st Dep't 2023). Defendant Chittibabusuriya argued that this was his first instance of renting his motor vehicle and that there was no requirement in the statute that went to the volume of rentals. Though there is no requirement that there must be a numerous rental record, the Court finds there is no evidence that Defendant Chittibabusuriya was a vehicle rental company or otherwise in the business of renting vehicles outside of an occasional occurrence.

As to the second element, Defendant argues that there were no mechanical issues that led to the accident, indicating there is negligence on behalf of the owner. He testified that he regularly inspected the vehicle, checking the safety components such as warning lights, fluids, and test driving the vehicle when getting it cleaned and that the vehicle was current on its New Jersey State Inspection at the time of the accident. *Ron Couchman v. Manuel Osvaldo Nunez Jr.*, 180 A.D.3d 645, 646 (2d Dep't 2020). The Court notes that Defendant further testified that he did not remember if his vehicle was equipped with hazard lights and did not know the parking lights were in good working order on the day of the accident.

The Court notes that the only evidence submitted is Exhibit J, a receipt of a transaction by Defendant Chittibabusuriya but does not speak to the relationship between Defendant Chittibabusuriya and Defendant Ngo through Turo. The Court finds that only claiming the vehicle was in good working order at the time it was rented creates a question of fact as to the possible negligent maintenance on the part of the Defendant. *See Holmquist v. Orphanides*, 2073 N.Y. Slip Op 4660 (2d Dep't 2023) and *Thorpe v. AutoZone, Inc.*, 212 A.D.3d 861 (2d Dep't 2023).

Plaintiffs also seek summary judgement on the issue of liability against Defendants Fernandez, Ngo and Chittibabusuriya, as they were seat belted passengers. Plaintiffs argue that there is no question that Defendant Fernandez rear ended the Garcia vehicle as a result of traveling at an unsafe speed. Defendant Fernandez in opposition argues that he was safely traveling between 45 and 50 miles per hour on the highway when he encountered the Ngo vehicle stopped, with no lights flashing on the right 5 feet ahead of him. He testified that he immediately attempted to break and moved to the right lane to avoid hitting the Ngo vehicle when he encountered the Garcia vehicle which appeared to be stopped. However, Ngo testified in (NYSCEF Doc. 470 page 93) that the roadway was flat and straight for 20 car lengths up to the place where her vehicle struck the median. The Court finds triable issues of fact as to whether Fernandez's inability to avoid the collision was the result of his own negligence. *See Gregson v. Terry*, 35 A.D.3d 358 (2d Dep't 2006). The presence of the stationary vehicle directly ahead of him and the Garcia vehicle in the adjacent lane was the reason provided for the collision.

Plaintiffs argue that Defendant Ngo did not attempt to move her vehicle before exiting, nor did she put on her hazards before she left the care in violation of VTL §1163(e) and

§1201(a). They further argue that her failure to activate her hazard lights while leaving the vehicle unattended in the left lane constitutes proximate cause to the accident. Defendant Ngo in opposition argues that she is not the proximate cause for the Plaintiffs' injuries and only furnished the conditions for the occurrence of the accident. *Batista v. City of New York*, 101 A.D.3d 773 (2d Dep't 2012). Defendant cited numerous Second Department cases to support this argument, that are distinguishable to the case at hand. *Iqbal v. Thai*, 83 A.D.3d 897 (2d Dep't 2011) (affirming summary judgement where decedent's vehicle stopped on the shoulder of Long Island Expressway, driver that struck the vehicle was asleep before the accident); *Ely v. Pierce*, 302 A.D.2d 489 (2d Dep't 2003) (reversing trial court's decision and granting summary judgement where defendant driver proved that the vehicle was inoperable, furnishing the conditions for the accident) and *Hyland v. Calace*, 244 A.D.2d 318 (2d Dep't 1997) (affirming summary judgment where plaintiff-decedent operating the motor vehicle while intoxicated was the proximate cause of the accident).

As previously discussed, Defendant Chittibabusuriya failed to prove that he was engaged in the business of renting and leasing vehicles and that the vehicle operated by Defendant Ngo at the time of the accident was free of mechanical defect; leaving a triable issue of fact as to whether he was vicariously liable for the actions of Defendant Ngo.

The Court finds that there is a question of fact as to whether Defendants Fernandez, Ngo and Chittibabusuriya as owners and/or operators utilized their vehicles in a negligent manner. Further, though Plaintiffs are innocent passengers in this motor vehicle accident, they have failed to prove that Defendants Fernandez, Ngo and Chittibabusuriya were all definitively at fault; leaving a triable issue of fact. *See Phillip v. D&D Carting Co., Inc.*, 136 A.D.3d 19 (2d Dep't 2015) and *Anjum v. Bailey*, 123 A.D.3d 852 (2d Dep't 2014). This Court notes that a plaintiff's right as an innocent passenger to summary judgement on the issue of liability is not barred by any potential issue of comparative fault between the owners and operators of vehicles involved in a motor vehicle accident. *See Rodriguez v. Farrell*, 115 A.D.3d 929 (2d Dep't 2014). The portion of their motion striking the affirmative defense of comparative negligence is granted as they were passengers in the Garcia vehicle, and free from fault in the happening of the accident. *Id.*

Defendant Ngo also seeks an Order pursuant to CPLR §3212 for summary judgement and dismissing the Plaintiffs' Complaints, all crossclaims and the Third-Party Complaint with prejudice (Seq. 18). She argues that she merely furnished the condition or occasion for the occurrence of the accident and was not the proximate cause of Plaintiffs' injuries. She argues that the car was smoking, making it impossible for her to move the car, however her testimony is that she remained in the car for several minutes after it came to a stop before she got out of the vehicle. As referenced above, Defendant Ngo cites a line of Second Department cases to argue her vehicle was not the proximate cause of the accident. Fernandez argues that this accident was unavoidable and occurred solely because Defendant Ngo recklessly, negligently and carelessly left her motor vehicle in the left lane without warning to other motorists which was the proximate cause to the accident.

The Court finds that Defendant Ngo failed to establish that the reason for her vehicle crashing was not the result of her negligence; which would then be a proximate cause of the

accident. Her prima facie burden was to establish that the reason for the vehicle becoming disabled was lawful and not merely the result of a foreseeable problem of her own making. *See Gregson*. The Court also finds a question of fact as to whether she exercised reasonable care in warning other drivers of the hazard posed by exiting the stopped vehicle. *Axelrod v. Krupinski*, 302 N.Y.367 (1951) and *Kornfeld v. United States*, 120 F. Supp. 254 (1954).


Accordingly, Defendant Ranjit Chittibabusuriya's motion for summary judgement and dismissing the Plaintiffs' Complaints and the Third-Party Complaint and any crossclaims under the Graves Amendment (Seq. 14 and 19) is denied. Defendant did not meet his prima facie burden that he nor Defendant Ngo was not vicariously liable and that he was engaged in the trade or business of renting or leasing motor vehicles and that the vehicle was properly maintained and in good condition at the time of delivery or up to the accident.

Similarly, Plaintiffs' motion for an order granting summary judgement on the issue of liability against Defendants Fernandez, Ngo and Chittibabusuriya (Seq. 16) is denied. Though Plaintiffs are innocent passengers they have not proven that the owners and/or operators of any of the offending vehicles are at fault, leaving a triable issue of fact. The portion of Plaintiffs' motion to strike the affirmative defenses of comparative negligence is granted and failure to wear a seatbelt is denied without prejudice to renew upon completion of deposition testimony of Police Officer Varbero.

Defendant Ngo's motion for an Order granting summary judgment (Seq. 18), dismissing crossclaims and the third-party Complaint (Seq. 18) is denied. The Court finds material issues of facts as to the proximate cause of the May 22, 2017 accident and Defendant has not demonstrated she was not the proximate cause.

This is the decision and order of this Court.

Dated: June 24, 2024

  
Hon. Ulysses B. Leverett, J.S.C.

**HON. ULYSSES B. LEVERETT**

