

Pelaez v Merchan-Guaman
2024 NY Slip Op 35087(U)
September 19, 2024
Supreme Court, Westchester County
Docket Number: Index No. 65439/2021
Judge: Janet C. Malone
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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 WESTCHESTER

-----X
STEPHANIE PELAEZ

Plaintiff,

-against-

ANGEL MERCHAN-GUAMAN and ROJAS
TRANSPORTATION LLC,

Defendants.

-----X
ANGEL MERCHAN-GUAMAN and ROJAS
TRANSPORTATION LLC,

Third-Party Plaintiffs,

-against-

LOUISA M. AVANZINO, RYOJI DOHI, LUIS CORDERO,
ERVIN HOXHA and BESNIK HOXHA,

Third-Party Defendants.

-----X
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
LOUISA AVANZINO,

Plaintiffs,

-against-

ANGEL MERCHAN-GUAMAN, ROJAS
TRANSPORTATION LLC, ERVIN HOXHA,
BESNIK HOXHA, LUIS CORDERO and RYOJI DOHI,

Defendants.

-----X
MALONE, J.

DECISION AND ORDER
Motion Seq. Nos. 9, 10, 11

Index No. 65439/2021
Action # 1

Index No. 50595/2022
Action # 2

Overview

Action No. 1 and Action No. 2 arise from a rear-end collision involving six vehicles in the far-right northbound lane of Interstate 95 in Rye, New York.

Now Third-Party Defendants Luis Cordero, Ryoji Dohi, and Ervin and Besnik Hoxha (“the Hoxha Defendants”) (collectively “the Moving Defendants”) move by Notices of Motion filed on October 16, 2023, October 17, 2023, and October 27, 2023, respectively, for summary judgment in both Actions. By way of Motion Sequence No. 9 (NYSCEF Doc. Nos. 202-03; 213; 246; 249; 253; 256-57), Motion Sequence No. 10 (NYSCEF Doc. Nos. 204-212; 251-52), and Motion Sequence No. 11, (NYSCEF Doc. Nos. 214-45; 250; 254) the Moving Defendants argue that they were middle vehicles in the Accident which excuses them from any liability. They argue that Merchan-Guaman and Rojas’ position as the rearmost vehicle creates a presumption of negligence that Merchan-Guaman and Rojas cannot overcome.

Merchan-Guaman and Rojas oppose the three motions arguing that issues of fact prevent summary judgment. Specifically, Merchan-Guaman and Rojas argue that there are issues of fact as to whether (1) the Hoxha Defendants’ vehicle (Vehicle No. 2) unsafely pulled into the lane in front of their vehicle (Vehicle No. 1) and (2) the vehicles involved in the Accident were travelling too closely together. Dohi also submits partial opposition arguing that if the Court denies its motion (Motion Seq. No. 10) it should deny Cordero’s and the Hoxha Defendants’ motions.

During the pendency of the motions, the parties agreed to discontinue Action No. 2 by stipulation of discontinuance dated December 11, 2023 (NYSCEF Doc. No. 245). Therefore, this Decision and Order addresses only the remaining motions asserted by Third-Party Defendants in Action No. 1: Sequences 9, 10, and 11.

Upon consideration of the NYSCEF case file and the foregoing papers, Defendants’ motions for summary judgment are determined based on the following:

Background

Actions No. 1 and 2 were consolidated for purposes of discovery and a trial on liability on December 19, 2022 (NYSCEF Doc. No. 129 in Action No. 1). As this Court (Hyer, J.) found by Decision and Order dated February 24, 2023 (“Prior Order” [NYSCEF 148 in Action No. 1]), the vehicles collided in the following order from back to front: (1) defendant, Rojas Transportation

LLC's 2005 Mitsubishi box truck driven by defendant Angel Merchan-Guaman; (2) defendant, Besnik Hoxha's 2021 Volkswagen driven by defendant Ervin Hoxha, in which Action No. 1 Plaintiff, Stephanie Pelaez, was a passenger; (3) defendant, Jose J. DeJesus's 2014 Jeep driven by defendant, Ryan DeJesus; (4) defendant, Luis Cordero's 2016 GMC pickup truck; (5) defendant, Ryoji Dohi's 2018 Toyota; and (6) Action No. 2 Plaintiff, Louisa Avanzino's 2019 Subaru ("the Accident"). The Prior Order also found:

[a]ccording to the police report, Avanzino slowed down for the traffic in front of her. Dohi's, Cordero's, and DeJesus' vehicles were able to slow down as well. However, a chain reaction occurred when Rojas/Merchan-Guaman box truck struck the Hoxha vehicle from behind, which then was forced to strike the DeJesus vehicle which struck the Cordero truck. The Cordero vehicle then struck the Dohi car which struck Avanzino's vehicle.

Pelaez (passenger in Vehicle No. 2) brought Action No. 1 against Merchan-Guaman and Rojas Transportation LLC ("Rojas"), who jointly answered and brought Third-Party claims against Avanzino, Dohi, Cordero, DeJesus and Besnik and Ervin Hoxha ("the Hoxha Defendants"). The Third-Party defendants answered with cross claims against each other. Avanzino (driver of Vehicle No. 6) brought Action No. 2 directly against Dohi, Cordero, the DeJesus defendants, the Hoxha Defendants, and Merchan-Guaman and Rojas; all of whom answered asserting reciprocal cross claims.

In Action No. 1, this Court (Lubell, J.), by Order on September 21, 2022 (NYSCEF Doc. No. 72 in Action No. 1), granted Plaintiff Pelaez summary judgment as to liability against Merchan-Guaman and Rojas. The Court also dismissed Rojas and Merchan-Guaman's first, second, fifth, and sixth affirmative defenses (*id.*). Dohi, (Motion Seq. No. 2) Cordero (Motion Seq. No 5), the DeJesus Defendants, (Motion Seq. No. 6) and the Hoxha Defendants, (Motion Seq. No. 4) then moved to dismiss the Third-Party claims and cross claims against them. In Action No. 2, Dohi (Motion Seq. No. 1), Cordero (Motion Seq. No. 2), Avanzino (Motion Seq. No. 3) and the Hoxha Defendants (Motion Seq. No. 4) moved for summary judgement.

On February 24, 2023, after consolidation, Justice Hyer issued an order resolving all pending summary judgment motions. In that order, as to Action No. 1, the Court denied Dohi's, Cordero's and the Hoxha Defendants' motions as premature reasoning that "[i]t is unclear from the parties' affidavits what really happened in the accident, other than their own possibly self-serving and more importantly unchallenged, versions of the events" (Prior Order at p. 7). However, the Court granted

summary judgment to the DeJesus Defendants due to Rojas's and Merchan-Guaman's failure to raise an issue of fact and failure to oppose the motion. The Court denied the motions in Action No. 2 on the same grounds. Subsequently, the DeJesus Defendants successfully moved for summary judgment in Action No. 2 on preclusion grounds (NYSCEF Doc. No. 201 in Action No. 2).

Analysis

The proponent of a motion for summary judgment 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 from the case (*see Winegrad v N.Y. Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]; *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). Failure to make such showing requires denial of the motion, regardless of the sufficiency of the opposing papers (*see Winegrad*, 64 NY2d at 853). "Once this showing has been made, however, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action" (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]; *see also Zuckerman*, 49 NY2d at 562). "[M]ere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient" to defeat a prima facie showing of entitlement to summary judgment (*id.*). "In considering the motion for judgment as a matter of law, the trial court must afford the party opposing the motion every inference which may properly be drawn from the facts presented, and the facts must be considered in a light most favorable to the nonmovant" (*Szczerbiak v. Pilat*, 90 NY2d 553, 556 [1997]).

As this Court previously explained (*see Prior Order*, at 6):

"[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, requiring that operator to come forward with evidence of a nonnegligent explanation for the collision to rebut the inference of negligence" (*Bardizbanian v Bhuiyan*, 181 AD3d 772 [2d Dept 2020], *quoting Jimenez v Ramirez*, 171 AD3d 902, 903 [2d Dept 2019]). "Evidence that a vehicle was struck in the rear and propelled into the vehicle in front of it may provide a sufficient non-negligent explanation" (*id.* at 772). "Thus, 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" (*id.* at 772-773, *quoting Chuk Hwa Shin v Correale*, 142 AD3d 518, 519 [2d Dept 2016]).

In Motion Seq. No 9, Cordero argues that he is entitled to summary judgment because he was the fourth vehicle in the collision (NYSCEF Doc. No. 95 at p. 2), he was slowing down and traveling five miles per hour or less at the time he was struck, and that the strike caused him to push into the DeJesus' vehicle (Vehicle No. 3). He further explained that there was heavy traffic at the time of the Accident (NYSCEF Doc. No. 95 at p. 2) and, due to the heavy traffic, the vehicles in front of him slowed down and he slowed down in response (*id.*). He then heard a loud bang and the DeJesus vehicle struck the rear of his vehicle (*id.*). In addition, Cordero argues that in the minute leading up to the accident, he maintained approximately ten feet of distance between his vehicle and the vehicle in front of him (NYSCEF Doc. No. 207 at pp. 17-18).

In Motion Sequence No. 10, Dohi (Vehicle No. 5) argues that he was travelling in the exit lane in heavy traffic behind Avanzino's vehicle (Vehicle No. 6) which was slowing to a stop (NYSCEF Doc. No. 58 at p. 2). He attested that he was also bringing his vehicle to a stop, travelling less than 1-5 miles per hour, and was half a car length to one length away from Avanzino's vehicle (*id.*). He heard a loud bang and saw a pickup truck hit him (*id.*). This contact caused him to push forward into the Avanzino vehicle (*id.* at p. 3). In addition, Dohi introduces the Accident Report (NYSCEF Doc. No. 59) which corroborates that a chain reaction occurred when the last vehicle hit "vehicle 5" (Vehicle No. 2) and that Merchan-Guaman's "[f]ollowing too closely" and "[u]nsafe speed" were "apparent contributing factors" to the Accident (*id.*).

In Motion Sequence No. 11, the Hoxha Defendants argue that Ervin Hoxha was the second vehicle in the Accident, was stopped at the time of the impact, did not change lanes immediately before the impact, and was pushed forward by the Merchan-Guaman and Rojas vehicle (Vehicle No. 1) (NYSCEF Doc. No. 237 at pp. 1-2). Ervin Hoxha further testified that he had "just about a car length" between him and the vehicle in front of him at the time of the Accident (*id.* at p. 17).

The Moving Defendants have established a nonnegligent explanation for the rear-end collisions by showing that they were stopped or slowing their vehicles when struck and were propelled forward into the vehicle in front of them (*see e.g., Sougstad v Capuano*, 215 AD3d 776, 777[2d Dept 2023] [defendant met his prima facie burden for summary judgment by showing that defendant's car was either stopped or slowing down due to traffic conditions at the time of the accident when he was struck and propelled into the vehicle in front of him]; *see also Bardizbanian* 181 AD3d at 778). As such, the burden shifts to Rojas and Merchan-Guaman to overcome this presumption.

In response to the three motions for summary judgment dismissing the Third-Party Complaint, Third-Party Plaintiffs Merchan-Guaman and Rojas submit an omnibus opposition arguing that (1) all of the vehicles were travelling too closely together and (2) the vehicle in front of him (the Hoxha vehicle) changed lanes unsafely and abruptly stopped.

Regarding the first argument, Cordero testified that there was approximately ten feet between his vehicle (Vehicle No. 4) and the Dohi vehicle (Vehicle No. 5) (NYSCEF Doc. No. 207 at pp. 17-18) and Merchan-Guaman testified that the Dohi vehicle and the Cordero vehicle were only two to three feet apart at the time of the Accident (NYSCEF Doc. No. 211 at pp. 44-45). As to Dohi, he testified that he was about a half a car length to one length away from Avanzino's vehicle (NYSCEF Doc. No. 58 at p. 3). As to the Hoxha Defendants, Ervin Hoxha (Vehicle No. 2) testified that he was stopped at the time of the Accident and that there was "just about a car length" between him and the DeJesus vehicle (Vehicle No. 3) at the time of the Accident (NYSCEF Doc. No. 237 at pp. 1-2; 17). Regarding the second argument, while Ervin Hoxha testified that he was stopped at the time of the Accident (NYSCEF Doc. No. 211 at pp. 44-45), Merchan-Guaman testified that the Hoxha vehicle moved into his lane about ten seconds before the Accident and that there were three to four car lengths between his vehicle and the Hoxha vehicle prior to impact (NYSCEF Doc. No. 211 at pp. 43-44).

Merchan-Guaman and Rojas argue that these factual discrepancies preclude summary judgment, however, accepting Merchan-Guaman's testimony regarding the vehicles being two to three feet apart as true, Merchan-Guaman fails to establish that this distance between the vehicles contributed to the Accident considering the vehicles were stopped (NYSCEF Doc. 211, pp. 28; 44-45). Indeed, without an expert or any relevant caselaw, Merchan-Guaman's and Rojas' argument amounts to speculation that a two to three feet separation of vehicles was a cause of the Accident. As to the Hoxha Defendants, Merchan-Guaman's testimony/arguments in Opposition fail to substantiate why pulling into the lane ten seconds before the Accident and leaving 3-4 car lengths of space between the vehicles constitutes stopping without proper warning and contributed to the Accident. Additionally, Merchan-Guaman and Rojas make no attempt to connect the collisions to each other – that is, to establish that the chain reaction of each of the collisions was caused by each of the Third-Party Defendants. Without more, these theories are speculative and unsubstantiated. It is well established that "material proffered in opposition to summary judgment is insufficient if it constitutes mere surmise, suspicion, speculation, or conjecture" (*Agulnick v*

Agulnick, 191 AD3d 12, 16 [2d Dept 2020]).

Furthermore, the cases cited by Merchan-Guaman and Rojas are not specific to their arguments but rather general denials of summary judgment due to issues of fact (*see Migdol v Striker*, 215 AD2d 358, 358 [2d Dept 1995] or they are distinguishable from the instant case (*see De COSMO v HULSE*, 204 AD2d 953, 954 [3d Dept 1994] [Plaintiff's vehicle was proceeding when it stopped for no apparent reason causing the accident as opposed to traffic conditions and slowing/stopped traffic]; *Varsi v Stoll*, 161 AD2d 590, 591 [2d Dept 1990] [in a motion to set aside a verdict after trial, jury found that while travelling approximately 25 miles per hour, a car suddenly darted out in front of the vehicle and despite slamming on the brakes, the vehicle was unable to avoid a rear end collision]; *Glick v M. A. Hittner & Sons, Inc.*, 111 AD2d 150, 150 [2d Dept 1985] [after conflicting evidence at trial as to whether the vehicle was stopped at a red light or suddenly and without proper warning stopped immediately prior to the accident, the Court could not set aside the jury's verdict as the verdict was based on the jury's assessment of credibility of the witnesses]).

Furthermore, it is well accepted that "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. Moreover, a conclusory assertion by the operator of the following vehicle that the sudden stop of the vehicle caused the accident is insufficient, in and of itself, to provide a nonnegligent explanation" (*Brothers v Bartling*, 130 AD3d 554, 556 [2d Dept 2015] [internal citations and quotations omitted]; *see also Russ v Investech Sec.*, 6 AD3d 602, 602 [2d Dept 2004]; *Dickie v Pei Xiang Shi*, 304 AD2d 786, 787 [2d Dept 2003]; *Vecchio v Hildebrand*, 304 AD2d 749, 750 [2d Dept 2003]; *McGregor v Manzo*, 295 AD2d 487 [2d Dept 2002]; *Levine v Taylor*, 268 AD2d 566, 567 [2d Dept 2000]).

Here, in addition to not causally connecting the distance of the vehicles or the Hoxha Defendants' vehicle's lane merge to the cause of the Accident, they also fail to address the foreseeability of the Moving Defendants' actions and did not establish that Merchan-Guaman maintained a safe distance between his vehicle and the vehicle ahead or the predictability that the other vehicles would be stopped close to each other while waiting to exit. Thus, Merchan-Guaman and Rojas—even after being given the benefit of discovery to challenge the assertions in the Third-Party Defendants' prior motions for summary judgment—have failed to establish an issue of fact

to overcome the Moving Defendants’ prima facie cases.

The Court has considered the remaining arguments and find them to be without merit.

Accordingly, it is

ORDERED that the Moving Defendants’ motions (Motion Sequence Nos. 9, 10, and 11) for summary judgment are granted and the Third-Party Complaint is dismissed; and it is further

ORDERED that based on the discontinuance of Action No. 2 and the dismissal of the Third-Party Complaint, the caption is conformed as follows:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
STEPHANIE PELAEZ

Plaintiff,

DECISION AND ORDER
Motion Seq. Nos. 9, 10, 11

Index No. 65439/2021

-against-

ANGEL MERCHAN-GUAMAN and ROJAS
TRANSPORTATION LLC,

Defendants.

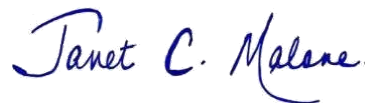
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and it is further

ORDERED, that the remaining parties shall appear for a virtual settlement conference on before Court Attorney Benjamin M. Wright at **4:00pm on October 18, 2024** via Microsoft Teams – [Click here for the videoconference](#)

The foregoing constitutes the Decision and Order of the Court.

Dated: White Plains, New York
September 19, 2024



HON. JANET C. MALONE
Justice of the Supreme Court