

Deliz v Davis
2024 NY Slip Op 35215(U)
January 4, 2024
Supreme Court, Bronx County
Docket Number: Index No. 29144/2017E
Judge: Bianka Perez
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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX, PART 14**

-----X

MONICA DELIZ, as the Administratrix of the
ESTATE OF SOPHIA JULIET AGUIRRE and
MONICA DELIZ, individually,

Action 1

Index №. 29144/2017E

Plaintiffs,

-against-

Hon. BIANKA PEREZ

Justice Supreme Court

STANLEY F. DAVIS, AVID WASTE
SYSTEMS, INC., MARITZA DELIZ, CITY OF
NEW YORK, NEW YORK CITY
DEPARTMENT OF TRANSPORTATION,
NEW YORK CITY DEPARTMENT OF
DESIGN AND CONSTRUCTION, and CARLO
LIZZA & SONS PAVING, INC.,

Defendants.

-----X

MARITZA DELIZ,

Action 2

Index №. 31927/2017E

Plaintiff,

-against-

AVID WASTE SYSTEMS, INC., STANLEY F.
DAVIS, CITY OF NEW YORK, NEW YORK
CITY DEPARTMENT OF
TRANSPORTATION, NEW YORK
DEPARTMENT OF DESIGN AND
CONSTRUCTION, and CARLO LIZZA &
SONS PAVING, INC.,

Defendants.

-----X

HECTOR DELIZ,

Action 3

Index №. 21117/2018E

Plaintiff,

-against-

AVID WASTE SYSTEMS, INC., STANLEY F.
DAVIS, CITY OF NEW YORK, NEW YORK
CITY DEPARTMENT OF
TRANSPORTATION, NEW YORK
DEPARTMENT OF DESIGN AND
CONSTRUCTION, and CARLO LIZZA &
SONS PAVING, INC.,

Defendants.

-----X
THE CITY OF NEW YORK,

Third-Party Plaintiff,

-against-

MARITZA DELIZ,

Third- Party Defendant.

-----X

The following were read on these motions and cross-motion (Index # 29144/2017E: Mot. Seq No. 8, 9, 11; Index # 31927/2017E: Mot. Seq. 3; Index # 21117/2018E: Mot. Seq. 1) for SUMMARY JUDGMENT submitted on March 16, 2023.

Notice of Motion #8 - Exhibits and Affidavits Annexed	No(s). 204-213
Answering Affidavits- Exhibits	No(s). 225, 234-238, 317, 324-329
Replying Affidavit and Exhibits	No(s). N/A
Notice of Motion #9 - Exhibits and Affidavits Annexed	No(s). 215-223
Answering Affidavits- Exhibits	No(s). 239-243, 244-251, 318-319
Replying Affidavit and Exhibits	No(s). 252, 320, 322
Notice of Motion #11 - Exhibits and Affidavits Annexed	No(s). 286-316
Answering Affidavits- Exhibits	No(s). N/A
Replying Affidavit and Exhibits	No(s). N/A
Index 31927/2017E, Notice of Motion #3 - Exhibits and Affidavits Annexed	No(s). 67-80
Answering Affidavits- Exhibits	No(s). 86-87
Replying Affidavit and Exhibits	No(s). 84, 90

Index 21117/2018E, Notice of Motion #1 - Exhibits and Affidavits Annexed	No(s). 41-48
Notice of Cross-Motion – Exhibits and Affidavits Annexed	No(s). 49-55
Answering Affidavits- Exhibits	No(s). 57, 62-66
Replying Affidavit and Exhibits	No(s). 67-73

Upon the foregoing papers, Defendants Avid Waste Systems, Inc. and Stanley Davis (hereinafter “Avid”) move, under Index # 29144/2017E motion sequence #8, for an Order pursuant to CPLR §3212, dismissing plaintiffs’ respective complaints and all causes of action insofar as asserted against Avid Waste Systems, Inc. and Stanley Davis. All Plaintiffs as well as Co-defendant/ Third Party Plaintiff, The City of New York (“City”), and defendants New York City Department of Transportation (“NYCDOT”) and New York City Department of Design and Construction (“NYCDDC”) (collectively, hereinafter “City Defendants”) oppose.

Defendant/Plaintiff/Third-Party Defendant Maritza Deliz (hereinafter “Defendant/Plaintiff Maritza”) moves, under Index # 29144/2017E: motion sequence #9, Index 31927/2017E: motion sequence #3, and cross-moves under Index 21117/2018E, Motion Sequence #1, for summary judgment pursuant to CPLR §3212 dismissing the complaint, the third-party complaint and any counterclaims and/or cross claims on the basis that the movant was not negligent and did not breach any duty owed to the Co-Plaintiffs. The City Defendants, Defendant Carlo Lizza & Sons Paving, Inc (hereinafter “Lizza”) and Plaintiff Monica Deliz, as the Administratrix of the ESTATE OF SOPHIA JULIET AGUIRRE and individually, oppose.

Plaintiff Monica Deliz, as the Administratrix of the ESTATE OF SOPHIA JULIET AGUIRRE and individually, moves under Index # 29144/2017E: motion sequence #11, for an order 1) pursuant to CPLR 3212, granting summary judgment on the issue of liability in favor of Plaintiffs against Defendants Avid and 2) granting summary judgment to Plaintiffs on the issue of their freedom from comparative negligence. No opposition.

Plaintiff Hector Deliz moves under Index # 21117/2018E: motion sequence #1, for an order 1) awarding plaintiff Hector Deliz summary judgment against Defendants Avid 2) pursuant to

CPLR 3212, granting summary judgment to Plaintiff Hector Deliz on the issue of his freedom from comparative negligence.¹ No opposition was filed as to Plaintiff Hector Deliz's motion.

BACKGROUND

These matters arise from an accident that occurred on April 27, 2017 on the Northbound service road of Bruckner Boulevard, near its intersection with East 141 Street in Bronx County, New York. Plaintiffs Monica Deliz, Hector Deliz, and decedent Sophia Juliet Aguirre were passengers (hereinafter "Plaintiff Passengers") in the vehicle owned and operated by Defendant/Plaintiff/Third-Party Defendant Maritza. While stopping to avoid a raised sewer cap due to the re-paving of the road by Defendants New York City Department of Transportation, New York Department of Design and Construction, and Carlo Lizza & Sons Paving, Inc., Defendant/Plaintiff Maritza's vehicle was rear-ended by the vehicle owned by Defendant Avid Waste Systems, Inc. and operated by Defendant Stanley Davis.

Judge Higgitt's Decision & Order dated November 18, 2019 addresses the parties' prior summary judgment motions. As part of those motions, the parties submitted documents regarding the NYC Department of Motor Vehicle investigation and hearing that were conducted regarding this subject accident. This Court found that plaintiff's collateral estoppel argument failed because the DMV was tasked solely with finding whether there was a violation of the Vehicle and Traffic Law (hereinafter "VTL") §1180, and not whether the violation of the VTL §1180 was a proximate cause of the subject accident. Moreover, Defendant Davis and Defendant Avid Waste were not afforded the same, or substantially the same opportunity to litigate liability in the administrative proceeding as they do in this plenary action. The parties' prior summary judgment motions were denied with leave to renew upon completion of discovery (See NYSCEF Doc #155).

¹ Plaintiff Hector Deliz relies and incorporates the moving papers of Plaintiff Monica Deliz under Index 29144/2017E, motion sequence #11.

DEFENDANTS AVID AND DEFENDANT/PLAINTIFF MARITZA'S MOTIONS FOR SUMMARY JUDGMENT

The proponent of a summary judgment motion has the burden of submitting evidence in admissible form demonstrating the absence of any triable issues of fact and establishing entitlement to judgment as a matter of law (*Giuffrida v. Citibank Corp.*, 100 N.Y.2d 72 [2003]; *Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320 [1986]). Only when the movant satisfies its prima facie burden will the burden shift to the opponent “to lay bare his or her proof and demonstrate the existence of triable issues of fact” (*Alvarez*, 68 N.Y.2d at 324; *Zuckerman v. City of New York*, 49 N.Y.2d 557 [1980]; *Chance v. Felder*, 33 A.D.3d 645, 645-646 [2d Dep’t 2006]). “It is well settled 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.” (*Cabrera v. Rodriguez*, 72 A.D.3d 553 [1st Dep’t 2010] citing *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]; see also *Dattilo v. Best Transp. Inc* 79 A.D.3d 432 [1st Dep’t 2010]). Further, VTL § 1129 requires a driver to maintain sufficient space between vehicles to avoid a collision. In a rear-end collision, the burden shifts to the rear driver to come forward with a non-negligent explanation for the crash (*Abbott v Picture Cars E., Inc.*, 78 A.D.3d 869 [2d Dep’t 2010]; *Costa v. Eramo*, 76 A.D.3d 942 [2d Dep’t 2010]). In addition, a motorist is under a duty to see that which under the circumstances he or she should have seen by the proper use of his or her senses. Each driver in the exercise of ordinary prudence ought to have observed and used such care to avoid the collision as an ordinarily prudent person would have used under the circumstances (see *Shea v. Judson*, 283 NY 393 [1940]; *Rennie v. Barbarosa Transp.*, 151 A.D.2d 379, 380 [1st Dep’t 1989]; *Costalas v. City of New York*, 143 A.D.2d 573 [1st Dep’t 1988]; also see, 1 NY PJI 2:79 [2d ed]). A claim that the driver of the lead vehicle made a sudden stop, standing alone, is insufficient to rebut the presumption of negligence (see *id.*; *Farrington v. New York City Tr. Authority*, 33 A.D.3d 332, 822 N.Y.S.2d 51 [2006]

In support of Defendants Avid’s motion for summary judgment, they attached an uncertified copy of the police accident report, the deposition transcripts of Defendant Stanley

Davis and Defendant/Plaintiff Maritza, and the affidavits of reconstruction experts John A. Desch and Timothy G. Joganich.

Defendants Avid allege that Defendant/Plaintiff Maritza created an emergency situation by changing lanes and hard braking and that therefore Defendants Avid's conduct was not a proximate cause of the accident. As the rear vehicle in the rear-end collision, Defendants Avid are required to come forward with an adequate, non-negligent explanation for the accident in order to shift the burden to Defendant/Plaintiff Maritza's vehicle. Defendants Avid relies on Defendant driver Stanley Davis who acknowledges in his deposition testimony that the road was unpaved and that, immediately before the accident, he was traveling in the right lane when he came across a vehicle stopped in the right lane, at which point he moved around the vehicle, while staying in his lane (NYSCEF Doc 310, Pages 63-68, 95). He also asserts that Defendant/Plaintiff Maritza's vehicle entered the right lane from the left lane, suddenly braking, causing the Defendants Avid vehicle to strike Defendant/Plaintiff Maritza's vehicle.

Under the emergency doctrine, "when an actor is faced with a sudden and unexpected circumstance which leaves little or no time for thought, deliberation or consideration, or causes the actor to be reasonably so disturbed that the actor must make a speedy decision without weighing alternative courses of conduct, the actor may not be negligent if the actions taken are reasonable and prudent in the emergency context" (*Rivera v New York City Tr. Auth.*, 77 N.Y.2d 322, 327; see *Garcia v Stewart*, 120 A.D.3d 1298 [2d Dep't 2014]). However, where the claimed emergency resulted from a defendant's own actions, for example, from the defendant's failure to maintain a safe distance between his or her vehicle and the vehicle in front of him or her, it will not qualify as an emergency under the emergency doctrine (see *Shehab v. Powers*, 150 A.D.3d 918, 920, 54 N.Y.S.3d 104; *Burke v. Kreger Truck Renting Co.*, 272 A.D.2d 494, 494–495, 708 N.Y.S.2d 430; *Pappas v. Opitz*, 262 A.D.2d 471, 692 N.Y.S.2d 127). Nor will the emergency doctrine apply where he or she encounters "a known, foreseeable hazard which he in fact observed enter his path prior to the accident" or where he or she "fails to be aware of the potential hazards presented by traffic conditions, including stoppages caused by accidents up ahead" (see *Freder v. Costello Indus., Inc.*, 162 A.D.3d 984, 986 [2d Dep't 2018]) quoting *Cascio v. Metz*, 305 A.D.2d 354, 356 [2d Dep't 2003]).

Here, the Court finds the subject accident does not warrant the emergency doctrine. Instead, Defendants Avid failed to be aware of the potential hazards presented by the traffic conditions. Defendant Davis testified that the roadway was stripped and unpaved and that he had passed a stopped vehicle on his right just before the accident. Thus, Defendants Avid failed to submit a non-negligent explanation for the accident and have failed to rebut the presumption of negligence on a rear end collision.

In opposition to Defendant Avid's motion and in support of Defendant/ Plaintiff Maritza's motions and cross-motion for summary judgment, Defendant/Plaintiff Maritza attaches the NYS Department of Motor Vehicle ("DMV") Findings, Judge Higgitt's November 18, 2019 Decision & Order, Defendants Avid's motion papers, a copy of the pleadings, and Defendant/Plaintiff Maritza's affidavit. For the above stated reasons, Defendant/Plaintiff Maritza established her entitlement to judgment as a matter of law as there are no material issues of fact as to Defendants Avid's negligence in rear-ending the Defendant/Plaintiff Maritza's vehicle and causing the subject accident. Thus, Defendant/ Plaintiff Maritza's motion for summary judgment is granted.

PLAINTIFF PASSENGERS' MOTIONS FOR SUMMARY JUDGMENT ON LIABILITY

Summary judgment in favor of a plaintiff is warranted where the defendant's own conduct inculcates him (*Uragrizza v Schmieder*, 46 NY2d 471 [1979]). "It is well settled that the right of an innocent passenger to summary judgment is not in any way restricted by potential issues of comparative negligence as between the drivers of the two vehicles" (*Garcia v Tri-County Ambulette Serv.*, 282 AD2d 206, 207 [1st Dep't 2001] citing *Johnson v Phillips*, 261 A.D.2d 269, 272 [1st Dep't 1990]).

Here, Plaintiffs Monica Deliz, individually and as the Administratrix of the Estate of Sophia Juliet Aguirre and Hector Deliz established that they were innocent, seat-belted passengers free of comparative fault for the accident at issue (*Anzel v Pistorino*, 105 A.D.3d 784, 786 [2013], quoting *Medina v Rodriguez*, 92 AD3d 850, 850 [2012]). As there is no opposition contradicting these facts, plaintiffs are entitled to summary judgment on liability and the defendants' affirmative defenses of comparative negligence relating to plaintiffs Monica Deliz individually and as the

Administratrix of the ESTATE OF SOPHIA JULIET AGUIRRE and plaintiff Hector Deliz are dismissed (*Guzman v. Desantis*, 148 A.D.3d 580 [1st Dep't 2017]).

There are no applications before the Court to decide defendant Lizza's or City defendants' liability or lack of fault at this time.

Accordingly, it is hereby

ORDERED that Defendants Avid's motion for summary judgment, under Index 29144/2017E: motion sequence #8, is denied, it is further

ORDERED that Defendant/Plaintiff Maritza's motions for summary judgment pursuant to CPLR §3212 dismissing the complaint, and any counterclaims and/or cross claims, under Index # 29144/2017E: motion sequence #9; Index 31927/2017E: motion sequence #3 and Index 21117/2018E: cross-motion under motion sequence #1, are granted, it is further,

ORDERED, that the Clerk of the Court is directed to enter judgment on behalf of the Defendant/Plaintiff Maritza and against co-plaintiffs, co-defendants, and third-party plaintiff herein dismissing the causes of action in the complaints (29144/2017E and Third-Party Complaint under 21117/2018E), and any cross-claims as against her, and it is further

ORDERED that Plaintiff Monica Deliz, as the Administratrix of the Estate Of Sophia Juliet Aguirre and individually, motion, under Index # 29144/2017E; 31927/2017E; motion sequence #11, for summary judgment on the issue of liability and their freedom from comparative negligence is granted with apportionment of liability by and between the remaining defendants Avid, Lizza, and City defendants to be determined at the time of trial, and it is further

ORDERED, that the Clerk of the Court is directed to enter judgment in favor of plaintiff Monica Deliz and against Defendants Avid on the issue of liability and dismissing the affirmative defense of comparative negligence with apportionment of liability by and between the remaining defendants Avid, Lizza, and City defendants to be determined at the time of trial, and it is further

ORDERED that Plaintiff Hector Deliz's motion, under Index # 21117/2018E: motion sequence #1, for an order for summary judgment against Defendants Avid and on the issue of his freedom from comparative negligence is granted with apportionment of liability by and between

the remaining defendants Avid, Lizza, and City defendants to be determined at the time of trial, and it is further

ORDERED that the Clerk of the Court is directed to enter judgment in favor of plaintiff Hector Deliz and against Defendants Avid on the issue of liability and dismissing the affirmative defense of comparative negligence with apportionment of liability by and between the remaining defendants Avid, Lizza, and City defendants to be determined at the time of trial.

This constitutes the Decision and Order of this Court.

Dated: January 4, 2024

Hon. 
BIANKA PEREZ, J.S.C.

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| 1. CHECK ONE..... | ☐ CASE DISPOSED IN ITS ENTIRETY | ☒ CASE STILL ACTIVE |
| 2. MOTION IS..... | ☐ GRANTED | ☐ DENIED ☒ GRANTED IN PART ☐ OTHER |
| | ☐ SETTLE ORDER | ☐ SUBMIT ORDER ☐ SCHEDULE APPEARANCE |
| 3. CHECK IF APPROPRIATE..... | ☐ FIDUCIARY APPOINTMENT | ☐ REFEREE APPOINTMENT |