

Slama v Safi
2024 NY Slip Op 35306(U)
January 18, 2024
Supreme Court, Richmond County
Docket Number: Index No. 150812/2022
Judge: Paul Marrone, Jr.
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND
I.A.S. PART 3M

ROBERTO G. SLAMA

Index #: 150812/2022

Plaintiff

DECISION and ORDER

- against -

Hon. Paul Marrone, Jr.
Justice of the Supreme Court

MOHAMMAD I. SAFI; VANESSA COLUCCIO;
and SALVATORE COLUCCIO

Motion Sequence #1
Motion Sequence #2

Defendants

Recitation, as required by CPLR § 2219 (a), of the papers considered in the review of this motion:

<u>Papers</u>	<u>NYSCEF Document(s)</u>
Vehicle 2 Defendant’s Motion for Summary Judgment on Liability (#1), with supporting documents (filed September 28, 2023)	28 – 33
Plaintiff’s Cross-Motion for Summary Judgment on Liability, and to Strike Affirmative Defenses (#2), with supporting documents (filed November 3, 2023)	50 – 57
Vehicle 3 Defendants’ Opposition to Plaintiff’s Cross-Motion (#2), with supporting document (filed November 14, 2023)	59 – 60
Vehicle 3 Defendants’ Opposition to Vehicle 2 Defendant’s Motion (#1), with supporting document (filed November 15, 2023)	62 – 63
Vehicle 2 Defendant’s Opposition to Plaintiff’s Cross-Motion (#2) (filed November 15, 2023)	65
Plaintiff’s Reply to Vehicle 3 Defendants’ Opposition (#2), with supporting documents (filed November 21, 2023)	69 – 72
Vehicle 2 Defendant’s Reply to Vehicle 3 Defendants’ Opposition (#1) (filed November 22, 2023)	74

The plaintiff in this matter, Roberto G. Slama (hereinafter “Plaintiff”) commenced this action to recover damages allegedly sustained during a chain-reaction motor vehicle collision that occurred on May 7, 2019. At the time of the incident, the lead vehicle was operated by Plaintiff,

the second vehicle was operated by Mohammad I. Safi (hereinafter “Vehicle 2 Defendant”), and the third vehicle was operated by Vanessa Coluccio and owned by Salvatore Coluccio (hereinafter “Vehicle 3 Defendants”, collectively).

Within their answer, Vehicle 3 Defendants asserted a cross-claim for negligence against Vehicle 2 Defendant. The answer also asserted certain affirmative defenses, including comparative negligence, assumption of risk, joint liability, failure to use a seatbelt, the emergency doctrine, and superseding cause, which were sequenced as their first, second, fifth, sixth, twelfth, and thirteenth affirmative defenses, respectively.

Vehicle 2 Defendant filed the instant motion (Motion Sequence #1) for summary judgment on the issue of liability, seeking an order dismissing Plaintiff’s claim and Vehicle 3 Defendants’ cross-claim, to which Vehicle 3 Defendants filed opposition and, in turn, Vehicle 2 Defendant filed a reply. Plaintiff filed the instant cross-motion (Motion Sequence #2) also seeking summary judgment, and to strike Vehicle 3 Defendants’ aforementioned affirmative defenses. Vehicle 2 Defendant and Vehicle 3 Defendants each filed opposition to Plaintiff’s cross-motion, but Plaintiff filed a reply only to Vehicle 3 Defendants.

The motion was heard on November 22, 2023 with all parties represented by counsel, and the Court reserved its decisions.

As a preliminary matter, the Court will address Vehicle 3 Defendants’ argument that the motions are procedurally defective because Vehicle 2 Defendant and Plaintiff each failed to file a Statement of Material Facts as required by the *Uniform Civil Rules for the Supreme and the County Court*. Effective February 1, 2021, every motion for summary judgment in this state, except in lieu of a complaint pursuant to CPLR § 3213, must annex a “separate, short and concise statement, in numbered paragraphs, of the material facts as to which the moving party contends there is no genuine issue to be tried” (22 NYCRR 202.8-g [a]). Such numbered paragraphs must specifically cite to evidence separately submitted in support of the motion (*id.* at [d]). However, CPLR § 2101 (f) provides that a court may excuse defects where “a substantial right of a party is not prejudiced.” Here, the Court finds that the movants have not prejudiced Vehicle 3 Defendants by offering motion papers that functionally bury in voluminous records the relevant allegations of fact and their evidentiary basis, and will not view each movant’s failure to attach the Statement of Material Facts as fatal (*see Amos Fin. LLC v Crapanzano*, 2021 NY Slip Op 21209, 3 [Sup Ct, Rockland County 2021]).

A motion for summary judgment should be granted if “upon all the papers and proofs submitted, the cause of action shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of any of the parties.” (CPLR 3212). Summary judgment is a drastic remedy which should only be employed when there is no doubt as to the absence of triable issues (*Chiara v Town of New Castle*, 126 AD3d 111, 125 [2d Dept 2015], citing *Millerton Agway Cooperative, Inc. v Briarcliff Farms, Inc.*, 17 NY2d 57 [1966]). In the context of a negligence action, a plaintiff must establish that the defendant breached a duty owed to the plaintiff and that the defendant’s negligence was a proximate cause of the alleged injuries (*Tsyganash v Auto Mall Fleet Mgt., Inc.*, 163 AD3d 1033 [2d Dept 2018]).

In support of their motions, Vehicle 2 Defendant and Plaintiff both put forward their own deposition transcripts. Vehicle 2 Defendant averred, during his deposition, that he was stopped at a red light for “less than a minute” when Vehicle 3 Defendant struck him in the rear, and propelled him into Plaintiff’s rear. Plaintiff averred, during his deposition, that he was stopped at the red light for “less than 30 seconds” when he observed Vehicle 2 Defendant come to a “full stop” through his rear-view mirror, before feeling an impact to the rear of his vehicle.

The movants also introduced the transcript from the deposition of Vanessa Coluccio, one of Vehicle 3 Defendants, wherein she stated that she was stopped at the red light for “about a minute” before the light turned green and the vehicles ahead of her began “rolling” towards the intersection. She further stated:

“So the car in front of me – the line of cars in front of me had began rolling, but once they couldn’t go any further, they had braked, and that is when I impacted the car in front of me because there wasn’t enough space.”

The Court notes that both movants submitted copies of a police report created at the scene of the collisions. The Court finds the police report inadmissible, however, as it was not certified, and no foundation testimony establishing its authenticity and accuracy was offered (*Cheul Soo Kang v Violante*, 60 AD3d 991 [2d Dept 2009]).

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 non-negligent explanation for the collision in order to rebut the inference of negligence (*Figueroa v MTLR Corp.*, 157 AD3d 861, 862 [2d Dept 2018]). Vehicle 3 Defendants’ claim that the leading vehicles made sudden stops, standing alone, is insufficient to raise a triable issue of fact as to whether Vehicle 2 Defendant or Plaintiff negligently contributed to the collision under the circumstances of this case (*Mahmud v Feng Ouyang*, 208 AD3d 861, 862 [2d Dept 2022]). While a non-negligent 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 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 vehicle and the vehicle ahead (*Waide v ARI Fleet, LT*, 143 AD3d 975, 976 [2d Dept 2016]).

The Court finds that Vehicle 3 Defendants could not have been operating their vehicle in a non-negligent manner if they were unable to avoid the collision while the leading vehicles were travelling at reasonable rates of speed. Consequently, both the motion and cross-motion will be granted in their entirety.

Accordingly, Vehicle 2 Defendant’s motion (Motion Sequence #1) is GRANTED, and it is hereby:

ORDERED that the complaint and all cross-claims filed against him are dismissed.

Further, Plaintiff's cross-motion (Motion Sequence #2) is GRANTED, and it is hereby:

ORDERED that summary judgment regarding liability is granted in favor of Plaintiff as against Vehicle 3 Defendants; and it is further

ORDERED that Vehicle 3 Defendants' first, second, fifth, sixth, twelfth, and thirteenth affirmative defenses are stricken.

Dated: January 18, 2024
Staten Island, New York



Hon. Paul Marrone, Jr.
Justice of the Supreme Court