

Bryan v Kabir
2024 NY Slip Op 35324(U)
March 5, 2024
Supreme Court, Bronx County
Docket Number: Index No. 817916/2022E
Judge: John A. Howard-Algarin
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

NEW YORK SUPREME COURT - COUNTY OF BRONX

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF THE BRONX

Index No. 817916/2022E

Motion Calendar No.

Motion Date: October 16, 2023

-----x
DILLION MEKEL BRYAN,

AMENDED

DECISION/ ORDER

Plaintiff,

Present:

-against-

Hon. John A. Howard-Algarin
Justice Supreme Court

MOHAMMED KABIR, ABUL AZAD, ON THE
ROAD, MATTHEW RODRIGUEZ, and SYDANE
BRIGGS,

Defendants.
-----x

Recitation, as required by CPLR § 2219(a), of the papers considered in the review of this motion to dismiss the plaintiff's complaint:

<u>Papers</u>	<u>NYSCEF Doc. No(s).</u>
Notice of Motion, Affirmation in Support, Statement of Material Facts, Exhibits Thereto	19-26; 42-43
Notice of Cross-Motion, Affirmation in Support, Statement of Material Facts, Exhibits Thereto	28-38; 44-48
Affirmation(s) in Opposition, Counter-Statement of Material Facts, Exhibits Thereto	39
Reply Affirmation	40

Motions are decided as follows:

The motion of defendants, Mohammed Kabir and Abul Azad (hereinafter "Kabir" and "Azad"), and cross-motion of defendants, On The Road and Matthew Rodriguez (hereinafter "On the Road" and "Rodriguez"), for orders pursuant to CPLR § 3212 granting summary judgment and dismissing all claims and cross-claims asserted against them on the grounds that they are not liable for the motor vehicle accident underlying this action is granted as a matter of law. Additionally, the motion of plaintiff, Dillion Mekel Bryan (hereinafter "Bryan"), for an order pursuant to CPLR § 3212 granting partial summary judgment on the grounds that defendant, Sydane Briggs (hereinafter "Briggs"), is liable for his injuries and dismissing Briggs' affirmative defense of comparative negligence is also granted as a matter of law. The court's findings and conclusions are set forth below.

This action stems from injuries allegedly sustained by plaintiff on March 27, 2021, while he was a passenger in a vehicle owned by defendant, On the Road, and operated by defendant, Rodriguez, as it traveled eastbound on Van Siclen Avenue, at or near its intersection with Livonia Avenue in Kings County, New York. It is asserted that, at the moment complained of, Briggs' vehicle attempted to overtake Rodriguez's vehicle from the rear by crossing the double yellow line into the path of oncoming traffic and, in so doing, made contact with the rear portion of Rodriguez's vehicle causing him to careen into a parked vehicle and the Kabir-Azad vehicle.

Now the plaintiff and defendants Kabir, Azad, On the Road and Rodriguez, seek summary judgment all asserting that the collision at issue was proximately caused by defendant Briggs first in following the Rodriguez vehicle too closely and then in crossing the double-yellow lines on the two-laned roadway resulting in the successive contacts between Briggs' vehicle and the other two vehicles. Briggs opposes the applications arguing that discovery is not yet complete and that the certified police report contains inadmissible hearsay.

In support of their motion, defendants Kabir and Azad proffer, among other things, Azad's Affidavit, in which he avers:

After proceeding into the intersection, the car owned and operated by Sydane Briggs, which was also eastbound on Van Siclen, overtook the vehicle owned by On The Road and operated by Matthew Rodriguez, which was immediately behind me. After hitting the Rodriguez vehicle, the Briggs vehicle then hit my vehicle in the rear, and went on to hit a parked vehicle on Livonia Avenue. There was absolutely nothing that I did to cause the accident and nothing I could have done to prevent it (Azad Aff. at ¶ 3).

Kabir and Azad's submission also contains links to video footage from his vehicle's dashcam and from a nearby security camera depicting Briggs vehicle crossing into the single lane of oncoming traffic on the two-laned two-way roadway ultimately coming into contact with three vehicles by the time it came to rest. Kabir and Azad further support of their motion with a certified police accident report, which states in relevant part:

At [time and place of occurrence the operator] of MV1 [Azad] states that as he was traveling [eastbound] on Livonia Ave. through the intersection of Van Siclen, MV3 [Briggs] did overtake MV2 [Rodriguez] and collided into his vehicle (MV1) . [Operator] of MV2 [Rodriguez] states as he was traveling [eastbound] on Livonia Ave., attempting to turn [northbound] on Van Siclen Ave., MV3 [Briggs] did overtake his vehicle, subsequently causing MV3 [Briggs] to collide into him (MV2) . [Operator] of MV3 [Briggs] states as he was traveling [eastbound] on Livonia Ave., [operator] of MV2 was

brake checking him, and [operator] of MV3 did try to overtake MV2. MV3 did then collide into MV 1, 2, 4. MV4 parked at above location (NYSCEF Doc No. 24)(Emphasis provided).

Plaintiff, and defendants, On The Road and Rodriguez, similarly rely on Azad's Affidavit and the certified police report annexed to his motion in support their respective liability motions. Notably, while Briggs opposes on the general grounds that discovery is incomplete making the motions premature, he offers no affidavit that might provide a first-hand non-negligent explanation for how the accident might otherwise have occurred.

It is well established that, unless there is a non-negligent explanation for the accident (*Baez-Pena v MM Truck and Body Repair, Inc.*, 151 AD3d 473, 476 [1st Dept 2017]), a rear-end collision with a slowing or stopping vehicle establishes a *prima facie* case of negligence on the part of the operator of the rear vehicle (*Ahmad v Behal*, 221 AD3d 558 [1st Dept 2023]; *citing, Kalair v Fajerman*, 202 AD3d 625, 626 [1st Dept 2022]; VTL § 1129[a]). Similarly, crossing a double yellow line into the opposing lane of traffic in violation of Vehicle and Traffic Law § 1126[a] constitutes negligence as a matter of law, unless justified by an emergency situation not of the driver's own making (*see, Foster v. Sanchez*, 17 AD3d 312, 313 [2nd Dept 2005]).

Defendant Azad's affidavit is un rebutted, and thus, is sufficient to place sole responsibility for the accident with defendant Briggs as a matter of law (*see, Bendik v. Dybowski*, 227 AD2d 228 [1st Dept 1996]). That affidavit, along with Briggs' admission, as recorded in the certified police report, that the collisions happened as he attempted to overtake Rodriguez's vehicle from the rear establish *prima facie* that his doing so, in addition to constituting negligence *per se* (*Davis v Turner*, 132 AD3d 603 [1st Dept 2015]), served as the sole proximate cause of the underlying accident (*see Dalrymple v Morochio*, 208 AD3d 751, 753 [2nd Dept 2022]). Relatedly, Briggs has failed both to proffer a non-negligent explanation for the accident or to demonstrate that discovery might lead to relevant evidence that might to this court justify finding to the contrary (CPLR § 3212(f); *see also, Dalrymple*, 208 AD3d at 753). To be sure, the mere hope or speculation that the discovery process may uncover evidence sufficient to defeat a motion for summary judgment is an insufficient basis to deny such a motion (*see id.*).

Finally, plaintiff has not opposed either of the motions for summary judgment at bar choosing, instead, to assess the incident as one upon which liability rests with Briggs' alone.

Accordingly, it is:

ORDERED that defendants, Mohammed Kabir and Abul Azad's, motion for summary judgment dismissing plaintiff's complaint and all cross-claims asserted against

them on the grounds that they are without liability for the motor vehicle accident complained of herein is **GRANTED**;

ORDERED that defendants, On The Road and Matthew Rodriguez's, motion for summary judgment dismissing plaintiff's complaint and all cross-claims asserted against them on the grounds that they are without liability for the motor vehicle accident complained of herein is **GRANTED**;

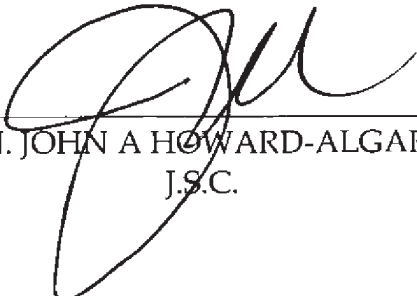
ORDERED that plaintiff, Dillion Mekel Bryan's, motion for summary judgment on the grounds that that there are no triable issues of fact as to the liability defendant, Sydane Briggs' liability herein, as a matter of law, and dismissing Briggs' Affirmative Defense regarding comparative negligence, said motion is **GRANTED**.

ORDERED that plaintiff shall serve a copy of this Order with Notice of Entry within thirty (30) days of entry of this Order.

ORDERED that plaintiff, Dillion Mekel Bryan, and defendant, Sydane Briggs, shall appear for a pre-trial conference on April 8, 2024, at Part 14, Courtroom 708, of the Bronx Supreme Court, at 9:30 a.m.

The forgoing constitutes the Decision and Order of the Court.

Dated: March 5, 2024


HON. JOHN A HOWARD-ALGARIN
J.S.C.