

Simmons v Ruiz
2024 NY Slip Op 35339(U)
March 19, 2024
Supreme Court, Queens County
Docket Number: Index No. 724309/2022
Judge: Phillip Hom
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**SUPREME COURT OF THE STATE OF NEW YORK
QUEENS COUNTY**

PRESENT: HON. PHILLIP HOM PART 14

Justice

-----X

QUEEN SIMMONS,

Plaintiff,

- v -

ARMANDO RUIZ, EDWIN POLING, PENG LI,

Defendants.

-----X

INDEX NO. 724309/2022

MOTION DATE 01/18/2024

MOTION SEQ. NO. 001 + cross-motion

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53

were read on this motion to/for

SUMMARY JUDGMENT

And on this cross-motion to/for

SUMMARY JUDGMENT

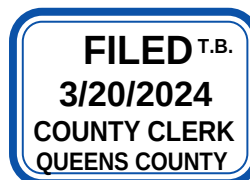
Upon the foregoing documents, it is ordered that this motion by defendant Edwin Poling, and this cross-motion by defendant Peng Li, are determined as follows:

On November 17, 2022, plaintiff Queen Simmons ("Plaintiff") commenced this action to recover for injuries she allegedly sustained in a car crash, which occurred on January 30, 2020, westbound on the Belt Parkway, at or near the Belt Parkway Bridge over Paerdegat Basin, Kings County, NY. The crash involved four vehicles, i.e., Plaintiff's lead vehicle, one vehicle owned and operated by defendant Peng Li ("Li"), one vehicle owned and operated by defendant Edwin Poling ("Poling"), and one vehicle owned and operated by defendant Armando Ruiz ("Ruiz").

Now, Poling moves for an order granting him summary judgment, and dismissing Plaintiff's complaint and any crossclaims against him. Poling claims that he is entitled to summary judgment, as his stopped vehicle was rear-ended by Ruiz's vehicle, which propelled his vehicle into the rear of Li's vehicle. Plaintiff and Ruiz oppose.

Li cross-moves for an order granting him summary judgment, and dismissing Plaintiff's complaint and any crossclaims against him. Li claims that he is entitled to summary judgment, as his stopped vehicle was rear-ended by Poling's vehicle, which propelled his vehicle into the rear of Plaintiff's vehicle. Plaintiff and Ruiz oppose.

In a summary judgment motion, the movant has the initial burden of submitting sufficient evidence eliminating any material issues of fact and demonstrating a prima facie entitlement to judgment as a matter of law (*see Giuffrida v Citibank Corp.*, 100 NY2d 72, 81 [2003]; *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]; *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]).



“A defendant moving for summary judgment in a negligence action has the burden of establishing, prima facie, that he or she was not at fault in the happening of the subject accident” (*De Pina v Jerriek Assoc., Inc.*, 216 AD3d 934, 934 [2d Dept 2023], quoting *Ellsworth v Rubio*, 204 AD3d 978, 979 [2d Dept 2022]).

Only when the movant satisfies this prima facie burden does the burden shift to the opponent to show that material issues of fact exist (*id.*). Thus, where the movant does not satisfy this initial burden, summary judgment is denied regardless of the sufficiency of the opposing papers (*see Voss v Netherlands Ins. Co.*, 22 NY3d 728, 734 [2014]).

The driver of a motor vehicle that approaches another vehicle from the rear, must maintain a reasonably safe rate of speed, a reasonably safe distance, and control over his vehicle, and use reasonable care to avoid colliding with a lead vehicle (*see Sooklall v Morisseav-Lafague*, 185 AD3d 1079, 1081 [2d Dept 2020]; *Catanzaro v Edery*, 172 AD3d 995, 996 [2d Dept 2019]; *Comas-Bourne v City of New York*, 146 AD3d 855, 856 [2d Dept 2017]; *Billis v Tunjian*, 120 AD3d 1168, 1169 [2d Dept 2014]).

It is well-settled law that a rear-end collision with a stopped or stopping vehicle establishes a prima facie case of liability as to the rearmost vehicle, requiring that driver to rebut this inference of negligence by providing a nonnegligent explanation for the collision (*id.*; *Tutrani v County of Suffolk*, 10 NY3d 906, 908 [2008]; *Cheow v Cheng Lin Jin*, 121 AD3d 1058, 1059 [2d Dept 2014]; Vehicle and Traffic Law § 1129 [a]).

“Evidence that a vehicle was rear-ended and propelled into the stopped vehicle in front of it may provide a sufficient nonnegligent explanation” (*Nicola v Nicolas*, 208 AD3d 791, 793 [2d Dept 2022], quoting *Williams v Sala*, 152 AD3d 729, 729 [2d Dept 2017]; *see also Parker v Johns*, 203 AD3d 1059, 1060-61 [2d Dept 2022]). “Therefore, in a chain-collision accident, the defendant operator/owner 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” (*Robinson v New York City Tr. Auth.*, 213 AD3d 786, 787 [2d Dept 2023], quoting *Nicola*, 208 AD3d at 793; *see also Graham v New York City Tr. Auth.*, 219 AD3d 1316, 1317 [2d Dept 2023]; *Sougstad v Capuano*, 215 AD3d 776, 777 [2d Dept 2023]).

Nevertheless, “where [...] there is a question of fact as to the sequence of the collisions, it cannot be said as a matter of law that the negligence of the operator of the last vehicle in the line of vehicles was a proximate cause of the injuries to an occupant [or operator] of the lead vehicle” (*Vavoulis v Adler*, 43 AD3d 1154, 1156 [2d Dept 2007]; *see also Sooklall*, 185 AD3d at 1082; *Mahieddine-Benziane v O’Connor*, 140 AD3d 1125, 1126 [2d Dept 2016]; *Krutul v Tanner*, 139 AD3d 1015, 1016 [2d Dept 2016]).

In support of the motion, Poling submits, among other things, his affidavit (EF 31), the summons and complaint (EF 28), his answer (EF 29), and the answers of Li and Ruiz (EF 30).

Poling avers that, prior to the crash, he was traveling on the Belt Parkway, and that he brought his vehicle to a stop, due to traffic ahead. Poling attests that he was completely stopped

for a couple of seconds, with his foot on the brake pedal, when Ruiz rear-ended him. He avers that the impact of Ruiz's vehicle was so strong that same pushed his vehicle forward and into the rear of Li's vehicle. He states that he did nothing to cause or contribute to the happening of the crash.

Here, Poling establishes his prima facie entitlement to judgment as a matter of law by demonstrating that his vehicle was properly stopped behind Li's vehicle when it was struck from behind by Ruiz's vehicle and propelled into Li's vehicle (*see Graham*, 219 AD3d at 1317; *Sougstad*, 215 AD3d at 777; *Robinson*, 213 AD3d at 787). Therefore, it is incumbent upon Plaintiff, Li, and Ruiz to raise a triable issue of fact.

In opposition, Ruiz and Plaintiff merely submit attorney affirmations (EF 33, 51), which are not based upon personal knowledge, and is of no probative or evidentiary significance (*see United Specialty Ins. v Columbia Cas. Co.*, 186 AD3d 650, 651 [2d Dept 2020]).

Plaintiff and Ruiz argue that Poling's motion is premature, as discovery is still outstanding, including, the examination before trial of the parties. The Court finds that the premature argument put forth by Plaintiff and Ruiz unavailing, as they fail to offer any evidence that discovery may lead to relevant evidence or that facts essential to opposing the motion were exclusively in Plaintiff's, Poling's and/or Li's knowledge and control (*see Maliakel v Morio*, 185 AD3d 1018, 1019 [2d Dept 2020]). Moreover, Plaintiff and Ruiz fail to explain why they did not submit affidavits in opposition (*see Shah v MTA Bus Co.*, 201 AD3d 833, 834 [2d Dept 2022]). Also, Plaintiff and Ruiz offer nothing beyond mere speculation and bald conjecture concerning what relevant evidence he hopes to uncover during discovery, which would bear on his liability for the alleged incident (*id.*). Li does not oppose this motion. Thus, Plaintiff, Li, and Ruiz fail to raise a triable issue of fact.

In support of the cross-motion, Li submits, among other things, his affidavit (EF 47).

Li attests that, prior to the collision, he was traveling directly behind Plaintiff's vehicle on the Belt Parkway in the left lane. Li attests that Plaintiff's vehicle came to a stop in front of him, so he brought his vehicle to a gradual stop behind Plaintiff's vehicle. He avers that he was completely stopped for approximately 5 seconds, with his foot on the brake pedal, when he was rear-ended by Poling's vehicle. Li states that the force of the impact pushed his vehicle forward into the rear of Plaintiff's vehicle. He claims that he did nothing to cause or contribute to the happening of the collision.

Here, Li also establishes his prima facie entitlement to judgment as a matter of law by demonstrating that his vehicle was properly stopped behind Plaintiff's vehicle when it was struck from behind by Poling's vehicle and propelled into Plaintiff's vehicle (*see Graham*, 219 AD3d at 1317; *Sougstad*, 215 AD3d at 777; *Robinson*, 213 AD3d at 787). As previously mentioned, the Court finds that Poling's vehicle was pushed into the rear of Li's vehicle, due to the impact of Ruiz's vehicle colliding the rear of Poling's vehicle. Therefore, it is incumbent upon Plaintiff and Ruiz to raise a triable issue of fact.

For the same reasons stated above, the Court finds that Plaintiff and Ruiz fail to raise a triable issue of fact in opposition to Li's cross-motion.

In accordance with the foregoing, it is hereby **ORDERED** that defendant Edwin Poling's motion is granted; and it is further

ORDERED that Plaintiff's complaint and all crossclaims are dismissed as against defendant Edwin Poling; and it is further

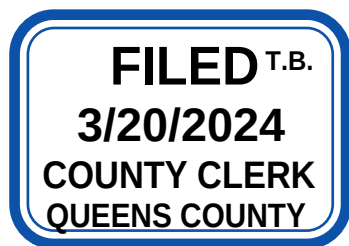
ORDERED that defendant Peng Li's cross-motion is granted; and it is further

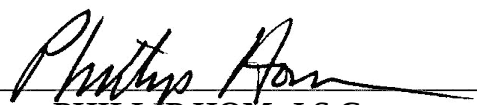
ORDERED that Plaintiff's complaint and all crossclaims are dismissed as against defendant Peng Li; and it is further

ORDERED that defendants Peng Li and Edwin Poling shall serve, via NYSCEF, a copy of this Order with Notice of Entry upon Plaintiff and defendant Armando Ruiz, within five (5) days of the date of entry.

This constitutes the Decision and Order of this Court.

Dated: March 19, 2024




PHILLIP HOM, J.S.C.