

Islam v Lozier

2025 NY Slip Op 32680(U)

July 22, 2025

Supreme Court, New York County

Docket Number: Index No. 151725/2023

Judge: Richard Tsai

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

PRESENT: HON. RICHARD TSAI **PART** **21**

Justice

-----X

MD RAZIBUL ISLAM,

Plaintiff,

- v -

HEBERT LOZIER, IVOR ARMOGA, METROPOLITAN
TRANSPORTATION AUTHORITY, NEW YORK CITY
TRANSIT AUTHORITY,

Defendants.

-----X

INDEX NO. 151725/2023

MOTION DATE 02/29/2024,
12/06/2023

MOTION SEQ. NO. 002 003

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document numbers (Motion 002) 38-45 were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER).

The following e-filed documents, listed by NYSCEF document numbers (Motion 003) 48-61 were read on this motion to/for JUDGMENT - SUMMARY.

In this motor vehicle action involving a chain collision of vehicles, plaintiff now moves for summary judgment in his favor as to liability against defendants Ivor Armoga,¹ Metropolitan Transportation Authority, and New York City Transit Authority (collectively, the Transit Defendants), and for summary judgment dismissing all affirmative defenses (Seq. No. 002). Defendant Hebert Lozier opposes the motion.

Lozier also separately moves for summary judgment dismissing the complaint as against him along with all cross-claims (Seq. No. 003). The Transit Defendants oppose Lozier’s motion.

This decision addresses both motions.

BACKGROUND

At plaintiff’s statutory hearing, plaintiff testified that, on August 1, 2022, he was driving on West 115th Street and Lenox Avenue (Exhibit C in support of plaintiff’s motion, statutory hearing tr at 7, line 25 through 8, line 3; at 18, line 3; at 19, line 6). According to plaintiff, he was the first car to reach the red light on West 115th Street (*id.* at 19, lines 13-14). Plaintiff testified that he was waiting at the red light for a few seconds, and he was suddenly hit from behind heavily (*id.* at 19, lines 15-17; at 20, lines

¹ The summons named this defendants Ivor Armoga, but the complaint names this defendant as Ivor Armogan.

23-25). Plaintiff stated that the light was still red when the incident occurred (*id.* at 21, lines 3-6). According to plaintiff, he told police who arrived at the scene that his left wrist, left leg, back of the head, knee, and lower back were injured (*id.* at 40, line 17 through 41, line 7).

In an affidavit, defendant Herbert Lozier stated that, at the time of the accident, he was operating a brown 2015 Honda CR-V, which he owned (see Exhibit A in opposition to plaintiff's motion, Lozier aff ¶ 3 [NYSCEF Doc. No. 44]; see *also* Exhibit E in support of Lozier's motion [NYSCEF Doc. No. 56]). Lozier averred that his vehicle came to a complete stop as he approached the intersection of 115th Street and Lenox Ave, for the traffic light was red (*id.* ¶¶ 11-12). According to Lozier, there was one vehicle directly ahead of him, which was also stopped for the red light, and Lozier was approximately 2 meters behind this vehicle (*id.* ¶¶ 13, 15). Lozier stated that he felt an impact to the rear of his vehicle, and the impact propelled Lozier's vehicle forward, causing him to rear-end the vehicle directly ahead of him (*id.* ¶ 18). Lozier stated that, after the accident, he exited his vehicle and saw that he had been rear-ended by an MTA maintenance vehicle (*id.* ¶ 20). Lozier later learned that the vehicle ahead of him was plaintiff's vehicle (*id.* ¶ 14).

According to a certified police accident report, there were three vehicles involved in the incident: plaintiff's vehicle, Lozier's vehicle, and a vehicle operated by Ivor Armogan, bearing a New York license plate number AV7749 (see Exhibit B in opposition to plaintiff's motion [NYSCEF Doc. No. 45]; see *also* Exhibit F in support of Lozier's motion [NYSCEF Doc. No. 57]).

In the Transit Defendants' answer, they admitted that defendant New York City Transit Authority (NYCTA) owned a bus bearing license plate number AV77V9, that the bus was operated by defendant Ivor Armogan, its employee, and that Armogan "operated said bus within the scope of his employment and with the permission of" the NYCTA (see Exhibit B in support of plaintiff's motion, answer ¶ 5 [NYSCEF Doc. No. 41]; see *also*

DISCUSSION

"On a motion for summary judgment, the moving party must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact. If the moving party produces the required evidence, the burden shifts to the nonmoving party to establish the existence of material issues of fact which require a trial of the action" (*Xiang Fu He v Troon Mgt., Inc.*, 34 NY3d 167, 175 [2019] [internal citations and quotation marks omitted]).

On a motion for summary judgment, "facts must be viewed in the light most favorable to the non-moving party" (*Vega v Restani Const. Corp.*, 18 NY3d 499, 503 [2012] [internal quotation marks omitted]).

I. Lozier's Motion for Summary Judgment (Seq. No. 003)

"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" (*Chuk Hwa Shin v Correale*, 142 AD3d 518, 519 [2d Dept 2016]).

Here, Lozier met his prima facie burden for summary judgment dismissing the complaint as against him, based on his affidavit that his vehicle was stopped when it was rear-ended by a vehicle operated by Armogan, which then propelled Lozier's vehicle into plaintiff's vehicle.

Plaintiff did not oppose Lozier's motion.

The Transit Defendants argue that Lozier's motion is premature, because depositions have not been held (see affirmation of counsel for the Transit Defendants in opposition to Lozier's motion ¶¶ 8-17 [NYSCEF Doc. No. 58]). This argument is without merit, because any explanation for why Armogan rear-ended Lozier's vehicle was already present within Armogan's own personal knowledge (see *Stephenson v New York City Tr. Auth.*, 226 AD3d 546 [1st Dept 2024]; *Ahmad v Behal*, 221 AD3d 558, 559 [1st Dept 2023]).

Therefore, Lozier's motion for summary judgment dismissing the complaint as against him is granted.

Because Lozier can no longer be held liable to plaintiff, the cross-claims of the Transit Defendants, for common-law indemnification and/or contribution, are dismissed by operation of law (see e.g. *Bendel v Ramsey Winch Co.*, 145 AD3d 500, 501 [1st Dept 2016] [in view of the dismissal of the complaint in its entirety as against a defendant, the cross claims against that defendant are also dismissed]). Lozier's own cross-claims for common-law indemnification and contribution against the other co-defendants are also dismissed as academic (*Rogers v Rockefeller Group Intl., Inc.*, 38 AD3d 747, 750 [2d Dept 2007]).

II. Plaintiff's Motion for Summary Judgment (Seq. No. 002).

"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 nonnegligent explanation for the collision" (*Madera v Charles Hukrston Truck, Inc.*, 235 AD3d 452 [1st Dept 2025] [internal quotation marks omitted]).

“In a chain-reaction collision, responsibility presumptively rests with the rearmost driver” (*Cabrera v Thomas*, 193 AD3d 406 [1st Dept 2021]; *Chang v Rodriguez*, 57 AD3d 295 [1st Dept 2008]).

Here, it is undisputed that the rearmost driver was Ivor Armogan, who rear-ended Lozier’s vehicle and propelled it into plaintiff’s vehicle. Thus, plaintiff met his prima facie burden of establishing Armogan’s negligence. Plaintiff’s testimony that he suffered injuries to left wrist, left leg, back of the head, knee, and lower back also established that Armogan’s negligence was a substantial factor in causing plaintiff injury.

As the NYCTA is the admitted owner of the vehicle operated by Armogan with NYCTA’s permission, plaintiff met his prima facie burden that NYCTA is vicariously liable for Armogan’s negligence under Vehicle and Traffic Law § 388 (see *Murdza v Zimmerman*, 99 NY2d 375, 379 [2003]). As the incident occurred within the scope of Armogan’s employment, NYCTA is also vicariously liable for Armogan’s negligence under the doctrine of respondeat superior (*Riviello v Waldron*, 47 NY2d 297, 302 [1979]; *Ryga v New York City Tr. Auth.*, 17 AD3d 561, 562 [2d Dept 2005]).

Thus, plaintiff is granted summary judgment in his favor as to liability against the NYCTA and Armogan.

To be clear, the determination of their fault as a matter of law on this motion does not include the issue of whether plaintiff suffered a serious injury within the meaning of Insurance Law § 5102 (d), “which is a threshold matter separate from the issue of fault” (*Reid v Brown*, 308 AD2d 331, 332 [1st Dept 2003]).

Plaintiff is also entitled to summary judgment dismissing the first affirmative defense of culpable conduct and the fourth affirmative defense of the emergency doctrine in the answer of the Transit Defendants. As plaintiff was the driver of the lead vehicle who was rear-ended, plaintiff is presumed not negligent (see *Ly Giap v Hathi Son Pham*, 159 AD3d 484, 485 [1st Dept 2018]; *Soto-Marroquin v Mellet*, 63 AD3d 449, 449-50 [1st Dept 2009]). Additionally, “the emergency doctrine does not apply to typical accidents involving rear-end collisions because trailing drivers are required to leave a reasonable distance between their vehicles and vehicles ahead of them” (*Shehab v Powers*, 150 AD3d 918, 920 [2d Dept 2017]; *Johnson v Phillips*, 261 AD2d 269, 271 [1st Dept 1999] [“the emergency doctrine typically is inapplicable to routine rear-end traffic accidents”]).

However, plaintiff did not meet his prima facie burden with respect to the other affirmative defenses, such as the seatbelt defense, collateral sources, an offset in the event of settlement, among other defenses. Although plaintiff’s counsel claims that plaintiff stated that he wore a seat belt in an affidavit (see affirmation of plaintiff’s counsel in support of motion ¶ 37 [NYSCEF Doc. No. 39]), there is no affidavit from plaintiff in the record.

Plaintiff did not meet the prima facie burden of summary judgment as to defendant Metropolitan Transportation Authority, who was neither the owner of the rear-most vehicle nor the employer of Armogan.

Finally, Lozier opposed plaintiff's motion to the extent that plaintiff was also seeking summary judgment in his favor as to liability as against Lozier. However, the notice of motion in plaintiff's motion clearly indicates that plaintiff sought summary judgment against the Transit Defendants, not Lozier. To be clear, Lozier established on his motion that he was not negligent as a matter of law because Lozier's stopped vehicle was rear-ended and then propelled into plaintiff's vehicle.

CONCLUSION & ORDER

Upon the foregoing documents, it is **ORDERED** that plaintiff's motion for summary judgment in his favor against defendants Ivor Armoga, Metropolitan Transportation Authority, and New York City Transit Authority (Seq. No. 002) is **GRANTED IN PART TO THE EXTENT THAT** plaintiff is granted partial summary judgment in his favor as to liability against defendant Ivor Armogan, sued herein as Ivor Armoga, and defendant New York City Transit Authority, who are jointly and severally liable; and it is further

ORDERED that the first affirmative defense of culpable conduct and the fourth affirmative defense of the emergency doctrine in the answer of defendants Ivor Amorga, Metropolitan Transportation Authority and New York City Transit Authority are stricken; and it is further

ORDERED that plaintiff's motion for summary judgment is otherwise denied; and it is further

ORDERED that defendant Hebert Lozier's motion for summary judgment dismissing the complaint and all cross-claims (Seq. No. 003) is **GRANTED**, the complaint is severed and dismissed as against defendant Hebert Lozier, and all cross-claims by and against Lozier are dismissed; and it is further

ORDERED that the Clerk is directed to enter judgment in defendant Hebert Lozier's favor accordingly, with costs and disbursements to this defendant upon submission of an appropriate bill of costs; and it is further

ORDERED that the remainder of the action shall continue; and it is further

ORDERED that the remaining parties are directed to appear for a status conference in person in IAS Part 21, 80 Centre Street Room 280, New York, NY 10013

on September 18, 2025 at 3 p.m.



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7/22/2025

DATE

RICHARD TSAI, J.S.C.

CHECK ONE:

MOTION SEQ. NO. 002

MOTION SEQ. NO. 003

APPLICATION:

CHECK IF APPROPRIATE:

CASE DISPOSED

GRANTED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

OTHER

REFERENCE