Gustave v Thomas
2025 NY Slip Op 35393(U)
January 31, 2025
Supreme Court, Queens County
Docket Number: Index No. 700050/2023
Judge: Maurice E. Muir
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Short Form Order

NEW YORK SUPREME COURT – QUEENS COUNTY

Present: HONORABLE MAURICE E. MUIR
Justice

ROGER GUSTAVE,

Plaintiff,

-against-

DANIEL A. THOMAS, REGINA IREK,

Defendants.

IAS Part - 42

Index No.: 700050/2023

Motion Date: 1/25/24

Motion Cal. No. 26

Motion Seq. No. 1

The following electronically filed ("EF") documents read on this motion by Regina Irek ("Ms. Irek") for an order: (a) pursuant to CPLR § 3212 granting summary judgment on the issue of liability, in favor of the defendant(s), Regina Irek, dismissing plaintiff's complaint and all claims and cross claims against defendant, Regina Irek; and (b) granting such other and further relief as this Court may deem to be just and proper.

Moreover, Daniel A. Thomas ("Mr. Thomas") cross moves for an order: (a) pursuant to CPLR § 3212, granting summary judgment dismissing the complaint of Roger Gustave, and any cross-claim of co-defendant, Regina Irek, on the grounds that no liability for the subject motor vehicle accident which gave rise to this complaint exists against Daniel A. Thomas; and (b) granting such other and further relief that this Court may deem just and proper.

	Papers Numbered
Notice of Motion-Affirmation in Support-Exhibits..................................	EF 22 - 28
Affirmation in Opposition-Exhibits-Service..	EF 29 - 33
Notice of Cross Motion-Affirmation in Support-Exhibits-Service...........	EF 34 - 44
Affirmation in Opposition-Exhibit-Service..	EF 46 - 48
Reply Affirmation-Service..	EF 49 - 51
Reply Affirmation..	EF 52

Upon the foregoing papers, it is ordered that the motion and cross-motion are combined

herein for disposition, and determined as follows:

This is an action to recover damages for personal injuries Roger Gustave ("Mr. Gustave" or "plaintiff") allegedly sustained in a motor vehicle collision. As a result, on January 3, 2023, the plaintiff commenced the instant action; and on or about January 27, 2023, issue was joined. Now, defendants move for the above-described relief. In support of the instant motion Ms. Irek avers that she was driving straight on Linden Boulevard, when the plaintiff's vehicle crossed the double yellow solid lines and collided with her vehicle head on. As a result, her vehicle spun out and collided into Thomasina's Restaurant. In opposition, Mr. Gustave avers that on October 26, 2020, at approximately 12:20 p.m., there was light drizzle, and the roads were wet; and both of his headlights and wipers were on. Moreover, on the day in question, he was driving approximately 20 mph on Linden Boulevard at or near its intersection with 205th Street when Daniel Thomas ("Mr. Thomas") pulled away from the curb on his right without signaling and towards his path of travel on Linden Boulevard. In order to avoid striking Mr. Thomas' vehicle, he had enough room to move to the left while remaining on his side of Linden Boulevard without ever crossing over the double yellow lines. However, Ms. Irek's vehicle was approaching in the opposite direction; and she swerved towards him and crossed over the double yellow lines. AQs a result, the plaintiff alleged that her driver's front bumper collided with his driver's front bumper: Afterward, Ms. Irek lost control and struck the planters in front of Thomasinas Restaurant. Now, the parties seek the above-described relief.

It is well settled law that "[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" (*Boulos v. Lerner-Harrington*, 124 AD3d 709 [2d Dept 2015]; *see Aponte v. Vani*, 155 AD3d 929 [2d Dept 2017]; *Baulete v. L & N Car Serv., Inc.,* 134 AD3d 753 [2d Dept 2015]; *Miron v. Pappas*, 161 AD3d 1063 [2d Dept 2018]; *see also Chan Pok Kim v. Jurado*, 203 AD3d 694 [2d Dept 2022]). Furthermore, it must be remembered that "[t]here can be more than one proximate cause of an accident." (*Lopez v. Reyes–Flores,* 52 AD3d 785, 786 [2d Dept 2008] quoting *Cox v. Nunez,* 23 AD3d 427 [2d Dept 2005]; and "[g]enerally, it is for the trier of fact to determine the issue of proximate cause" (*Kalland v. Hungry Habor Assoc., LLC*, 84 AD3d 889 [2d Dept 2011]).

Here, the court finds that the defendants failed to establish their *prima facie* entitlement to judgment as a matter of law on the issue of liability. In fact, they failed to establish, *prima facie*,

that they were free from fault in the happening of the subject accident. (*Rogers v. Consolidated Edison Co. of New York*, 223 AD3d 689 [2d Dept 2023]; *Woods v. Burgos*, 220 AD3d 688 [2d Dept 2023]; *Nesbitt v. Gallant*, 149 AD3d 763 [2d Dept 2017]; *see also Brunson v. Korkovilas*, 208 AD3d 842 [2d Dept 2022]). For instance, the court finds that there is a triable issue of fact as to whether Ms. Irek crossed the double yellow line in violation of Vehicle and Traffic Law §1126(a), which states, in relevant part, that "[w]hen official markings are in place indicating those portions of any highway where overtaking and passing or driving to the left of such markings would be especially hazardous, no driver of a vehicle proceeding along such highway shall at any time drive on the left side of such markings." It is well settled law that crossing a double yellow line into the opposing lane of traffic, in violation of VTL §1126(a), constitutes negligence as a matter of law, unless justified by an emergency situation not of the driver's own making" (*Burgess v. Little Wolf Cabinet Shop, Inc.*, 226 AD3d 957 [2d Dept 2024]; *Walker v. Edwards*, 230 AD3d 957 [2d Dept 2024]; *Foster v. Sanchez*, 17 AD3d 312 [2d Dept 2005]; *Browne v. Logan Bus Co., Inc.*, 156 AD3d 856 [2d Dept 2017]).

Furthermore, the court finds that there is a triable issue of fact as to whether Mr. Thomas violated VTL § 1162, which states that "[n]o person shall move a vehicle which is stopped, standing, or parked unless and until such movement can be made with reasonable safety." Again, "'[t]here can be more than one proximate cause of an accident'" (*Lopez v. Reyes-Flores*, 52 AD3d 785, 786 [2d Dept 2008], quoting *Cox v. Nunez*, 23 AD3d 427 [2d Dept 2005]). This is because each driver has a duty to exercise reasonable care under the circumstances to avoid an accident. (*see Lu Yuan Yang v. Howsal Cab Corp.*, 106 AD3d 1055, 1056 [2d Dept 2013]; *Cajas-Romero v. Ward*, 106 AD3d 850, 851 [2d Dept 2013]; *Shui-Kwan Lui v. Serrone*, 103 AD3d 620 [2d Dept 2013]). As a result, even where there is evidence that another driver involved in the accident was negligent as a matter of law due to a violation of the Vehicle and Traffic Law, "the proponent of a summary judgment motion has the burden of establishing freedom from comparative negligence as a matter of law" (*Pollack v. Margolin*, 84 AD3d 1341, 1342 [2d Dept 2011]; *Regans v. Baratta*, 106 AD3d 893, 894 [2d Dept 2013]). Here, neither defendant established that they are free from comparative negligence as a matter of law.

Lastly, it must be remembered that "[a] motion for summary judgment should not be granted where the facts are in dispute, where conflicting inferences may be drawn from the

evidence, or where there are issues of credibility" (*Walker v. Ryder Truck Rental & Leasing*, 206 AD3d 1036 [2d Dept 2022] citing *Ruiz v. Griffin*, 71 AD3d 1112, 1115 [2d Dept 2010] [internal quotation marks omitted]). "The function of the court on a motion for summary judgment is not to resolve issues of fact or determine matters of credibility, but merely to determine whether such issues exist" (*Charlery v. Allied Tr. Corp.*, 163 AD3d 914, 915 [2d Dept 2018] [internal quotation marks omitted]; *see Chimbo v. Bolivar*, 142 AD3d 944, 945 [2d Dept 2016]; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]).

Accordingly, it is hereby

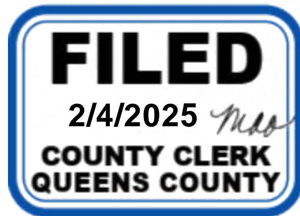
ORDERED that Regina Irek's motion for summary judgment, pursuant to CPLR § 3212, is denied, in its entirety; and it is further,

ORDERED that Daniel A. Thomas' cross motion for summary judgment, pursuant to CPLR § 3212, is denied, in its entirety; and it is further,

ORDERED that plaintiff shall serve a copy of this decision and order with notice of entry upon all parties on or before February 20, 2025.

The foregoing constitutes the decision and order of the court.

Dated: January 31, 2025
Long Island City, New York



MAURICE E. MUIR, J.S.C.