

Huseyin v Sharma
2025 NY Slip Op 35643(U)
May 7, 2025
Supreme Court, Queens County
Docket Number: Index No. 721077/2023
Judge: Anna Culley
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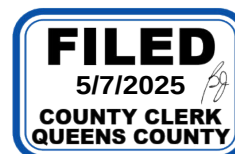
Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE ANNA CULLEY IA Part 27
Justice-----X
SAMIL CELIK HUSEYIN,

Plaintiff,

-against-

SAGAR SHARMA, "JOHN DOE", a fictitious
name/person intended to be the unknown operator of
the subject vehicle and TRIANGLE SERVICE INC.,Defendants.
-----XIndex
Number 721077 /2023Motion
Date February 27, 2024Mot Seq. No. 1

The following numbered papers read on this motion by defendant Sagar Sharma for an order

1) Granting him summary judgment pursuant to CPLR §3212 dismissing the complaint and any and all cross claims against him on the basis that he did not breach any duty owed to the plaintiff, and therefore, is not a proximate cause of the subject accident.

	Papers Numbered
Notice of Motion - Affidavits - Exhibits	EF 101-106
Answering Affidavits - Exhibits	EF 107-109
Reply Affidavits	EF 110

Upon the foregoing papers, it is ordered that the motion is determined as follows:

The instant action arises from a motor vehicle accident that occurred on May 17, 2019, on the Van Wyck Expressway, at or near Exit 9, in Queens County, New York. Plaintiff was a passenger in the vehicle owned and driven by defendant Sagar Sharma ("Sharma") when it allegedly

came into contact with a vehicle owned by defendant Triangle Service, Inc. (“Triangle Service”), and operated by an unknown individual sued herein as “John Doe”¹.

Plaintiff originally commenced the instant action in Kings County, designated under Index No. 504404/2021.

On April 12, 2021, Triangle Service filed its Answer, setting forth twenty two affirmative defenses and a cross-claim against Sharma based upon him allegedly being

By Order of the Robin K. Sheares, J.S.C., dated January 19, 2023, defendants Sharma and Triangle Service’s separate motions for summary judgment against plaintiff on the issue of “serious injury”, as defined in Insurance Law §5102(d), were both granted, as to the “90/180-day” category, only, and denied as to the other categories. Sharma had previously moved for the same relief sought in this instant motion when the matter was in Kings County. Said motion was assigned Motion Sequence No. 25, and was fully briefed prior to the action being transferred to Queens County on or around October 5, 2023.

Sharma now brings the instant motion for an order granting him summary judgment, pursuant to CPLR §3212, dismissing plaintiff’s complaint and any cross-claims against him, arguing, in sum and substance, that he was free from negligence and that the negligence of the Triangle Service driver in violating Vehicle and Traffic Law §1128[a] was the sole proximate cause of the accident. The motion is opposed by Triangle Service.² No opposition is submitted by the plaintiff.

In support of his motion, Sharma submits, *inter alia*, his examination before trial (“EBT”) transcript testimony, plaintiff’s EBT transcript testimony, EBT transcript testimony of Triangle Service’s Chief Operating Officer Gregory Blake Fine (“Fine”), and an excerpt of EBT transcript testimony of Triangle Service’s employee Alejandro Ramos (“Ramos”).

Sharma testified that: after he merged on to the Van Wyck Expressway, he was traveling in the rightmost lane traveling at a rate of approximately 45 to 50 miles per hour; he saw Triangle Service’s vehicle in the lane to the left of him; Triangle Service’s vehicle crossed over into his lane of travel; he sounded the horn; the front-driver’s side of his vehicle came into contact with the front-passenger’s side of Triangle Service’s vehicle; and that as a result of that contact, he swerved to his right and his vehicle then hit a highway barrier, resulting in his car being pinned against the barrier by Triangle Service’s vehicle. Plaintiff’s EBT testimony corroborates Sharma’s version of events.

¹The Court notes that the identity of the driver has since been exchanged following the deposition of Gregory Blake Fine, a representative of Tiger Industries, as Santiago Diaz. However, neither side has moved to substitute said individual in place and stead of the “John Doe” defendant.

²Triangle Service’s opposition papers, in addition to Sharma’s replying papers, were incorrectly filed under Motion Sequence No. 25. The Court has considered these filings as pertaining to the instant motion.

Fine testified, *inter alia*, to Triangle Service's ownership of the vehicle, the inter-office procedures for generating an accident report, that the individual driving Triangle Service's vehicle was Santiago Diaz ("Diaz"), that "one of [Triangle Service's] admins [sic] [p]robably filled out" the accident report, that Mr. Diaz no longer works at the company, and that he had no additional information regarding the accident. The accident report was only marked as being "submitted by" Ramos, not by Diaz, and Fine was unsure if Diaz was present when the report was prepared.

As pertaining to Ramos' EBT testimony, Sharma submits a two-page excerpt from Ramos' EBT transcript, wherein Ramos states, *inter alia*, that: he never saw Sharma's vehicle anywhere except in the right lane; the front-passenger side of Triangle Service's vehicle came into contact with the front-driver's side of Sharma's vehicle; the point of contact occurred "on the right lane with [Sharma's vehicle] and the lane immediately next to [Sharma]...which was the lane that [him and Mr. Diaz] were in; and that "[a]ll four wheels [of Sharma's vehicle] were in the right lane".

"The proponent of a summary judgment motion 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." (*Winegrad v New York Univ. Med. Center*, 64 NY2d 851, 853 [1985]; *see also Zuckerman v City of New York*, 49 NY2d 557 [1980]). "Failure to make such showing requires a denial of the motion, regardless of the sufficiency of the opposing papers." (*Winegrad v New York Univ. Med. Center*, *supra* at p 853.) "Once this showing has been made, however, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action." (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]).

On a motion for summary judgment, facts must be viewed "in the light most favorable to the non-moving party" (*Ortiz v Varsity Holdings, LLC*, 18 NY3d 335, 339 [2011]). "A defendant driver 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 collision" (*Salama v Piccirillo*, 223 AD3d 692, 693 [2d Dept 2024]; *see Shuofang Yang v Sanacore*, 202 AD3d 1120, 1121 [2d Dept 2022]; *Enriquez v Joseph*, 169 AD3d 1008, 1008-1009 [2d Dept 2019]).

Although "[t]here can be more than one proximate cause of an accident, and, generally, it is for the trier of fact to determine the issue of proximate cause," "the issue of proximate cause may be decided as a matter of law where only one conclusion may be drawn from the established facts" (*Guido v Dagneše*, 214 AD3d 715, 716 [2d Dept 2019][citations, alterations, and internal quotation marks omitted]; *see Kalland v Hungry Harbor Assoc., LLC*, 84 AD3d 889, 889 [2d Dept 2011]).

"[A] violation of a standard of care imposed by the Vehicle and Traffic Law constitutes negligence *per se*" (*E.B. v Gonzalez*, 208 AD3d 618, 619 [2d Dept 2020]). "If one party has established that the other party has committed negligence *per se*, the burden then falls to the opposing party to submit a nonnegligent explanation for the action" (*Orellana v Mendez*, 208 AD3d 888, 889 [2d Dept 2022]).

“[A] driver is negligent if he or she makes an unsafe lane change (*see* Vehicle and Traffic Law §1128[a]), or fails to see that which, through the proper use one’s senses, should have been seen” (*Fogel v Rizzo*, 91 AD3d 706, 707 [2d Dept 2012]). “A driver has a duty not to merge into a lane of moving traffic until it is safe to do so,” and “a driver of a vehicle with the right-of-way is entitled to anticipate that the driver in the lane next to him or her will obey the traffic laws requiring them to yield to a driver with the right-of-way” (*Vigdorchik v Vigdorchik*, 209 AD3d 923, 924 [2d Dept 2022][internal quotation marks omitted]). Further, “a driver with the right-of-way who has only seconds to react to a vehicle which has failed to yield is not comparatively negligent for failing to avoid the collision” (*Choo v Virginia Transp. Corp.*, 204 AD3d 743, 744 [2d Dept 2022][internal quotation marks omitted]; *see also Yelder v Walters*, 64 AD3d 762, 764 [2d Dept 2009]).

Here, Sharma demonstrated, *prima facie*, that Diaz, the operator of the Triangle Service vehicle, failed to see what there was to be seen and attempted to change lanes when it was unsafe to do so, in violation of VTL §1128[a] (*see Salama v Piccirillo*, 223 AD3d at 693; *Guido v Dagnese*, 214 AD3d at 716-717). Furthermore, Sharma demonstrated that Diaz’s negligence in operating the Triangle Service vehicle was the sole proximate cause of the accident (*see Vigdorchik v Vigdorchik*, 209 AD3d at 924).

In opposition, Triangle Service fails to raise an issue of fact. It submits an incident report, and the full transcript of Ramos’ EBT testimony. However, Triangle Services fails to submit an affidavit or EBT testimony from Diaz, the operator of the vehicle, which offers a non-negligent explanation for the happening of the accident. The argument that the motion is premature is without merit, as this accident happened in 2019, the lawsuit was commenced in 2021, and Triangle Services had ample time and opportunity to take a deposition of Diaz and/or obtain his affidavit.

Regarding the unsigned accident report submitted by Triangle Services, such is not in admissible form where it is not certified or authenticated in any manner, and Fine’s EBT testimony is insufficient in establishing it as a business record (*see* CPLR 4518(a)).

The EBT testimony of Ramos, the passenger in the Triangle Service vehicle, is further insufficient to raise an issue of fact. Ramos testified that the impact occurred in the right lane; that the Sharma vehicle was completely in the right lane at impact; and that before the accident, he never saw the Sharma vehicle anywhere except in the right lane. Accordingly, any arguments about the actions of Sharma are speculative and not supported by competent evidence, and are thus insufficient to raise a triable issue of fact (*see Yelder v Walters*, 64 AD3d at 765; *Galvis v Ravilla*, 111 AD3d 600 [2d Dept 2013]; *Batts v Page*, 51 AD3d 833 [2d Dept 2008]; *Hou-Ching Chow v Wong*, 34 AD3d 642 [2d Dept 2006]).

As such, the motion by defendant Sagar Sharma for summary judgment is granted, and plaintiff’s Complaint, and all cross-claims, as against Sharma, are dismissed.

Movant is not relieved from the applicable provisions of CPLR 2220 and 202.5-b (h) (2) of the Uniform Rules of Supreme and County Courts insofar as it relates to service and notice of entry of the filed document upon all other parties to the action/proceeding, whether accomplished by

mailing or electronic means, whichever may be appropriate dependent upon the filing status of the party.

The foregoing constitutes the decision and order of this court.


ANNA CULLEY, J.S.C.

Dated: May 7, 2025

