

**Scipio v Nikac**

2017 NY Slip Op 33355(U)

December 5, 2017

Supreme Court, Westchester County

Docket Number: Index No. 52678/17

Judge: Lewis J. Lubell

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This opinion is uncorrected and not selected for official publication.

CAR Dorian Wood 12/15/17 @ 9:30

To commence the 30 day statutory time period for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties

SUPREME COURT OF THE STATE of NEW YORK  
COUNTY OF WESTCHESTER

-----X

MARGARITA E. SCIPIO,

Plaintiff,

-against -

FRANKIE NIKAC, PASKO NIKAC, EAN  
HOLDINGS LLC and BERNARD WILLIAMS,

Defendants.

-----X

LUBELL, J.

DECISION & ORDER

Index No. 52678/17

Sequence No. 1&2

The following papers were considered in connection with **Motion Sequence #1** by plaintiff for an Order pursuant to CPLR 3212 for summary judgment on the issue of liability; and **Motion Sequence #2** by defendants EAN Holdings LLC and Bernard Williams for an Order granting summary judgment pursuant to CPLR 3212 dismissing plaintiff's complaint and any and all cross-claims against EAN and Williams as the complaint is without merit as a matter of law and granting summary judgment pursuant to CPLR 3212 to the defendant EAN dismissing the complaint and any and all cross-claims as the plaintiff's complaint is barred and preempted by federal law under Subchapter I of Chapter 301 of Title 49, United States Code 30106 and therefore is without merit as a matter of law:

<b>PAPERS</b>	<b>NYSCEF</b>
NOTICE OF MOTION/AFFIRMATION/EXHIBITS 1-5	13-20
NOTICE OF CROSS MOTION/AFFIRMATION/AFFIDAVITS/ EXHIBITS A-E	21-29
REPLY AFFIRMATION	30,31

Plaintiff, Margarita E. Scipio, brings this negligence action to recover damages for alleged serious injuries sustained as a result of an alleged three-vehicle automobile accident which occurred on August 17, 2016, on Jackson Avenue and its intersection with the exit and entranceway of the Sprain Brook Parkway South,

Scardsale, New York.

At the time of the accident, plaintiff was a passenger in a vehicle being operated by defendant Bernard Williams ("Williams") and which was owned by defendant EAN Holdings LLC ("EAN"), also referred to as the "William's Vehicle". The accident took place when the William's Vehicle was struck in the rear by a vehicle being operated by defendant Frankie Nikac and which is owned by defendant Pasko Nikac. As the result of this impact, plaintiff contends that the William's Vehicle was caused to make contact with a non-party vehicle situated in front of it. Williams disputes this latter claim.

It is well established that the drastic remedy of summary judgment should only be employed where there is no doubt as to the absence of any triable issues of a material fact (Kolivas v. Kirchoff, 14 AD3d 493 [2d Dept 2005]). "Issue finding, rather than issue determination is the courts function. If there is any doubt about the existence of a triable issue of fact, or a material issue of fact is arguable, summary judgment should be denied" (Celardo v. Bell, 222 A.D.2d 547 [2d Dept 1995] ). "In the context of a motion for summary judgment, the court is obliged to draw all reasonable inferences in favor of the non-moving party, and may not pass on issues of credibility" (Rizzo v. Lincoln Diner Corp., 215 A.D.2d 546 [2d Dept 2005] ).

However,

"[w]hen the driver of an automobile approaches another automobile from the rear, he or she is bound to maintain a reasonably safe rate of speed and control over his vehicle, and to exercise reasonable care to avoid colliding with the other vehicle" (Gaeta v. Carter, 6 AD3d 576, 576; see Gallo v. Jairath, 122 AD3d 795, 796; Taing v. Drewery, 100 AD3d 740, 741). A rear-end collision with a stopped or stopping vehicle creates a prima facie case of negligence against the operator of the rear vehicle, thereby requiring that operator to rebut the inference of negligence by providing a nonnegligent explanation for the collision (see Tutrani v. County of Suffolk, 10 NY3d 906, 908; Brothers v. Bartling, 130 AD3d 554, 555; Le Grand v. Silberstein, 123 AD3d 773, 774; Williams v. Spencer-Hall, 113 AD3d 759, 760). "To prevail on a motion for summary

judgment on the issue of liability, a plaintiff must establish, prima facie, not only that the opposing party was negligent, but also that the plaintiff was free from comparative fault" (Phillip v. D & D Carting Co., Inc., 136 AD3d 18, 22; see Melendez v. McCrowell, 139 AD3d 1018, 1020).

(Comas Bourne v. City of New York, 2017 NY Slip Op 00286 [2d Dept Jan. 18, 2017]).

The Court finds that plaintiff had made a prima facie showing of entitlement to judgment in her favor as a matter of law as against the Nikac defendants who struck the William's Vehicle in the rear as it was stopped or slowing down, and defendants have failed to respond to same. Therefore, summary judgment is granted in favor of plaintiff and against the Nikac defendants on the issue of liability.

The Court cannot say that plaintiff has established the same with respect to the Williams Vehicle, be it with respect to the operator, Williams, and, thus, with respect to its owner, EAN. Plaintiff's position that the William's Vehicle was following the car in front it too closely and/or that Williams failed to maintain the William's Vehicle under control upon being struck in the rear by the Nikac vehicle is nothing more than conclusory and speculative. As such, plaintiff has not met its initial burden upon the motion.

In any event, upon review of the factual averments made by Williams in opposition to plaintiff's motion and in support of his motion, the Court finds that there are material questions of fact warranting the denial of plaintiff's motion for summary judgment in her favor and defendant William's motion for summary judgment dismissing the complaint. These questions of fact include, but are not limited to, whether the William's Vehicle struck the non-party vehicle in the first place and, if so, under what circumstances.

EAN has established that the William's Vehicle was rented to Williams in the ordinary course of business of non-party ELRAC, LLC to Williams pursuant to a written rental agreement and that EAN is otherwise entitled by law to dismissal of this action pursuant to the "Safe, Accountable, Flexible, Efficient Transportation Equity Act", 49 USC §30106 [The Graves Amendment], which prohibits the imposition of vicarious liability against owners and their affiliates of motor vehicles who rent or lease their vehicles and which are subsequently involved in motor vehicle accidents (see

Bravo v. Vargas, 113 AD3d 579 [2d Dept, 2014]); Couture v. Miskovitz, 102 AD3d 723 [2d Dept 2017]). Plaintiff has failed to raise a triable issue of fact regarding same.

Based upon the foregoing, it is hereby

ORDERED, that summary judgment is granted in favor of plaintiff and against defendants, Frankie Nikac and Pasko Nikac, on the issue of liability and is otherwise denied; and, it is further

ORDERED, that summary judgment is granted in favor of defendant EAN; and, it is further

ORDERED, to any further extent, the motion and cross-motion are otherwise denied.

The parties are hereby reminded to appear for the already scheduled conference with Court Attorney Referee Dorian Wood on December 15, 2017 @ 9:30 a.m.

The foregoing constitutes the Opinion, Decision, and Order of the Court.

Dated: White Plains, New York

*December 5*, 2017



HON. LEWIS J. LUBELL, J.S.C.

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