

**Pehr v Staiano**

2013 NY Slip Op 30901(U)

April 29, 2013

Sup Ct, Queens County

Docket Number: 700678/11

Judge: Bernice Daun Siegal

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Short Form Order

**NEW YORK STATE SUPREME COURT – QUEENS COUNTY**  
Present: HONORABLE BERNICE D. SIEGAL IAS TERM, PART 19  
Justice

-----X  
Karl Pehr and Isabella Pehr,

Plaintiff,

-against-

Ralph J. Staiano,

Defendant.

-----X  
Ralph J. Staiano,

Plaintiff,

-against-

Susan M. Darby,

Defendant.

-----X

Index No.: 700678/11  
Motion Date: 2/21/13  
Motion Cal. No.: 133  
Motion Seq. No.: 2

The following papers numbered 36, 43, 44, 46 read on this motion for an order granting summary judgment pursuant to CPLR §3212 dismissing the Third-party Complaint of the Third-party plaintiff and any and all cross-claims against third-party defendant on the grounds that the third-party defendant, Susan M. Darby, bears no liability for the subject accident and a cross-motion for summary judgment by plaintiff as against defendant Staiano.

	PAPERS NUMBERED
Notice of Motion - Affidavits-Exhibits.....	36
Affirmation in Opposition Motion and Cross-Motion.....	43
Cross-Motion.....	44
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Upon the foregoing papers, it is hereby ordered that the motion is resolved as follows: Third-Party Defendant, Susan M. Darby (“Darby”) moves for an order pursuant to CPLR § 3212 granting summary judgment and dismissing the Third-Party Complaint and dismissing any and all cross-claims against her, on the issue of liability.

Plaintiff, Karl and Isabella Pehr (“Pehr”) cross-move for an order pursuant to CPLR § 3212 granting summary judgment on the issue of liability against Defendant Ralph J. Staiano (“Staiano”).

### **Facts**

This action arises out of a five-car motor vehicle accident that occurred on July 30, 2010, on Route 287 North, in the Township of Mahwah, Bergen County, New Jersey. Plaintiffs, Karl Pehr and Isabella Pehr (“Pehr”), commenced an action against the defendant/third-party Plaintiff, Ralph J. Staiano (“Staiano”). Staiano then commenced a third-party action against third-party defendant, Susan M. Darby (“Darby”), asserting that in the event that the plaintiff’s recover a judgment in the first party action against him, Darby is obligated for the full amount of recovery, or in the alternative, to contribute to any judgment recovered by plaintiffs against the defendant, as determined by Darby’s proportionate share of liability.

The subject accident occurred when the vehicle operated by Staiano was in the process of changing from the middle lane to the left-hand lane and the front of his car impacted the rear of Plaintiffs’ vehicle, causing Plaintiffs’ vehicle to impact Darby’s vehicle. The Police Report states: “Vehicle #1, Vehicle #2, Vehicle #3, Vehicle #4, and Vehicle #5 were all traveling in the left lane of Route 287 North. Vehicle #1 stopped in the lane of travel because of heavy traffic.

Vehicle #2 struck Vehicle #1 from behind. Vehicle #3 [Darby's vehicle] stopped without making contact behind Vehicle #2, but was struck from behind by Vehicle #4 [Pehr's vehicle] and propelled forward into Vehicle #2. Vehicle #4 [Pehr's vehicle] was then struck from behind by Vehicle #5 [Staiano's vehicle]." As the Police Report provides, Vehicle #3 was Darby's vehicle, Vehicle #4, Pehr's, and Vehicle #5, Staiano. Thus, it is undisputed that Staiano was the operator of the last vehicle. Additionally, it is undisputed that the accident occurred at around 4:00 PM, at which time the conditions were clear and the roads dry.

Darby's asserts that she had been traveling in the left-hand lane of Route 287 North for approximately a mile, when, while coming to a stop, her vehicle was hit in the rear by another vehicle and was then hit in the rear a second time as a result of the vehicle behind her being hit. Thus, third-party Defendant, Darby, contends that her vehicle, while at a complete stop, was rear-ended by the plaintiff.

Pehr's deposition testimony provides "[w]hile I was driving I see the brake light in front of me, I was braking and that's when I heard breaks squeaking and the boom, that's when I got hit and he pushed me all the way into the other car." However, Staiano deposition testimony provides that right before the accident his vehicle was traveling at a maximum speed of 25 to 35 miles per hour and that he was moving into the left-hand lane and started to accelerate because the traffic was clearing up, when the car in front of him stopped abruptly. Additionally, when asked specifically about whether the operator of the vehicle in front of his said anything at the scene of the accident, Staiano responded, "that he hit the car in front of him then I hit him and he hit her again."

As more fully set forth below, the motion for summary judgment brought by third-party defendant Darby on the issue of liability is granted and Plaintiff Pehr's cross-motion for summary judgment is denied.

### **Discussion**

It is well established that summary judgment should be granted when there is no doubt as to the absence of triable issues. (*see Rotuba Extruders, Inc. v Ceppos*, 46 NY2d 223, 231 [1978].) As such, the court's function on the instant motion is issue finding and not issue determination. (*see D.B.D. Nominee, Inc. v 814 10<sup>th</sup> Ave. Corp.*, 109 AD2d 668, 669 [2nd Dept 1985].) The party moving for summary judgment must tender evidentiary proof in admissible form eliminating any material issues of fact from the case. (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980].) If the movant succeeds, the burden shifts to the party opposing the motion, who then must show the existence of material issues of fact by producing evidentiary proof in admissible form, sufficient to require a trial. (*id.*)

A rear-end collision establishes a prima facie case of negligence on the part of the operator of the rearmost vehicle and imposes a duty of explanation on its operator to excuse the collision either through a mechanical failure, a sudden stop of the vehicle ahead, an unavoidable skidding on wet pavement, or any other reasonable cause. (*see Lampkin v Chan*, 68 AD3d 727 [2nd Dept 2009].) In short, the driver of the offending vehicle is required to rebut the inference of negligence by providing a non-negligent explanation for the collision. (*Kastritsios v Marcello*, 84 AD3d 1174, 1174-75 [2nd Dept 2011].) If the operator of the offending vehicle cannot rebut the inference, the driver of the lead vehicle may properly be awarded summary judgment on the issue of liability. (*Staton v Ilic*, 69 AD3d 606 [2nd Dept 2010].) This is because the operator of the

offending vehicle is in the best position to explain whether the collision was due to a reasonable, non-negligent cause. (*Carter v Castle Elec. Contr. Co.*, 26 AD2d 83, 85 [2nd Dept 1966]; *Vecchio v Hildebrand*, 304 AD2d 749, 750 [2nd Dept 2003].) Thus, if the operator cannot come forward with any evidence to rebut the inference of negligence, the moving party may properly be awarded judgment as a matter of law on the issue of liability. (*Lopez v Minot*, 258 AD2d 564 [2nd Dept 1999].)

Moreover, “[t]here can be more than one proximate cause of an accident.” (*Cox v Nunez*, 23 AD3d 427 [2nd Dept 2005].) Thus, “in a multiple-vehicle accident, 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 of the lead vehicle.” (*Vavoulis v Adler*, 43 AD3d 1154, 1155 [2nd Dept 2007].)

### **Darby’s Motion for Summary Judgment**

Darby moves for an order pursuant to CPLR § 3212 granting her summary judgment, dismissing the Third-Party Complaint and dismissing any and all cross-claims against her, on the ground that she bears no liability for the subject accident. Darby asserts that she cannot be held liable because, as a matter of law, there is nothing to indicate she was negligent or otherwise contributed to the occurrence of the accident. Thus, Darby contends summary judgment should be granted because there is no issue of fact that Darby’s vehicle was rear-ended, and the only question of fact for trial is between Plaintiff Pehr and Defendant/third-party Plaintiff Staiano.

Here, Darby made the requisite prima facie showing of her entitlement to summary judgment, through the submission of her affidavit, in which she avers that her vehicle was

coming to a complete stop when hit in the rear by Pehr's vehicle, and that "[a]t no point in time prior to the impacts did I come to a sudden stop or suddenly decrease the speed of my vehicle without warning." Once the moving party makes a prima facie showing of entitlement to summary judgment in their favor, it is incumbent upon the opposing party to come forth with evidentiary proof in admissible form to demonstrate the existence of triable issues of fact.

*(Zuckerman v City of New York, 49 NY2d 557, 562 [1980].)*

In opposition, third-party plaintiff/defendant, Staiano failed to refute Darby's contentions and/or raise a triable issue of fact as to any liability on the part of Darby, which could have caused or contributed to the subject accident. Nor did Staiano rebut the inference of negligence by providing a non-negligent explanation for the collision. *(Kastritsios v. Marcello, 84 AD3d 1174, 1174-75 [2nd Dept 2011].)* Claiming that a driver stopped suddenly is insufficient to rebut a presumption of negligence. *(Vecchio v Hildebrand, 304 AD2d 749 [2nd Dept 2003]; Dileo v. Greenstein, 281 AD2d 586 [2nd Dept 2001].)* Moreover, "[c]onclusory allegations in opposition do not rebut the inference of negligence created by the unexplained rear-end collision." *(Levine v Taylor, 268 AD2d 566 [2nd Dept 2000].)*

Accordingly, third-party Plaintiff Staiano failed to raise an issue of fact for trial. As such, third-party defendant Darby's motion for summary judgment on the issue of liability is granted and the third party complaint is dismissed.

### **Pehr's Cross-Motion for Summary Judgment**

Plaintiff cross-moves for summary judgment, pursuant to CPLR § 3212, on the issue of liability against Staiano, on the ground that there are no triable issues of fact. It is undisputed that

Plaintiff's vehicle was the fourth vehicle in a five-vehicle chain collision, and was struck by the fifth and final vehicle, operated by Staiano. It is also undisputed that Pehr's vehicle impacted the vehicle Darby vehicle in the rear. The issue is whether the Pehr vehicle struck the Darby vehicle before, or after, being struck in the rear by Staiano.

A rear-end collision establishes a prima facie case of negligence on the part of the operator of the rearmost vehicle and imposes a duty of explanation on its operator to excuse the collision via a non-negligent cause. (*see Lampkin v Chan*, 68 AD3d 727 [2nd Dept 2009]; *Lopez v Minot*, 258 AD2d 564 [2nd Dept 1999].) Once the operator of the offending vehicle offers a non-negligent cause for the collision, the burden then shifts to his or her adversary to raise a triable issue of fact as to whether the operator was negligent in failing to avoid the collision. (*Cerda v Parsley*, 273 AD2d 339 [2nd Dept 2000].)

While Staiano, as the operator of the offending vehicle, is presumed to have been negligent in hitting Plaintiff's vehicle, Staiano offers evidence to rebut this presumption. During Staiano's deposition, when asked specifically about the person in front of him, and whether he said anything at the scene of the accident, Staiano testified that Plaintiff Pehr stated, "that he hit the car in front of him [Darby] then I hit him and he hit [Darby] again." On the other hand, Pehr's deposition testimony provides that the first impact to his vehicle was to the rear and the second and final was to the front.

Accordingly, summary judgment cannot be granted, here, because a material issue of fact remains as to the sequence of the subject collision, whether Pehr's vehicle rear-ended Darby's vehicle prior to Staiano's vehicle rear-ending Pehr's or whether Pehr's vehicle rear-ended Darby's as a result of Staiano's vehicle rear-ending Pehr's. (*see Malak v. Wynder*, 56 A.D.3d



622 [2<sup>nd</sup> Dept 2008]; *Vavoulis v Adler*, 43 AD3d 1154 [2<sup>nd</sup> Dept 2007]; *Omrami v. Socrates*, 227 A.D.2d 459 [2<sup>nd</sup> Dept 1996].)

Accordingly, there is a question of fact as to whether Plaintiff Pehr bears any liability for the subject accident.

### **Conclusion**

For the foregoing reasons, third-party defendant's (Darby's) motion for an order pursuant to CPLR § 3212 granting summary judgment on the issue of liability is granted and the third-party plaintiff's complaint and any and all cross-claims against Darby are dismissed and plaintiff Pehr's cross-motion for summary judgment on the issue of liability is denied.

Dated: April 29 , 2013

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Bernice D. Siegal, J. S. C.