

**Mials v McQueen**

2018 NY Slip Op 33578(U)

September 5, 2018

Supreme Court, Bronx County

Docket Number: 20763/2016E

Judge: Lizbeth Gonzalez

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX: PART 10

-----X

Phyllis Mials,<sup>1</sup>

Plaintiff,

DECISION and ORDER  
Index No. 20763/2016E

- against -

Robert E. McQueen Jr. and Frank F. Tavarez,

Defendants.

-----X

Defendant Robert McQueen was involved in a three-vehicle collision on the New Jersey Turnpike on 8/13/15. Defendant moves for summary judgment dismissal of plaintiff's claims against him pursuant to CPLR 3212(b) on the issue of liability. Plaintiff Phyllis Mials and co-defendant Frank Tavarez oppose defendant McQueen's motion.

DISCUSSION

The proponent of a motion for summary judgment "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. Failure to make such prima facie showing requires a denial of the motion, regardless of the sufficiency of the papers" (*JMD Holding Corp v Congress Financial Corporation*, 4 NY 3d 373 [2005], quoting *Alvarez v Prospect Hospital*, 68 NY2d 320 [1986]; *Diaz v Nunez*, 5 AD3d 308 [1<sup>st</sup> Dept 2004]).

The New York State Vehicle and Traffic Law § 1129 provides:

The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent having due regard for the speed of such vehicles and the traffic upon the condition of the highway (VTL § 1129[a]).

---

<sup>1</sup>By Stipulation dated 4/3/17, all parties agreed to amend the caption to name "Angela Tese-Miller, Esq. As Trustee for the Estate of Phyllis Mials." In the absence of a so-ordered stipulation, motion or court order, this court declines to accept the amended caption.

In a chain-reaction collision, responsibility presumptively rests with the rearmost driver (*De La Cruz v Ock Wee Leong*, 16 AD3d 199 [1<sup>st</sup> Dept 2005]; *Mustafaj v Driscoll and Lugo*, 5 AD3d 138 [1<sup>st</sup> Dept 2004]). A rear-end collision establishes a *prima facie* case of negligence on the part of the driver of the offending vehicle, imposing upon him or her a duty to come forward with a non-negligent explanation for the collision (*Dattilo v Best Transp. Inc.*, 79 AD3d 432 [1<sup>st</sup> Dept 2010]).

In support of his motion, defendant McQueen proffers his own deposition transcript and those of plaintiff Phyliss Mials and defendant Frank Tavarez. The defendant proffers the police accident report to establish the order of vehicles at the time of the accident and liability. The police report is not certified; it can not be used to establish liability because it constitutes hearsay and is thus inadmissible (*Rosario v Vasquez*, 93 AD3d 509 [1<sup>st</sup> Dept 2012]).

Defendant Robert McQueen, Jr. testified that he was traveling in the left lane of the New Jersey Turnpike ("Turnpike") and just prior to the accident, he decreased his speed due to traffic. The vehicle in front of him slowed down gradually, then stopped. Defendant McQueen states that both his vehicle and the vehicle ahead of him were stopped when his vehicle was rear-ended, pushing him into the rear of the stopped Nissan Altima in front of him.

Plaintiff Phyliss Mials testified that on the date of the accident, she operated a Nissan Altima and was traveling in the left lane of the Turnpike. Plaintiff states that she was "moving," slowed down due to traffic and came to a complete stop before she felt the impact to the rear of her vehicle.

Co-defendant Frank Tavarez testified that he was operating the rearmost vehicle in the left lane when the collision occurred.

Page 22

Q. And in that one mile before the accident were there any vehicles traveling in front of you in the left lane?

A. Just the car that I impacted.

Q. Do you know the make or model or type of car that you impacted?

A. It looked like an SUV.

Q. At the point approximately one mile before the accident location, how fast

were you traveling?

A. It's around 50.

Defendant Tavarez states that approximately three to four seconds after he saw the SUV come to a stop, he slammed on his brakes.

Page 33

Q. And stepping on the brake caused your vehicle to slow down, correct?

A. It just kept going.

Q. Okay.

A. I heard the screeching, the screeching of my tires, but the car just kept going.

Defendant Tavarez avers that his vehicle eventually came to a stop impacting the vehicle in front of him.

Page 34

Q. As a result of the impact between your vehicle and the SUV, did the SUV then move forward?

A. Yes.

Defendant Tavarez states that the vehicle he rear-ended came into contact with another vehicle. Defendant conceded that he received a citation for reckless driving.

In opposition to the movant's motion and in an effort to preserve judicial resources, defendant Frank Tavarez incorporates and adopts the facts and arguments set forth in the opposition submitted by plaintiff Phyllis Mials. Plaintiff contends that there are issues of fact as to whether the movant properly slowed or stopped his vehicle; came to a sudden stop; gave due warning to the vehicle traveling behind him (Tavares); and thus contributed to the accident's occurrence. Plaintiff does not testify, however, that she felt two impacts.

#### CONCLUSION

New York State drivers must maintain a safe distance between their vehicles and any vehicles in front of them (*De La Cruz v Ock Wee Leong*, 16 AD3d 199 [1<sup>st</sup> Dept 2005]).

**FILED: BRONX COUNTY CLERK 09/11/2018 11:03 AM**

NYSCEF DOC. NO. 53

INDEX NO. 20763/2016E

RECEIVED NYSCEF: 09/11/2018

Based on the foregoing, the Court finds that defendant has met his burden and plaintiff and co-defendant have not met their shifting burden of proof. The defendant's motion is granted and all claims against him are dismissed.

Service of a copy of this Decision and Order with Notice of Entry shall be effected within 30 days.

Dated: September 5, 2018

So ordered,

  
\_\_\_\_\_  
Hon. Lizbeth González, J.S.C.