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| German v Hurricane Mgt. Corp. |
| 2020 NY Slip Op 31605(U) |
| May 28, 2020 |
| Supreme Court, New York County |
| Docket Number: 161414/15 |
| Judge: Adam Silvera |
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ADAM SILVERA PART IAS MOTION 22

Justice

-----X

RADHAMES BOLIVAR GERMAN,
Plaintiff,

-against-

HURRICANE MANAGEMENT CORP., JOSE
ANTONIO CABRERA-PICHARDO,
Defendants.

INDEX NO. 161414/15
MOTION DATE 12/20/19
MOTION SEQ. NO. 004

DECISION & ORDER

-----X

HURRICANE MANAGEMENT CORP., JOSE
ANTONIO CABRERA-PICHARDO,
Third-Party Plaintiffs,
-against-

JAMES BROWN, SABRINA E. MOYE, FATMASARI
SIAHAAN, and RANGGA MAROLA,
Third-Party Defendants.

-----X

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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FATMASARI SIAHAAN,
Plaintiff,

-against-

JOSE ANTONIO CABRERA-PICHARDO, HURRICANE
MANAGEMENT CORP., JAMES BROWN, and
SABRINA E. MOYE,
Defendants.

INDEX NO. 450640/19
MOTION DATE 12/23/19
MOTION SEQ. NO. 001 & 003

DECISION & ORDER

-----X

161414/15 RADHAMES BOLIVAR GERMAN vs. HURRICANE MANAGEMENT CORP.
Motion No. 004
450640/19 FATMASARI SIAHAAN vs. JOSE ANTONIO CABRERA-PICHARDO
Motion No. 001 & 003
451998/17 FELISA PELT vs. JOSE ANTONIO CABRERA-PICHARDO
Motion No. 001

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X

FELISA PELT,

Plaintiff,

-against-

JOSE ANTONIO CABRERA-PICHARDO, HURRICANE
MANAGEMENT CORP., FATMASARI SIAHAAN, RANGGA
JAMES BROWN, and SABRINA E. MOYE,

Defendants.

INDEX NO. 451998/17

MOTION DATE 12/23/19

MOTION SEQ. NO. 001

DECISION & ORDER

-----X

The following e-filed documents, respectively, listed by NYSCEF document number (Motion 004) 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144

were read on this motion to/for JUDGMENT - SUMMARY .

The following e-filed documents, respectively, listed by NYSCEF document number (Motion 001) 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 89, 90, 91, 92, 93, 94, 123, 124

were read on this motion to/for JUDGMENT - SUMMARY .

The following e-filed documents, respectively, listed by NYSCEF document number (Motion 003) 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 120, 122

were read on this motion to/for JUDGMENT - SUMMARY .

The following e-filed documents, respectively, listed by NYSCEF document number (Motion 001) 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45

were read on this motion to/for JUDGMENT - SUMMARY .

Upon the foregoing documents, and after oral arguments, defendants Jose Antonio

Cabrera-Pichardo and Hurricane Management Corp.’s threshold motion for summary judgment

dismissing the complaint, defendants’ James Brown and Sabrina E. Moye’s cross-motion for

summary judgment on the issue of threshold dismissing the complaint, and defendants James

Brown and Sabrina E. Moye's motions for summary judgment dismissing the complaints on the issue of liability are all decided herein.

Preliminarily, the Court notes that the instant three actions listed above (hereinafter referred to as "the German action", "the Siahaan action", and "the Pelt action") have been consolidated for joint discovery and trial.

Here, with regards to the instant threshold motion which was filed in the Siahaan action (mot. seq. no. 001), defendants Cabrera-Pichardo and Hurricane Management Corp. moved to dismiss plaintiff Siahaan's complaint. Thereafter, defendants Brown and Moye cross-moved for the same relief adopting defendants Cabrera-Pichardo and Hurricane Management Corp.'s arguments. Plaintiff Siahaan opposes and all defendants in the Siahaan action reply.

Defendants in both the motion and cross-motion argue that plaintiff Siahaan failed to show that she sustained a serious injury pursuant to Insurance Law §5102(d) in that, based upon independent medical examinations by defendants' doctors, plaintiff Siahaan has suffered no permanent injuries and that her alleged injuries are degenerative in nature. Defendants further argue that plaintiff Siahaan was not prevented from performing substantially all of the material acts constituting her customary daily activities for 90 out of 180 days following the accident.

"In determining whether summary judgment is appropriate, the motion court should draw all reasonable inferences in favor of the nonmoving party and should not pass on issues of credibility." *Garcia v J.C. Duggan, Inc.*, 180 AD2d 579, 580 (1st Dep't 1992), citing *Dauman Displays, Inc. v Masturzo*, 168 AD2d 204 (1st Dep't 1990). The Court notes that summary judgment is a drastic remedy and should only be granted if the moving party has sufficiently established it is warranted as a matter of law. *See Alvarez v Prospect Hosp.*, 68 NY2d 320, 324

(1986). As such, summary judgment is rarely granted in negligence actions unless there is no conflict at all in the evidence. *See Ugarriza v Schmieder*, 46 NY2d 471, 475-476 (1979).

In opposition, plaintiff proffers, *inter alia*, her physicians' medical reports which show limited ranges of motion that conflict with defendants' physicians' medical reports. Furthermore, the affirmation of Dr. Brownstein, dated October 22, 2019, specifically states that plaintiff's injuries are not degenerative in nature. As there are conflicting medical reports as to limitations on plaintiff's ranges of motion and causation, namely whether plaintiff's injuries are degenerative or causally related to the motor vehicle accident at issue, there exists a issues of fact precluding summary judgment. Thus, defendants Cabrera-Pichardo and Hurricane Management Corp.'s threshold motion, as well as defendants Brown and Moye's cross-motion on the issue of threshold, are denied.

As to defendants Brown and Moye's liability motions, such defendants filed the same motion for summary judgment to dismiss the complaints in the German action (mot. seq. no. 004), the Siahaan action (mot. seq. no. 003), and the Pelt action (mot. seq. no. 001). Co-defendants and plaintiffs oppose. Defendants Brown and Moye argue that they did not breach any duty to any plaintiff and are not liable for any of the injuries suffered by plaintiff German, plaintiff Siahaan, and plaintiff Pelt. In support of their motion, movants proffer, *inter alia*, the deposition transcripts of defendant James Brown, plaintiff/defendant Fatmasari Siahaan, defendant Jose Antonio Cabrera-Pichardo, and plaintiff Felisa Pelt. Here, it is undisputed that plaintiff Pelt was a seat belted passenger in the vehicle operated by defendant Brown and owned by defendant Moye when such vehicle was involved in an accident with the vehicle owned and

operated by plaintiff/defendant Siahaan. However, aside from this undisputed fact, the remainder of the facts as testified to in the deposition transcripts are in dispute.

According to defendant Brown's own testimony, he was traveling in the right lane when he observed a disabled vehicle in the right lane, which was not involved in the instant action. Thereafter, he put on his signal light and changed lanes into the middle lane whereupon the vehicle he was operating was impacted on the side rear while in the middle lane. He further testified that this was a three car accident, and that a split second before his vehicle was impacted, he heard an impact between two other vehicles. Defendant Brown testified that after the impact he moved his vehicle back into the right lane in front of the disabled vehicle which was stopped in the right lane.

However, defendant Brown's passenger, plaintiff Pelt, testified that defendant Brown was operating the vehicle in the right lane when she observed a stalled vehicle in front of their vehicle. Plaintiff Pelt testified that defendant Brown brought the vehicle to a complete stop and turned on the turn signal when they were rear-ended in the right lane behind the stalled vehicle. She further testified that she did not hear or observe any other impacts, and the vehicle in which she was a passenger remained behind the stalled vehicle but did not impact it.

Plaintiff/defendant Siahaan's deposition testimony reveals that she was operating her vehicle in the right lane of traffic when she observed defendant Brown's vehicle stopped behind a disabled vehicle in the right lane. She further testified that she brought her vehicle to a complete stop in the right lane approximately six feet behind defendant Brown's vehicle. Thereafter, while stopped in the right lane, her vehicle was impacted in the rear by a taxi

operated by defendant Cabrera-Pichardo and owned by defendant Hurricane Management Corp. and pushed into the rear of the vehicle operated by defendant Brown.

Lastly, defendant Cabrera-Pichardo testified that he was operating his vehicle in the middle lane when he became involved in a two vehicle accident in the middle lane. According to defendant Cabrera-Pichardo, he saw a disabled vehicle in the right lane as his vehicle was traveling in the middle lane. Thereafter, the vehicle operated by plaintiff/defendant Siahaan, which was in the right lane behind the disabled vehicle switched into the middle lane and abruptly came to a stop immediately in front of defendant Cabrera-Pichardo's vehicle such that he was unable to stop his vehicle prior to impact. Defendant Cabrera-Pichardo further testified that plaintiff/defendant Siahaan's vehicle was pushed to the right onto the sidewalk but did not impact any other vehicle.

Thus, based on the conflicting deposition testimony, defendants Brown and Moye have failed to establish prima facie entitlement to summary judgment as a matter of law. As issues of fact, regarding how the accident occurred exists, summary judgment is precluded and defendant Brown and Moye's motions for summary judgment dismissing the complaints against them is denied.

Accordingly, it is

ORDERED that defendants Jose Antonio Cabrera-Pichardo and Hurricane Management Corp.'s motion (mot. seq. no. 001 in the Siahaan action) for summary judgment on the issue of threshold and to dismiss the complaint is denied in its entirety; and it is further

ORDERED that defendants James Brown and Sabrina E. Moye’s cross-motion (mot. seq. no. 001 in the Siahaan action) for summary judgment on the issue of threshold and to dismiss the complaint is denied in its entirety; and it is further

ORDERED that defendants James Brown and Sabrina E. Moye’s motion (mot. seq. no. 004 in the German action, mot. seq. no. 003 in the Siahaan action, and mot. seq. no. 001 in the Pelt action) for summary judgment on the issue of liability and to dismiss all three actions is denied in its entirety; and it is further

ORDERED that within 90 days of entry, plaintiff/defendant Fatmasari Siahaan shall serve a copy of this decision/order upon all parties with notice of entry.

This constitutes the Decision/Order of the Court.

5/28/2020

DATE

ADAM SILVERA, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE