

Guzman-Slaughter v Dell
2021 NY Slip Op 33044(U)
December 20, 2021
Supreme Court, Bronx County
Docket Number: Index No. 24187/2019E
Judge: Veronica G. Hummel
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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX, IAS PART 31**THERESA GUZMAN-SLAUGHTER and ANTHONY
SLAUGHTER,

Plaintiffs,

-against-

LENFORD DELL and AMERICAN NATIONAL RED
CROSS,

Defendants.

Index No. 24187/2019E**HON. VERONICA G. HUMMEL, A.J.S.C.****Mot. Seq. No. 1**

In accordance with CPLR 2219(a), the decision herein is made upon consideration of all papers filed by the parties in NYSCEF in support of and in opposition to: (1) plaintiffs THERESA GUZMAN-SLAUGHTER's ("Guzman-Slaughter") and ANTHONY SLAUGHTER's ("Slaughter"; and, together with Guzman-Slaughter, "Plaintiffs") motion (Seq. No. 1) seeking an order, pursuant to CPLR 3212, granting them partial summary judgment as to liability against defendants LENFORD DELL ("Dell") and AMERICAN NATIONAL RED CROSS (the "Red Cross"; and, together with Dell, "Defendants"); and (2) Defendants' cross-motion (Seq. No. 1) seeking an order, pursuant to CPLR 3212, granting them summary judgment dismissing the complaint.

This is a personal-injury action arising out of a multi-vehicle rear-end accident that occurred on April 25, 2018, on the Henry Hudson Parkway (the "Henry Hudson") in Manhattan, New York (the "Accident"). The Accident involved three vehicles. Guzman-Slaughter drove the lead vehicle northbound in the left-most lane of the Henry Hudson. Slaughter, Guzman-Slaughter's husband, was in the front passenger seat of Plaintiffs' vehicle. Dell drove the vehicle directly behind Plaintiffs. Dell's vehicle, a white Chevrolet SUV, was owned by the Red Cross, for whom Dell volunteered. The rear-most vehicle, also a white SUV, was driven by an unknown white male who fled the scene shortly after the Accident. Plaintiffs claim that Dell hit them in the rear. Dell, while not disputing that he hit Plaintiffs in the rear, claims that he was hit in the rear by the unidentified white SUV and pushed into Plaintiffs' vehicle.

Plaintiffs and Defendants now seek competing relief, with Plaintiffs seeking summary judgment establishing Defendants' liability for the Accident and Defendants—as the middle vehicle in an alleged chain-reaction collision—seeking summary judgment establishing their *lack* of liability for the Accident.

In support of the motion, Plaintiffs submit an attorney affirmation; a copy of the pleadings; a copy of the police accident report; a copy of a photograph of the rear of Plaintiffs' vehicle taken after the Accident; a copy of the transcript of Guzman-Slaughter's examination under oath by an attorney representing Allstate Insurance Company; and a copy of the transcript of Dell's deposition. Because the police accident report is not certified, the Court cannot consider it as competent evidence in deciding the motion and cross-motion. *Coleman v. Maclas*, 61 A.D.3d 569, 569 (1st Dep't 2009).

In opposition to the motion and in support of the cross-motion, Defendants submit an attorney affirmation; a statement of material facts; a copy of the pleadings; a copy of Defendants' Notice to Admit, served on Plaintiffs on August 26, 2020; a copy of photographs of the rear of Plaintiffs' vehicle and the front and rear of Defendants' vehicle taken after the Accident; a copy of the Red Cross accident report related to the Accident; and copies of the transcripts of Guzman-Slaughter's, Slaughter's, and Dell's depositions.

Guzman-Slaughter testified at her deposition that, on April 25, 2018, she was driving in the left lane of the Henry Hudson, with her husband, Slaughter, accompanying her in the front passenger seat. The weather at the time was a light drizzle, and the road was wet. Traffic was heavy, moving in a stop-and-go pattern. Consistent with that traffic pattern, Guzman-Slaughter was moving at approximately 5 to 10 mph when her vehicle was struck in the rear by Dell's vehicle. Guzman-Slaughter testified that she felt only one impact. In her estimation, the Accident occurred at approximately 4:45 p.m. Guzman-Slaughter never saw Dell's vehicle prior to the Accident. Nor did she know whether Dell's vehicle had itself been rear-ended prior to rear-ending her vehicle.

Slaughter testified at his deposition consistently with Guzman-Slaughter. According to Slaughter's deposition testimony, traffic was very heavy and moving in a stop-and-go pattern at the time of the Accident. Like Guzman-Slaughter, Slaughter felt only one impact; did not see Dell's vehicle prior to the Accident; and did not know whether Dell's vehicle had itself been rear-ended prior to rear-ending Plaintiff's vehicle. Slaughter testified that the Red Cross vehicle depicted in the photographs that Defendants' submitted in support of the cross-motion looked like the same vehicle that had struck Plaintiffs' vehicle. Those photographs depict a white Chevrolet SUV with damage to both its front- and rear-ends.

Dell testified at his deposition that, on April 25, 2018, he was driving northbound on the Henry Hudson in a white Chevrolet SUV owned by the Red Cross, for whom Dell volunteered. Prior to the Accident, Dell picked the vehicle up at the Red Cross headquarters and was traveling to the Bronx. During the approximately 20 minutes that Dell was driving the vehicle prior to the Accident, the vehicle's brakes and accelerator worked properly, and Dell was not aware of any prior damage to the vehicle. Because traffic was very heavy and moving in a stop-and-go pattern at the time, Dell was moving at an average rate of speed of less than 5 mph. Immediately prior to the Accident, Dell was slowly rolling forward in the left-most lane approximately 6 to 8 feet behind Plaintiff's vehicle—which was then also moving slowly forward—when Dell's vehicle was rear-ended. The impact was very heavy and pushed Dell's vehicle forward 6 to 8 feet and into the rear of Plaintiff's vehicle. According to Dell, because of the suddenness of the impact, he had no time to apply his brakes or do anything else to avoid hitting Plaintiffs' vehicle. After the Accident, Dell exited his vehicle, checked on Plaintiffs, and then checked on the driver of the rear-most vehicle that had rear-ended Dell's vehicle. The rear-most vehicle was a white SUV, and its driver was a white middle-aged man. After checking on the rear-most driver, Dell went to his vehicle to get his registration and driver's license. At that time, the rear-most vehicle fled the scene. According to Dell, the Accident occurred between approximately 4:00 and 4:30 p.m. Dell further testified that the damage to the rear of the Red Cross vehicle depicted in the photographs that Defendants' submitted in support of the cross-motion was caused by the impact to the rear of that vehicle by the vehicle that fled the scene. After the Accident, Dell told the police at the scene, as well as the Red Cross through an accident report, that he had been hit in the rear and pushed into the vehicle in front of him.

A. LEGAL STANDARD

“The proponent of a summary judgment motion must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering evidence sufficient to eliminate any material issues of fact from the case.” *Winegrad v. N.Y. Univ. Med. Ctr.*, 64 N.Y.2d 851, 853 (1985). Upon such a showing, the burden then shifts to the nonmovant to “present evidentiary facts in admissible form sufficient to raise a genuine, triable issue of fact.” *Mazurek v. Metro. Museum of Art*, 27 A.D.3d 227, 228 (1st Dep't 2006). A plaintiff in a negligence action moving for summary judgment on the issue of liability must, therefore, establish, *prima facie*, that the defendant breached a duty owed to the plaintiff and that the defendant's negligence was a proximate cause

of the alleged injuries. *Fernandez v. Ortiz*, 183 A.D.3d 443 (1st Dep't 2020). A plaintiff is not required to demonstrate his or her freedom from comparative fault in order to establish a *prima facie* entitlement to summary judgment on the issue of liability. *Rodriguez v. City of N.Y.*, 31 N.Y.3d 312, 324-25 (2018).

Since there can be more than one proximate cause of an accident, a defendant moving for summary judgment is required to make a *prima facie* showing that she is free from fault. *Hilago v. Vasquez*, 187 A.D.3d 683, 684 (1st Dep't 2020); *Harrigan v. Sow*, 165 A.D.3d 463, 464 (1st Dep't 2018). In order for a defendant driver to establish entitlement to summary judgment on the issue of liability in a motor-vehicle-collision case, therefore, the driver must demonstrate, *prima facie*, that she kept the proper lookout, or that her alleged negligence, if any, did not contribute to the accident. *Hilago*, 187 A.D.3d at 684; *Harrigan*, 165 A.D.3d at 464.

B. DEFENDANTS' CROSS-MOTION FOR SUMMARY JUDGMENT

It is well settled that “[a] rear-end collision with a stopped or stopping vehicle establishes a *prima facie* case of negligence on the part of the driver of the rear vehicle, and imposes a duty on the part of the operator of the moving vehicle to come forward with an adequate, nonnegligent explanation for the accident.” *Urena v. GVC Ltd.*, 160 A.D.3d 467, 467 (1st Dep't 2018) (quoting *Matos v. Sanchez*, 147 A.D.3d 585, 586 (1st Dep't 2017)); *Santos v. Booth*, 126 A.D.3d 506, 506 (1st Dep't 2015); *Woodley v. Ramirez*, 25 A.D.3d 451, 452 (1st Dep't 2006). In a chain-reaction collision, responsibility presumptively rests with the rear-most driver. *Ferguson v. Honda Lease Trust*, 34 A.D.3d 356, 357 (1st Dep't 2006).

Here, Defendants establish *prima facie* entitlement to summary judgment as to their liability for the Accident. “In a chain collision accident, the operator of the middle vehicle may establish *prima facie* entitlement to judgment as a matter of law by demonstrating that the middle vehicle was properly stopped behind the lead vehicle when it was struck from behind by the rear vehicle and propelled into the lead vehicle.” *Chuk Hwa Shin v. Correale*, 142 A.D.3d 518, 519 (2d Dep't 2016); *see also Mustafaj v. Driscoll*, 5 A.D.3d 138 (1st Dep't 2004). Whether the middle vehicle was fully stopped or moving “very slowly,” the same rule applies to a stopped or stopping vehicle which is struck in the rear and propelled into another vehicle. *Skura v. Wojtowski*, 165 A.D.3d 1196, 1199 (2d Dep't 2018). By their submissions on the cross-motion, Defendants establish that Dell was moving slowly forward in stop-and-go traffic approximately 6 to 8 feet

behind Plaintiffs' vehicle when another vehicle rear-ended Dell and pushed his vehicle into the rear of Plaintiff's vehicle. This is precisely the scenario in which the prevailing law holds that the driver of a middle vehicle in a chain-reaction collision, such as Dell, bears no responsibility for the impact to the front-most vehicle.

In opposition to the cross-motion, Plaintiffs fail to generate a genuine issue of material fact sufficient to warrant denial of the cross-motion. Plaintiffs oppose the cross-motion on the dual grounds (a) that Dell was following too closely to Plaintiffs' vehicle and (b) that Dell may have skidded on the wet road into the rear of Plaintiffs' vehicle. Both contentions, however, are speculative and conclusory, having no foundation in any piece of admissible evidence before the Court on these motions. It is well settled that "[m]ere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient to raise a triable issue of fact." *Cabrera v. Rodriguez*, 72 A.D.3d 553, 554 (1st Dep't 2010) (citing *Alvord & Swift v. Muller Constr. Co.*, 46 N.Y.2d 276, 281-82 (1978)). Furthermore, Plaintiffs' citation to caselaw involving two-car rear-end accidents is also unavailing, as it is undisputed that the Accident was a chain-reaction collision involving three cars.

Defendants' cross-motion for summary judgment in their favor dismissing the complaint is, therefore, appropriately granted.

C. PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Because the Court determines that Defendants' cross-motion for summary judgment is appropriately granted, Plaintiffs' motion, which seeks to establish Defendants' liability for the Accident, is moot and denied as such.

Accordingly, it is hereby:

ORDERED that plaintiffs THERESA GUZMAN-SLAUGHTER's and ANTHONY SLAUGHTER's motion (Seq. No. 1) seeking an order, pursuant to CPLR 3212, granting them partial summary judgment as to liability against defendants LENFORD DELL and AMERICAN NATIONAL RED CROSS is **DENIED**; and it is further

ORDERED that defendants DELL's and AMERICAN NATIONAL RED CROSS's cross-motion (Seq. No. 1) seeking an order, pursuant to CPLR 3212, granting them summary judgment as to liability is **GRANTED**; and it is further

ORDERED that the Clerk shall enter judgment dismissing the complaint against defendants DELL and AMERICAN NATIONAL RED CROSS; and it is further

ORDERED that the Clerk shall mark the motion and cross-motion (Seq. No. 1) disposed in all Court records; and it is further

ORDERED that the Clerk shall mark the action disposed in all Court records.

This constitutes the decision and order of the Court.

Dated: December 20, 2021

Hon. s/Hon. Veronica G. Hummel/signed 12/20/2021
VERONICA G. HUMMEL, A.J.S.C.

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- 1. CHECK ONE..... CASE DISPOSED IN ITS ENTIRETY CASE STILL ACTIVE
 - 2. MOTION IS..... GRANTED DENIED GRANTED IN PART OTHER
 - 3. CROSS-MOTION IS..... GRANTED DENIED GRANTED IN PART OTHER
 - 4. CHECK IF APPROPRIATE..... SETTLE ORDER SUBMIT ORDER SCHEDULE APPEARANCE
 FIDUCIARY APPOINTMENT REFEREE APPOINTMENT
 CONVERT TO ELECTRONIC FILING EDIT CAPTION