

Mahay v Doss

2021 NY Slip Op 33087(U)

November 5, 2021

Superme Court, Queens County

Docket Number: Index No. 702770/2021

Judge: Robert J. McDonald

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SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK
CIVIL TERM - IAS PART 34 - QUEENS COUNTY
25-10 COURT SQUARE, LONG ISLAND CITY, N.Y. 11101

P R E S E N T : HON. ROBERT J. MCDONALD
Justice

- - - - - x

ARACELY MAHAY,

Index No.: 702770/2021

Plaintiff,

Motion Date: 11/4/2021

- against -

Motion No.: 21

SAM DOSS and NICOLAS SAMUEL DOSS HOM,

Motion Seq.: 1

Defendants.

- - - - - x

SAM DOSS and NICOLAS SAMUEL DOSS HOM,

Third-Party Plaintiffs,

- against -

DANIEL S. SILVA,

Third-Party Defendant.

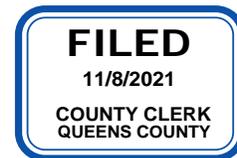
- - - - - x

The following electronically filed documents read on this motion by third-party defendant DANIEL S. SILVA for an Order pursuant to CPLR 3212, granting summary judgment to Silva and dismissing the third-party complaint and any and all cross-claims:

| | <u>Papers</u> |
|--|-----------------|
| | <u>Numbered</u> |
| Notice of Motion-Affirmation-Exhibits..... | EF 14 - 20 |
| Affirmation in Opposition-Exhibits..... | EF 21 - 22 |
| Reply Affirmation..... | EF 23 |

This personal injury action arises out of a motor vehicle accident that occurred on July 20, 2019 on the northbound Meadowbrook Parkway.

Plaintiff commenced this action by filing a summons and complaint on February 5, 2021. Issue was joined by service of an answer on February 22, 2021. A third-party action was commenced



on March 11, 2021. An answer to the third-party complaint was filed on June 4, 2021. Silva now moves for summary judgment, dismissing the third-party complaint.

In the accident description portion of the certified Police Accident Report (MV-104AN) the responding officer noted:

ALL VEHICLES TRAVELING IN LEFT LANE WHEN TRAFFIC BEGAN TO SLOW ABRUPTLY. V-4 (Doss Hom) UNABLE TO STOP IN TIME, REAR ENDS V-3 (Silva). AS A RESULT V-3 IS PUSHED INTO V-2 AND V-2 IS PUSHED INTO V-1.

In support of the motion, Silva submits an affidavit. At the time of the accident, he was traveling in the left lane of the Meadowbrook Parkway. At some point the vehicles ahead of him began to slow for traffic and came to a complete stop. He slowed his vehicle for traffic and brought his vehicle to a stop. His vehicle was stopped for approximately thirty seconds. There was approximately one car length between his vehicle and the vehicle in front of him. His vehicle was rear-ended and pushed into the vehicle ahead of him. The vehicle ahead of him then left the scene of the accident.

Based on the certified police report and his affidavit, Silva contends that the accident was caused solely by Doss Hom's negligence in that Doss Hom's vehicle was traveling too closely to the vehicle in front in violation of VTL § 1129, and Doss Hom failed to safely bring the vehicle to a stop prior to rear-ending his vehicle which, in turn, rear-ended the non-party's vehicle. Therefore, Silva is entitled to summary judgment on the issue of liability because third-party plaintiffs were solely responsible for causing the accident while Silva was free from culpable conduct.

The proponent of a summary judgment motion must tender evidentiary proof in admissible form eliminating any material issues of fact from the case. If the proponent 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 in support of his or her position (see Zuckerman v City of New York, 49 NY2d 557[1980]). "A court deciding a motion for summary judgment is required to view the evidence presented in the light most favorable to the party opposing the motion and to draw every reasonable inference from the pleadings and proof submitted by the parties in favor of the opponent to the motion" (Myers v Fir Cab Corp., 64 NY2d 806 [1985]).

"When 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 or her vehicle, and to exercise reasonable care to avoid colliding with the other vehicle" (Macauley v ELRAC, Inc., 6 AD3d 584 [2d Dept. 2003]). It is well established law that a rear-end collision with a stopped or stopping vehicle creates a prima facie case of negligence on the part of the driver of the rearmost vehicle, requiring the operator of that vehicle to proffer an adequate, non-negligent explanation for the accident (see Klopchin v Masri, 45 AD3d 737 [2d Dept. 2007]; Hakakian v McCabe, 38 AD3d 493 2d Dept. 2007]; Reed v New York City Transit Authority, 299 AD2 330 [2d Dept. 2002]; Velazquez v Denton Limo, Inc., 7 AD3d787 [2d Dept. 2004]).

Here, Silva submitted sufficient evidence to demonstrate that his vehicle was stopped when it was struck in the rear. Thus, Silva satisfied his prima facie burden of establishing entitlement to judgment as a matter of law on the issue of liability (see Volpe v Limoncelli, 74 AD3d 795 [2d Dept. 2010]; Vavoulis v Adler, 43 ad3d 1154; [2d Dept. 2007]; Levine v Taylor, 268 AD2d 566 [2d Dept. 2000]).

In opposition, Doss Hom submits an affidavit. At the time of the accident, he was four to five car lengths behind Silva's vehicle. In front of Silva's vehicle was a Jeep. In front of the Jeep was plaintiff's vehicle. He saw Silva's vehicle slam on its brakes and come to a stop. It appeared to him that the three vehicles ahead of him had been in a collision. He applied his brakes heavily and slowed down, but could not avoid striking the rear of Silva's vehicle. Silva's vehicle did not move as a result of his making contact with it. He did not observe the actual contacts between the vehicles ahead of him. He is certain that Silva's vehicle did not move as a result of the contact with his vehicle.

Here, viewing the evidence submitted in the light most favorable to the nonmoving parties, there are issues of credibility which must be determined by the trier of fact rather than on a motion for summary judgment. "A court may not weigh the credibility of witnesses on a motion for summary judgment, unless it clearly appears that the issues are not genuine, but feigned" (Conciatori v Port Auth. of N.Y. & N.J., 46 AD3d 501 [2d Dept. 2007]). This Court finds that as the parties have presented differing versions as to how the accident occurred, there are triable issues of fact, including, but not limited to, the order of the impacts and whether Silva's vehicle moved as a result of being struck by Doss Hom's vehicle (see Boockvor v Fischer, 56

AD3d 405 [2d Dept. 2008]; Makaj v Metropolitan Transp. Auth., 18 AD3d 625 [2d Dept. 2005]).

Accordingly, for the above stated reasons, it is hereby

ORDERED, that the motion by third-party defendant DANIEL S. SILVA is denied.

Dated: November 5, 2021
Long Island City, N.Y.

Robert J. McDonald

ROBERT J. McDONALD
J.S.C.

