

**Lewis v Worrell-Morris**

2021 NY Slip Op 33981(U)

May 26, 2021

Supreme Court, Queens County

Docket Number: Index No. 713627/2019

Judge: Janice A. Taylor

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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE JANICE A. TAYLOR IAS Part 15  
Justice

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JOHNNIE LEWIS,

Plaintiff(s),

- against -

Index No.: 713627/19

Motion Date: 5/4/21

Motion Cal. No.: 7

Motion Seq. No.: 01

ONEIDA WORRELL-MORRIS, SHELDON TRIBBLE  
and YASHPAUL PERSAUD,

Defendant(s).

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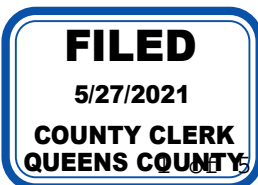
The following papers numbered 1 - 20 read on this motion by defendants Oneida Worrell-Morris and Sheldon Tribble, pursuant to CPLR 3212, for summary judgment dismissing the complaint and cross-claims, and on this cross-motion by plaintiff for summary judgment on the issue of liability.

PAPERS  
NUMBERED

Notice of Motion-Affirmation-Exhibits-Service.....	1 - 4
Affirmation in Opposition-Exhibits-Service.....	5 - 7
Reply Affirmation-Service.....	8 - 9
Notice of Cross Motion-Affirmation-Exhibits-Service.....	10 - 13
Memorandum of Law.....	14
Affirmation in Opposition-Exhibits-Service.....	15 - 17
Reply Affirmation-Exhibits-Service.....	18 - 20

Upon the foregoing papers, it is **ORDERED** that the above-referenced motion is decided as follows:

This personal injury action arises from an alleged three-vehicle chain collision motor vehicle accident that occurred on February 18, 2018, at or near the intersection of Hempstead Avenue and 225<sup>th</sup> Street in Queens County, City and State of New York. It is alleged that plaintiff was operating the lead vehicle, defendant Yashpaul Persaud was operating the rearmost vehicle, and the vehicle in the middle was owned and operated by defendants Oneida Worrell-Morris and Sheldon Tribble, respectively.



Defendants Oneida Worrell-Morris and Sheldon Tribble (hereafter, collectively, "the moving defendants") now move for summary judgment dismissing the complaint, as against them, and defendant Persaud's cross-claims. Plaintiff cross-moves for summary judgment on the issue of liability.

Summary judgment is a drastic remedy that will be granted only if the movant has demonstrated, through submission of evidence in admissible form, the absence of any material issues of fact (see *Vega v Restani Constr. Corp.*, 18 NY3d 499, 503 [2012]), and has affirmatively established the merit of his or her cause of action or defense (see *Zuckerman v New York*, 49 NY2d 557, 562 [1980]). A failure to make a *prima facie* showing of entitlement to judgment as a matter of law "requires a denial of the motion, regardless of the sufficiency of the opposing papers" (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). If a movant makes the *prima facie* showing, the burden then shifts to the non-movant to raise a material issue of fact requiring a trial (see *id.*). Courts must view the evidence in the light most favorable to the non-movant (see *Branham v Loews Orpheum Cinemas, Inc.*, 8 NY3d 931, 932 [2007]), and draw all reasonable inferences in his or her favor (see *Haymon v Pettit*, 9 NY3d 324, 327, n\* [2007]).

At the outset, it is unclear from plaintiff's papers whether she seeks summary judgment on liability as against all defendants, or solely the moving defendants. To the extent that plaintiff has cross-moved against all defendants, it is improper, since a cross-motion is "an improper vehicle for seeking affirmative relief from a nonmoving party" (*Sheehan v Marshall*, 9 AD3d 403, 404 [2d Dept 2004]). Defendant Persaud did not make the original motion against which plaintiff has cross-moved. Therefore, plaintiff may not use this cross-motion to seek affirmative relief against Mr. Persaud.

Tuning to the original motion, the moving defendants argue that defendant Persaud's conduct, in rear-ending their middle vehicle and propelling it forward, was the sole proximate cause of the chain collision accident. "A driver of a vehicle approaching another vehicle from the rear is required to maintain a reasonably safe distance and rate of speed under the prevailing conditions to avoid colliding with the other vehicle" (*Billis v Tunjian*, 120 AD3d 1168, 1169 [2d Dept 2014]; see also VTL § 1129[a]). Hence,

"[a] rear-end collision with a stopped or stopping vehicle establishes a *prima facie* case of negligence on the part of the operator of the rear vehicle, thereby requiring that operator to rebut the inference of negligence by providing a nonnegligent explanation for the collision" (*Orellana v Maggies Paratransit Corp.*, 138 AD3d 941, 941 [2d Dept 2016]).

Moreover, "[i]n chain collision accidents, 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 struck from behind by the rear vehicle and propelled into the lead vehicle" (*Kuris v El Sol Contr. & Constr. Corp.*, 116 AD3d 675, 676 [2d Dept 2014]).

In support of summary judgment, the moving defendants submit, *inter alia*, a personal affidavit from defendant Tribble, and certified copies of plaintiff's deposition transcript and the police accident report. Mr. Tribble averred that he was behind plaintiff's vehicle on Hempstead Turnpike, and each was stopped for the red light at the 225<sup>th</sup> Street intersection, when Mr. Tribble's vehicle was struck in the rear by the Persaud vehicle, propelling him into plaintiff's vehicle. Plaintiff testified that while stopped, she heard two consecutive "hits" from behind, the latter of which coincided with a "heavy" impact to the rear of her vehicle. She also testified that she asked the driver of the trailing vehicle if he had seen the red light, and "he said that he thought we [the lead and middle vehicles] were still moving."

In the police accident report, defendant Persaud is reported as stating that the first vehicle "stopped short," causing him to collide with the second vehicle. Plaintiff testified that this was "untrue," and that Mr. Persaud actually offered to pay to repair the damage to her vehicle if she took it to his mechanic.

The court finds that the moving defendants have failed to meet their *prima facie* burden to eliminate all issues of fact as to how the accident occurred, and which party's conduct was its proximate cause. The version of the accident attested to by plaintiff and defendant Tribble tend to establish that defendant Persaud rear-ended the stopped middle vehicle, thus precipitating the chain collision, and that this was the sole proximate cause of the accident (*see Kuris*, 116 AD3d at 676). However, Mr. Persaud's statement in the police accident report attributing the accident to plaintiff's having stopped short raises triable issues of fact as to her potential comparative negligence, as well as that of Mr. Tribble for failing to keep a safe distance behind plaintiff's vehicle (*see Billis*, 120 AD3d at 1169). Moreover, that plaintiff expressly denied Mr. Persaud's account only highlights the parties' dispute over how the accident happened. Since these factual issues are presented within the accident report and deposition transcript submitted with the moving papers-in-chief, the moving defendants have necessarily failed to eliminate such issues, thus warranting denial of summary judgment "regardless of the sufficiency of the opposing papers" (*see Alvarez*, 68 NY2d at 324).

In cross-moving for summary judgment on the issue of liability, plaintiff argues that she was not negligent because she was stopped at a red light when she was rear-ended by defendant Tribble. Plaintiff, thus, relies on the inference of negligence

arising from a rear-end collision, for which the rear driver must proffer a non-negligent explanation (see *Orellana*, 138 AD3d at 941). This may include a sudden stop of the vehicle ahead (see *Ramos v TC Paratransit*, 96 AD3d 924, 925 [2d Dept 2012]), and although a conclusory assertion is insufficient, "where the sudden stop is unexplained by the existing circumstances and conditions, an issue of fact as to liability is raised" (*Etingof v Metro. Laundry Mach. Sales, Inc.*, 134 AD3d 667, 668 [2d Dept 2015]).

In support of summary judgment, plaintiff relies on, *inter alia*, all of the evidence submitted by the moving defendants on the main motion, as well as the certified transcript of defendant Persaud's deposition, which he submitted with his separate opposition to that motion.<sup>1</sup> Mr. Persaud testified that he was also stopped for the red light, but the light turned green, after which the traffic proceeded, but then the lead and middle vehicles collided. Despite applying his brakes, Mr. Persaud could not avoid hitting the middle vehicle, but the contact was very light, as the middle vehicle did not move forward upon this impact. Mr. Persaud also testified that while the middle vehicle sustained significant damage in the front, it had no damage to its rear, and his own vehicle sustained only a crack to the front license plate bracket.

The court finds that plaintiff has failed to make her *prima facie* showing on the issue of liability. Mr. Persaud's testimony, coupled with his statement in the police accident report that plaintiff stopped short, raises triable issues of fact as to whether, in this chain-collision accident, the lead and middle vehicles collided first, and whether this was caused by plaintiff and defendant Tribble's operation of their respective vehicles in a negligent manner. Moreover, even assuming that the collision between the lead and middle vehicles occurred last in the chain of events, as plaintiff maintains, Mr. Tribble's testimony that his vehicle was pushed into plaintiff's vehicle upon being rear-ended by the Persaud vehicle qualifies as a non-negligent explanation for striking plaintiff's vehicle (see *Kuris*, 116 AD3d at 676). Similarly, Mr. Persaud's testimony that the lead and middle vehicles collided because plaintiff made a sudden stop after the traffic had started to proceed, constitutes a potentially non-negligent explanation for his rear-ending the middle vehicle (see *Etingof*, 134 AD3d at 668). Hence, on this record, factual issues abound as to how this chain-collision accident occurred, and as to whom proximate cause may be attributed. By submitting the evidence raising these issues with her papers-in-chief, plaintiff necessarily failed to eliminate all material issues of fact, thus, requiring denial of her cross-motion (see *Alvarez*, 68 NY2d at 324).

Accordingly, the above-referenced motion and cross-motion are,

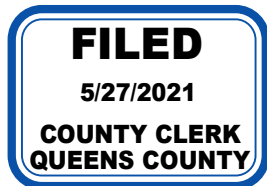
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<sup>1</sup>Defendant Persaud's deposition was held after the moving defendants made the main motion for summary judgment.

each, **DENIED** in their respective entireties.

The foregoing shall constitute the decision and order of this court.

Dated: May 26, 2021



  
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**JANICE A. TAYLOR, J.S.C.**

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