

<b>Onoyiboyeya v Teodosio</b>
2022 NY Slip Op 32532(U)
January 10, 2022
Supreme Court, Bronx County
Docket Number: Index No. 807754/2021E
Judge: Ben R. Barbato
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**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX: PART IA-15**

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**JASMINE ONOYIBOYEYA,**

**Index No.: 807754/2021E**

**Plaintiff,**

**-against-**

**LAURA TEODOSIO and TIM MIKHELASHVILI,**  
**Defendants.**

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HON. BEN R. BARBATO:

Co-Defendant, Laura Teodosio (“Movant”) seeks summary judgment and dismissal of the action against her on the basis that she is not liable for causing the accident that gives rise to this action. In support of the motion, Movant annexes the respective pleadings, a copy of the police report and her affidavit. Plaintiff has not submitted opposition to the motion, however, co-Defendant Tim Mikhelashvili (“co-Defendant”), submits counsel’s affirmation and his affidavit. In substance, co-Defendant argues in boilerplate fashion: the Movant has not established prima facie that she is entitled to the relief sought; the motion is premature as discovery is not complete; and there are issues of fact.

**Alleged Facts as per Movant:**

According to Movant (see NYSCEF No. 14, affidavit of Laura Teodosio), who avers as follows:

“On June 15, 2018, I was driving my Ford pickup truck when I was involved in a motor vehicle accident, in the afternoon. The accident occurred midblock on Shore Road , in the Bronx. In that location, Shore Road was a two-way street, with one traveling lane in either direction, separated by a double-yellow line. There were no traffic signals and no stop signs governing traffic in my direction on Shore Road, at the accident location. Prior to the accident, I brought my red pickup truck to a gradual stop on Shore Road, due to stopped traffic in front of me. I safely stopped my pickup truck behind another stopped car, which I later learned was being operated by the plaintiff, JASMINE ONOYIBOYEYA, without contacting it. I was stopped in traffic when I felt a single impact to the rear bumper of my vehicle. The force of that rear-end impact pushed my vehicle forward, into the back of the plaintiff's car. I later learned that the vehicle that rear-ended me was being operated by the co-defendant, TIM MIKHELASHVILI. There was nothing I could have done to avoid this accident, since I was stopped in traffic when I was rear-end by the MIKHELASHVILI car, which pushed my middle vehicle forward, into the back of the plaintiff's lead car.”

*Co-Defendant's version of the Accident:*

As per the co-Defendant, his affidavit (see NYSCEF No. 27, affidavit of Tim Mikhelashvili), he avers the following:

“On June 15, 2016, I was an operator of a vehicle on Shore Road, in Bronx, New York. I was operating a vehicle that bore the New York plate number HMN6273. On the date referenced above at approximately 3:40 p.m., I was traveling on the Shore Road in slow moving, stop and go traffic. The vehicle directly in front of me, that I later learned was being operated by co-defendant, Laura Teodosio, was moving prior to impact. As a result of the stop and go traffic, I lightly struck the vehicle directly in front of my vehicle. Ms. Teodosio's vehicle was moving at the time of impact. However, due to the slow moving stop and go traffic and both of our vehicles moving at the time of impact, ***I am unable to ascertain if the impact with Ms. Teodosio's***

***vehicle contributed to her striking the vehicle in front of her or if she struck the vehicle prior to our impact or after our impact.*** I have come to learn that the driver in front of Ms. Teodosio's was the plaintiff in this action, Jasmine Onoyiboyeya (emphasis added)."

**Applicable Law/Analysis:**

Vehicle and Traffic Law § 1129 (a) "Following too closely", provides that:

"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 and the condition of the highway."

Drivers are expected to maintain enough distance between themselves and the cars ahead of them, so as to avoid collisions with stopped vehicles, taking into account weather and road conditions (*see Matos v Sanchez*, 147 AD3d 585, 586 [1st Dept 2017]).

"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" (*Matos v Sanchez*, 147 AD3d 585, 586, 47 NYS3d 307 [1st Dept 2017]) ... defendant driver's assertion that plaintiffs' vehicle stopped abruptly does not explain why defendant driver failed to maintain a safe distance, and is insufficient to constitute a nonnegligent explanation." (*Urena v GVC Ltd.*, 160 AD3d 467, 467 [1st Dept 2018]).

In multi-vehicle accidents, Movant may meet her “initial burden ... by demonstrating, prima facie, that their stopped vehicle was propelled forward into the ... vehicle [ahead] after their vehicle was struck in the rear by a third vehicle” (*Williams v Sala*, 152 AD3d 729, 730 [2d Dept 2017]).

Accordingly, Movant made a *prima facie* showing, of her entitlement to summary judgment in her favor as against co-Defendant on liability, by her affidavit.

Thus, the burden shifted to co-Defendant to advance a non-negligent explanation for the accident. In reviewing co-Defendant’s affidavit, he fails to properly rebut Movant’s version. Indeed, based upon his affidavit, he is not certain whether the Movant was stopped or stopping. In this regard, in “a chain-reaction collision, responsibility presumptively rests with the rearmost driver” (*Mustafaj v Driscoll*, 5 AD3d 138, 138 [1st Dept 2004]; see *Chang v Rodriguez*, 57 AD3d 295 [1st Dept 2008]). Even, assuming arguendo, that Movant was stopping, co-Defendant as the rear-most driver had a statutory duty of care to avoid this accident, and his opposition offers no non-negligent excuse for the accident occurrence.

### Conclusion

Accordingly, the Motion by co-Defendant Laura Teodosio to dismiss this

action and any cross claims as against her and for summary judgment in her favor, is granted.

However, this Court makes no determination as to any other issues herein, including, but not limited to, whether Plaintiff's alleged injuries were proximately caused by the negligence of the Defendants; and whether Plaintiff sustained a "serious injury" within the meaning of the Insurance Law.

This constitutes the decision and Order of the Court.

Dated: JAN 10 2022

  
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HON. BEN R. BARBATO, J.S.C.