

**Gabriel v Balan**

2022 NY Slip Op 32902(U)

August 18, 2022

Supreme Court, Kings County

Docket Number: Index No. 524901/2018

Judge: Carl J. Landicino

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At an IAS Term, Part 81 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 18<sup>th</sup> day of August, 2022.

PRESENT:

HON. CARL J. LANDICINO,

Justice.

-----X  
MARGARETTE L. GABRIEL and JAYVON  
PIERRE-LOUIS,

*Plaintiffs,*

DECISION AND ORDER

-against-

Index No.: 524901/2018

MARIE J. BALAN and JEAN R. LAMOUR,

Motion Sequence # 7

*Defendants,*

-----X

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion:

Papers Numbered (NYSCEF)

Notice of Motion/Cross Motion and

Affidavits (Affirmations) Annexed ..... 22-28

Opposing Affidavits (Affirmations).....

Reply Affidavits (Affirmations) .....

After a review of the papers and oral argument with no opposition, the Court finds as follows:

This action concerns a motor vehicle accident that occurred on April 27, 2017. On that day, the Plaintiff Jayvon Pierre-Louis (hereinafter the "Plaintiff Pierre-Louis") was a passenger in a vehicle operated by Plaintiff Margarete L. Gabriel (hereinafter "Plaintiff Gabriel") which was involved in a collision concerning two other vehicles. The rear vehicle was owned and operated by Defendant Marie J. Balan (hereinafter the "Defendant Balan") and the front vehicle was operated by Defendant Jean R. Lamour (hereinafter the "Defendant Lamour")<sup>1</sup>. The accident allegedly occurred

<sup>1</sup> The action and all cross claims as against Defendant Lamour were dismissed by Decision and Order dated October 1, 2019. (See NYSCEF Doc. 28).

on Paerdegat Avenue North at or near its intersection with Paerdegat 10th Street, in Kings County, New York.

Plaintiff Gabriel now moves (Motion Sequence #7) on the counterclaim for summary judgment on the issue of liability as against all parties. Plaintiff Pierre-Louis and Defendant Balan do not oppose the motion.

Summary judgment is a drastic remedy that deprives a litigant of his or her day in court, and it “should only be employed when there is no doubt as to the absence of triable issues of material fact.” *Kolivas v. Kirchoff*, 14 AD3d 493, 787 N.Y.S.2d 392 [2d Dept 2005], citing *Andre v. Pomeroy*, 35 NY2d 361, 364, 362 N.Y.S.2d 1341 [1974]. The proponent for summary judgment must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact. *See Sheppard-Mobley v. King*, 10 AD3d 70, 74, 778 N.Y.S.2d 98 [2d Dept 2004], citing *Alvarez v. Prospect Hospital*, 68 NY2d 320, 324, 508 N.Y.S.2d 923 [1986], *Winegrad v. New York Univ. Med. Ctr.*, 64 NY2d 851, 853, 487 N.Y.S.2d 316 [1985]. “In determining a motion for summary judgment, evidence must be viewed in the light most favorable to the nonmoving party, and all reasonable inference must be resolved in favor of the nonmoving party.” *Adams v. Bruno*, 124 AD3d 566, 1 N.Y.S.3d 280, 281 [2d Dept 2015] citing *Valentin v. Parisio*, 119 AD3d 854, 989 N.Y.S.2d 621 [2d Dept 2014]; *Escobar v. Velez*, 116 AD3d 735, 983 N.Y.S.2d 612 [2d Dept 2014].

Once a moving party has made a *prima facie* showing of its entitlement to summary judgment, “the burden shifts to the opposing party to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action” *Garnham & Han Real Estate Brokers v Oppenheimer*, 148 AD2d 493, 538 N.Y.S.2d 837 [2d Dept 1989]. Failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers. *See Demshick v. Cmty. Hous. Mgmt. Corp.*, 34 AD3d 518, 520, 824

N.Y.S.2d 166, 168 [2d Dept 2006]; *see Menzel v. Plotnick*, 202 AD2d 558, 610 N.Y.S.2d 50 [2d Dept 1994]. However, “[a] plaintiff is no longer required to show freedom from comparative fault in establishing his or her *prima facie* case...” if they can show “...that the defendant’s negligence was a proximate cause of the alleged injuries.” *Tsyganash v. Auto Mall Fleet Mgmt., Inc.*, 163 AD3d 1033, 1034, 83 N.Y.S.3d 74, 75 [2d Dept 2018]; *Rodriguez v. City of New York*, 31 NY3d 312, 320, 101 N.E.3d 366, 371 [2018].

Turning to the merits of the motion the Court finds that sufficient evidence has been presented by Plaintiff Gabriel to establish, *prima facie*, that Defendant Balan’s vehicle hit the Plaintiffs’ vehicle in the rear, pushing Plaintiffs’ vehicle into Defendant Lamour’s vehicle. Plaintiff Gabriel relies primarily on a certified Police Accident Report, Defendant Lamour’s affidavit, and the depositions of Plaintiffs Gabriel and Pierre-Louis. In her deposition testimony, Plaintiff Gabriel confirms that the accident took place on Paerdegat. (See NYSCEF Doc. No. 90 at pg. 19). She further confirmed that Defendant Lamour’s vehicle was stopped in front of her at a stop sign and that she came to a complete stop behind this vehicle. (See NYSCEF Doc. No. 90 at pgs. 26 and 28). Plaintiff Gabriel stated that her “foot remained on the brake” when Defendant Balan’s vehicle hit the rear of Plaintiffs’ vehicle. The impact by Defendant Balan’s vehicle was heavy and “[i]t moved [Plaintiffs’] car and hit the other one in front of me.” (See NYSCEF Doc. No. 90 at pgs. 30 and 31). Defendant Lamour in his affidavit states that “[f]ollowing the impact to the rear of my vehicle, I exited my vehicle and observed that the vehicle that struck mine was a Honda bearing license plate ORT7651. Also, I observed that it appeared that the Honda was struck in the rear by another vehicle, a Toyota, bearing license plate GJT1511.” (See NYSCEF Doc. No. 88 at paragraph 5). The certified Police Accident Report corroborates Plaintiff Gabriel’s testimony and Defendant Lamour’s affidavit, in that Defendant Balan admitted that “she is not sure what

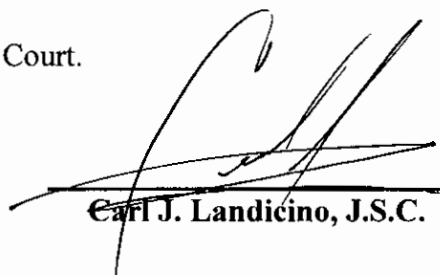
happen (sic) when she heard a loud noise and realized she ran into Plaintiffs' vehicle." (See NYSCEF Doc. No. 85). Defendant Balan does not oppose the motion. This evidence is sufficient for Plaintiff Gabriel to establish a *prima facie* showing. See *Martinez v. Allen*, 163 AD3d 951, 82 N.Y.S.3d 130 [2d Dept 2018]. This is because "[a] rear-end collision with a stopped or stopping vehicle creates a *prima facie* case of negligence against the operator of the rear vehicle, thereby requiring that operator to rebut the inference of negligence by providing a non-negligent explanation for the collision." *Klopchin v. Masri*, 45 AD3d 737, 737, 846 N.Y.S.2d 311, 311 [2d Dept 2007]. Further, "[w]hen 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." *Gaeta v. Carter*, 6 AD3d 576, 576, 775 N.Y.S.2d 86 [2d Dept 2004]; see Vehicle and Traffic Law § 1129 [a]; *Williams v. Spencer-Hall*, 113 AD3d 759, 759-760, 979 N.Y.S.2d 157 [2d Dept 2014]; *Taing v. Drewery*, 100 AD3d 740, 741, 954 N.Y.S.2d 175 [2d Dept 2012]. As such, Plaintiff Gabriel's motion on the counterclaim for summary judgment on the issue of liability, in that Plaintiff Gabriel is free from comparative fault, is granted.

Based upon the foregoing, it is hereby ORDERED as follows:

Plaintiff Gabriel's motion for summary judgment on the issue of liability (motion sequence #7) on the counterclaim is granted and the counterclaim is dismissed. Plaintiff Gabriel is free from comparative fault.

The foregoing constitutes the Decision and Order of the Court.

ENTER:

  
 Carl J. Landicino, J.S.C.  
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 KINGS COUNTY CLERK  
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