Julien v Johntry
2022 NY Slip Op 34490(U)
January 3, 2022
Supreme Court, Suffolk County
Docket Number: Index No. 610036/2020
Judge: David T. Reilly

SHORT FORM ORDER

INDEX No. 610036/2020

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 30 - SUFFOLK COUNTY

P R E S E N T :

Hon. DAVID T. REILLY
Justice of the Supreme Court

MOTION DATE 1/7/21
ADJ. DATE 7/21/21
Mot. Seq. # 001 MG
Mot. Seq. # 002 XMG

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ADRIANA JULIEN and GLADYS BELTRAN,

Plaintiffs,

- against -

EDWARD W. JOHNTRY and L. M. LIBRIZZI-PROSPER,

Defendants.

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LAW OFFICE OF CARL MALTRESE
Attorney for Plaintiffs
1050 West Jericho Turnpike, Suite B
Smithtown, New York 11787

SCAHILL LAW GROUP, P.C.
Attorney for Defendant Librizzi-Prosper
1065 Stewart Avenue, Suite 210
Bethpage, New York 11714

DESENA & SWEENEY, LLP
Attorney for Defendant Johntry
1500 Lakeland Avenue
Bohemia, New York 11716

Upon the following papers read on these motions for summary judgment : Notice of Motion/ Order to Show Cause and supporting papers filed by defendant L.M. Librizzi-Prosper, on November 30, 2020 ; Notice of Cross Motion and supporting papers filed by plaintiffs, on December 15, 2020 ; Answering Affidavits and supporting papers filed by defendant Edward W. Johntry, on December 4, 2020; filed by defendant Edward W. Johntry, on December 16, 2020; filed by defendant L.M. Librizzi-Prosper, on December 17, 2020 ; Replying Affidavits and supporting papers filed by defendant L.M. Librizzi-Prosper, on December 9, 2020 ; Other ; it is

ORDERED that the motion by defendant L.M. Librizzi-Prosper for summary judgment dismissing the complaint and cross claims as asserted against her is granted; and it is further

ORDERED that the cross motion by plaintiffs for summary judgment in their favor on the issue of defendant Edward W. Johntry's liability is granted.

This is an action to recover damages for injuries allegedly sustained by plaintiffs Adriana Julien and Gladys Beltran as the result of a motor vehicle accident, which occurred on December 13, 2019, at approximately 8:30 p.m., on Main Street, at or near its intersection with Ocean Avenue, in Islip, New

York. The accident allegedly occurred when plaintiffs' vehicle was involved in a four-vehicle, rear-end collision with vehicles owned and operated by an unnamed nonparty, and defendants L.M. Librizzi-Prosper and Edward W. Johntry. Plaintiff Julien operated the lead vehicle, in which plaintiff Beltran was a passenger, Librizzi-Prosper operated the middle vehicle, and Johntry operated the rear vehicle. Julien was operating her vehicle behind an unnamed nonparty vehicle. It is alleged that Julien brought her vehicle to a complete stop for a red traffic signal, that Librizzi-Prosper brought her vehicle to a complete stop behind Julien, and that Johntry's vehicle struck Librizzi-Prosper's vehicle in the rear, propelling it into the rear of plaintiffs' vehicle.

Librizzi-Prosper now moves for summary judgment dismissing the complaint and cross claims as asserted against her, arguing that because her vehicle was completely stopped when it was struck in the rear by Johntry's vehicle and propelled forward into the rear of plaintiffs' vehicle, she was not at fault in the happening of the accident. In support of her motion, Librizzi-Prosper submits, *inter alia*, a copy of the police accident report. Johntry opposes the motion, arguing that it is premature as discovery has not been completed, and he submits the affirmation of his attorney.

Plaintiffs cross-move for summary judgment in their favor on the issue of Johntry's liability, arguing that Johntry's negligence was the sole proximate cause of the accident. Plaintiff alleges that Johntry violated, *inter alia*, Vehicle and Traffic Law § 1129 (a) by following too closely. In support of their motion, plaintiffs submit, *inter alia*, the affidavits of Julien and Librizzi-Prosper, and a copy of the police accident report. Johntry, again, opposes the motion, arguing that it is premature and submits the affirmation of his attorney.

A defendant moving for summary judgment in a negligence action has the burden of establishing, prima facie, that he or she was not at fault in the happening of the subject accident (*see* ***Estate of Cook v Gomez***, 138 AD3d 675, 30 NYS3d 148 [2d Dept 2016]; ***Boulos v Lerner-Harrington***, 124 AD3d 709, 709, 2 NYS3d 526 [2d Dept 2015]; ***Rungoo v Leary***, 110 AD3d 781, 782, 972 NYS2d 672 [2d Dept 2013]). While there can be more than one proximate cause of an accident and it is generally for the trier of fact to determine, the issue of proximate cause may be decided as a matter of law where only one conclusion may be drawn from the established facts (*see* ***Estate of Cook v Gomez***, *supra*; ***Jones v Vialva-Duke***, 106 AD3d 1052, 966 NYS2d 187 [2d Dept 2013]; ***Kalland v Hungry Harbor Assoc., LLC***, 84 AD3d 889, 922 NYS2d 550 [2d Dept 2011]).

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 (*see* Vehicle and Traffic Law § 1129 [a]; ***Melendez v McCrowell***, 139 AD3d 1018, 32 NYS3d 604 [2d Dept 2016]; ***Singh v Avis Rent A Car Sys., Inc.***, 119 AD3d 768, 989 NYS2d 302 [2d Dept 2014]; ***Martinez v Martinez***, 93 AD3d 767, 941 NYS2d 189 [2d Dept 2012]). Accordingly, a rear-end collision establishes a prime 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 non-negligent explanation for the collision (*see* ***Strickland v Tirino***, 99 AD3d 888, 952 NYS2d 599 [2d Dept 2012]; ***Martinez v Martinez***, *supra*; ***Giangrasso v Callahan***, 87 AD3d 521, 928 NYS2d 68 [2d Dept 2011]). Evidence that a vehicle was struck in the rear and propelled into the vehicle in front of it may provide a sufficient non-negligent explanation (*see*

Hartfield v Seenarraine, 138 AD3d 1060, 30 NYS3d 316 [2d Dept 2016]; ***Kuris v El Sol Contr. & Constr. Corp.***, 116 AD3d 675, 983 NYS2d 580 [2d Dept 2014]; ***Strickland v Tirino***, *supra*). In chain-reaction accidents, the operator of a vehicle which is stopped or coming to a stop and is propelled into the vehicle in front of it, as a result of being struck from behind, is not negligent inasmuch as the operator's actions cannot be said to be the proximate cause of the injuries resulting from the collision (*see* ***Chuk Hwa Shin v Correale***, 142 AD3d 518, 36 NYS3d 213 [2d Dept 2016]; ***Niosi v Jones***, 133 AD3d 578, 19 NYS3d 550 [2d Dept 2015]; ***Vargas v Muhammad Akbar***, 123 AD3d 1016, 999 NYS2d 163 [2d Dept 2014]).

Librizzi-Prosper has established, prima facie, entitlement to summary judgment dismissing the complaint and cross claims against her, as she has established that her vehicle was completely stopped at a traffic signal on eastbound Main Street when it was struck from behind by Johntry's vehicle (*see* ***Chuk Hwa Shin v Correale***, *supra*; ***Estate of Cook v Gomez***, *supra*; ***Boulos v Lerner-Harrington***, *supra*; ***Jones v Vialva-Duke***, *supra*). She further established that she was stopped behind plaintiffs' vehicle, that she did not make contact with plaintiffs' vehicle until after she was struck from the rear, and that the rear collision propelled her vehicle forward into the rear of plaintiffs' vehicle.

Librizzi-Prosper having met her initial burden on the motion, the burden now shifts to the opposing parties to submit evidence, in admissible form, of a material issue of fact requiring a trial on the issue of liability (*see* ***Alvarez v Prospect Hosp.***, 68 NY2d 320, 508 NYS2d 923 [1986]; ***Zuckerman v City of New York***, 49 NY2d 557, 427 NYS2d 595 [1980]). Here, plaintiffs do not oppose the motion which, in effect, is a concession that no question of fact exists, and the facts as alleged in the moving papers may be deemed admitted (*see* ***Kuehne & Nagel v Baiden***, 36 NY2d 539, 369 NYS2d 667 [1975]; ***114 Woodbury Realty, LLC v 10 Bethpage Rd., LLC***, 178 AD3d 757, 114 NYS3d 100 [2d Dept 2019]). Johntry has also failed to raise a triable issue of fact. In opposition, Johntry submits the affirmation of his attorney, alleging that the motion is premature and that triable issues exist with respect to the happening of the accident. However, the affirmation from an attorney having no personal knowledge of the facts is without evidentiary value and, thus, is insufficient to raise a triable issue of fact (*see* ***Zuckerman v City of New York***, *supra*; *see also* CPLR 3212 [b]). Further, as Johntry himself has personal knowledge of the relevant facts underlying the accident, the purported need to conduct discovery does not warrant denial of the motion (*see* ***Jobson v SM Livery, Inc.***, 175 AD3d 1510, 109 NYS3d 376 [2d Dept 2019]; ***Pierre v Demoura***, 148 AD3d 736, 48 NYS3d 260 [2d Dept 2017]). The "mere hope or speculation that evidence sufficient to defeat a motion for summary judgment may be uncovered" by further discovery is an insufficient basis for denying the motion (***Lopez v WS Distrib. Inc.***, 34 AD3d 759, 760, 825 NYS2d 516, 517 [2d Dept 2006]; *see* ***Sapienza v Harrison***, 191 AD3d 1028, 142 NYS3d 584 [2d Dept 2021]; ***Castro v Rodriguez***, 176 AD3d 1031, 111 NYS3d 55 [2d Dept 2019]; ***Stubenhaus v City of New York***, 170 AD3d 1064, 96 NYS3d 662 [2d Dept 2019]). Therefore, Librizzi-Prosper's motion for summary judgment dismissing the complaint and cross claims against her is granted.

With respect to plaintiffs' motion for summary judgment on the issue of Johntry's liability, to establish prima facie entitlement to judgment as a matter of law on the issue of liability, a plaintiff is no longer required to show freedom from comparative fault (***Rodriguez v City of New York***, 31 NY3d 312, 76 NYS3d 898 [2018]; ***Bloechle v Heritage Catering, Ltd.***, *supra*; ***Catanzaro v Edery***, *supra*; ***Marks v***

Rieckhoff, 172 AD3d 847, 101 NYS3d 63 [2d Dept 2019]; ***Auguste v Jeter***, 167 AD3d 560, 560, 88 NYS3d 509 [2d Dept 2018]).

Plaintiffs' have established, prima facie, entitlement to summary judgment in their favor on the issue of Johntry's liability (*see* ***Modena v M&S Mech. Servs., Inc.***, 181 AD3d 802, 118 NYS3d 433 [2d Dept 2020]; ***Lopez v Dobbins***, 164 AD3d 776, 79 NYS3d 566 [2d Dept 2018]; ***Tsyganash v Auto Mall Fleet Mgt., Inc.***, 163 AD3d 1033, 83 NYS3d 74 [2d Dept 2018]). Julien avers that she was operating her vehicle eastbound on Main Street. She avers that as she was approaching the intersection with Ocean Avenue she observed the traffic light turn red. She avers that she brought her vehicle to a stop, and that suddenly, and without warning, it was struck in the rear by Librizzi-Prosper, whose vehicle was struck in the rear by Johntry. She states that the force of the collision with the Librizzi-Prosper vehicle propelled her vehicle forward into a nonparty vehicle, which was stopped in front of her.

Plaintiffs, having established their prima facie burden on the motion, the burden now shifts to defendants to raise a triable issue of fact with respect to whether there was non-negligent explanation for the accident (*see* ***Alvarez v Prospect Hosp.***, *supra*; ***Flood v Fillas***, *supra*; *see generally* ***Rodriguez v City of New York***, *supra*). Librizzi-Prosper submits the affirmation of her attorney, which states that she takes no position with respect to plaintiffs' motion. Johntry has failed to raise a triable issue of fact, as he submits only the affirmation of attorney, which is insufficient to raise a triable issue of fact (*see* ***Zuckerman v City of New York***, *supra*). Therefore, plaintiffs' motion for summary judgment on the issue of Johntry's liability is granted.

Dated: January 3, 2022

David T. Reilly. J.S.C.

____ **FINAL DISPOSITION** __X__ **NON-FINAL DISPOSITION**