

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS, PART 73

Index No.: 511807/2017
Motion Date: 11-2-20
Mot. Seq. No.: 7-8

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ANDREW TOLBERT,
Plaintiff,

-against-

DECISION/ORDER

NAKAWAH DONALDSON, BAY RIDGE LEXUS
and ANDREA COTTICA,
Defendants.

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Upon the e-filed documents, listed by NYSCEF as item numbers 97-134, 138-139 and 140, the motion and cross-motion are decided as follows:

In this action to recover damages for personal injuries, the defendants, Nakawah Donaldson and Bay Ridge Lexus, move for an order pursuant to CPLR § 3212 granting them summary judgment dismissing plaintiff Andrew Tolbert’s Verified Complaint and all crossclaims (**Mot. Seq. No. 7**). Defendant, ANDREA COTTICA, cross-moves for an order pursuant to CPLR § 3212 granting her summary judgment dismissing plaintiff Andrew Tolbert’s Verified Complaint and all crossclaims (**Mot. Seq. No. 8**). The motion and cross-motion are consolidated for disposition.

On June 17, 2014, the plaintiff, Andrew Tolbert, was riding a motorcycle in the southerly direction on New York State Route 22/North Broadway in the vicinity of its intersection with Central Westchester Parkway when he observed a vehicle owned and operated by defendant Andrea Cottica stopped on the roadway in front of him. In order to avoid colliding with this vehicle, he “dumped” his motorcycle down on the roadway and allegedly sustained injury as a result.

Several minutes before the accident, defendant Cottica was involved in a minor collision with a vehicle owned by defendant Bay Ridge Lexus and operated by defendant Donaldson. Just

prior to the collision, she had been traveling south in the right lane of New York State Route 22/North Broadway and had stopped at a red light located at the intersection of New York State Route 22/North Broadway and Westchester Parkway. When the light turned green, she put her vehicle into motion and began proceeding through the intersection. Before she cleared the intersection, the Donaldson/Bay Ridge Lexus vehicle collided into the driver's side of her vehicle.

Following the collision with the Donaldson/Bay Ridge Lexus vehicle, defendant Cottica drove several feet past the intersection and brought her vehicle to a complete stop on New York State Route 22/North Broadway. Defendant Donaldson moved his vehicle off the roadway and parked in an area where parking was permitted. The accident involving the plaintiff occurred several minutes later, when both of the defendants had exited their vehicles, inspected their respective vehicles for damage and confirmed that none of the occupants had sustained injuries.

In light of the "lapse in time" between the plaintiff's accident and the collision between the Cottica and Donaldson / Bay Ridge Lexus vehicles, even assuming that Donaldson's negligence was a proximate cause of the collision, his negligence was not a proximate cause of the accident involving the plaintiff and, at most, merely furnished a condition or occasion for the accident (see *Peralta v. Manzo*, 74 A.D.3d 1307, 1308, 905 N.Y.S.2d 245, 247; *Shatz v. Kutshers Country Club*, 247 A.D.2d 375, 375, 668 N.Y.S.2d 643, quoting *Sheehan v. City of New York*, 40 N.Y.2d 496, 503, 387 N.Y.S.2d 92, 354 N.E.2d 832; see *Poggiali v. Town of Babylon*, 219 A.D.2d 626, 631 N.Y.S.2d 415; *Williams v. Envelope Tr. Corp.*, 186 A.D.2d 797, 589 N.Y.S.2d 345). *Tr. Corp.*, 186 A.D.2d 797, 589 N.Y.S.2d 345). In this regard, following the minor collision between the two vehicles and several minutes prior to the accident involving the plaintiff, defendant Donaldson had pulled his vehicle off of the roadway onto a side street and

parked in an area where parking was permitted. The accident involving the plaintiff occurred after both of the defendants had exited their vehicles, inspected their respective vehicles for damage and confirmed that none of the occupants had sustained injuries.

Accordingly, the motion of defendants Donaldson and Bay Ridge Lexus for summary judgment dismissing all claims and cross-claims asserted against them is **GRANTED**. With respect to defendant Cottica, inasmuch as triable issue of fact exist as to whether defendant's negligence in violating Vehicle and Traffic Law §§1201 and 1202 was a proximate cause of plaintiff's accident, the motion of defendants Cottica for summary judgment dismissing all claims and cross-claims asserted against her is **DENIED**.

For the above reasons, it is hereby

ORDRED that motion and cross-motion as decided as indicated above.

This constitutes the decision and order of the Court.

Dated: December 28, 2020



PETER P. SWEENEY, J.S.C.

Note: This signature was generated electronically pursuant to Administrative Order 86/20 dated April 20, 2020