LaRose v Fayyaz Racing
2013 NY Slip Op 32829(U)
September 9, 2013
Supreme Court, Queens County
Docket Number: 20072/11
Judge: Timothy J. Dufficy

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

PRESENT: HON. TIMOTHY J. DUFFICY **PART 35**
Justice

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JUSTIN LAROSE,

Plaintiff,

-against-

Index No. : 20072/11
Motion Date: 5/23/13
6/21/13

FAYYAZ RACING, DAVE DOUBY, EAN HOLDINGS, LLC and RAPHAEL VOLMAR,

Mot. Seq. 4, 5 & 6

Defendants.

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The following papers numbered 1 to 28 read on this motion by defendant EAN Holdings, LLC (EAN Holdings) , for summary judgment dismissing the complaint and any and all cross claims; by separate notice of motion by defendant Raphael Volmar (Volmar) for summary judgment dismissing the complaint; and by separate notice of motion by plaintiff Justin Larose (plaintiff) for partial summary judgment on the issue of liability against defendants Fayyaz Razzaq (Razzaq) and Dave Douby (Douby) and for an order setting this matter down for an assessment on the issue of damages.

	Papers Numbered
Notices of Motion - Affidavits - Exhibits	1-12
Answering Affidavits - Exhibits	13-22
Reply Affidavits	23-28

Upon the foregoing papers it is ordered that the motions are determined as follows:

This is an action to recover damages that the plaintiff allegedly sustained as a result of a motor vehicle accident which occurred on June 11, 2011. The plaintiff has alleged that, at or near the intersection of Francis Lewis Boulevard and 100 Avenue, in the County of Queens, his vehicle was involved in a collision with three other vehicles, one owned and operated by Volmar, the second owned by EAN Holdings and operated by Douby, and the third owned and operated by Razzaq. The plaintiff has alleged that his vehicle was stopped

at a red traffic light when it was struck in the rear by the vehicle operated by Razzaq. Razzaq has alleged that his vehicle was pushed into the plaintiff's vehicle by Douby's vehicle. As a result of the impact, the plaintiff's vehicle was allegedly propelled into Volmar's vehicle.

EAN Holdings has moved for summary judgment dismissing the complaint and any and all cross claims and has argued that such a claim is barred by 49 USC § 30106(a), more commonly known as the "Graves Amendment." The Graves Amendment provides that the owner of a leased vehicle may not be held liable "for harm to persons or property that results or arises out of the use, operation, or possession of the vehicle during the period of the rental or lease, if – (1) the owner (or an affiliate of the owner) is engaged in the trade or business of renting or leasing motor vehicles; and (2) there is no negligence or criminal wrongdoing on the part of the owner (or an affiliate of the owner)" (49 USC § 30106[a]).

In support of its motion, EAN Holdings has relied upon, among other things, a copy of the pleadings, the affidavit of Lauren Farrell (Farrell), a Regional Risk Manager for non-party Elrac, LLC, and the deposition testimony of Douby. Plaintiff's pleadings reflect no specific allegations of negligence on the part of EAN Holdings and no allegations of any criminal wrongdoing in this matter. Farrell stated in her affidavit that she was an employee of Elrac, LLC, that EAN Holdings was an affiliate of Elrac, LLC, that on the date of the accident, was engaged in the business and trade of leasing motor vehicles under the trade name of non-party "Enterprise Rent-A-Car," and that EAN Holdings was the owner of the vehicle involved in the subject accident and operated by Douby. Farrell further stated that non-party Evelyne Douby rented the subject vehicle pursuant to an agreement with Enterprise Rent-A-Car, that Douby was operating the vehicle at the time of the accident, that EAN Holdings had no complaints or indications of mechanical issues prior to the date of the accident, and that neither the lessor of the vehicle, Evelyne Douby or Douby were employees of EAN Holdings at the time of the accident.

Douby testified that he was not an employee of Enterprise Rent-A-Car or any of its affiliates and did not have any mechanical difficulties with the subject vehicle prior to the accident. Based upon this evidence, EAN Holdings has demonstrated that as the owner of a leased vehicle involved in the subject accident, it cannot be held liable to plaintiffs for any negligence related to the subject accident pursuant to the Graves Amendment (49 USC § 30106 [a]; *see Khan v MMCA Lease, Ltd.*, 100 AD3d 833, 834 [2012]; *Graham v Dunkley*, 50 AD3d 55, 58 [2008], *lv dismissed* 10 NY3d 835 [2008]). No issue of fact has been raised in opposition. Therefore, EAN Holdings is entitled to the relief sought.

Volmar has moved for summary judgment dismissing the complaint and has argued that he was lawfully traveling on the roadway when the plaintiff's vehicle suddenly crossed over into his lane of travel from the opposite side of the roadway and struck his vehicle, that he could not have reasonably anticipated the collision and taken steps to avoid it, that he was not negligent in the happening of the accident and that he did not cause or contribute to it. Volmar has the initial burden of demonstrating the absence of any material issues of fact (*see Smalls v AJI Indus., Inc.*, 10 NY3d 733, 735 [2008]; *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). A driver is not required anticipate that another vehicle traveling in the opposite direction, would cross over into his or her lane of travel (*see Marsch v Catanzaro*, 40 AD3d 941, 942 [2007]; *Whitfield v Toense*, 273 AD2d 877 [2000]).

"The common-law emergency doctrine 'recognizes that when an actor is faced with a sudden and unexpected circumstance which leaves little or no time for thought, deliberation or consideration, or causes the actor to be reasonably so disturbed that the actor must make a speedy decision without weighing alternative courses of conduct, the actor may not be negligent if the actions taken are reasonable and prudent in the emergency context, provided the actor has not created the emergency" (*Lifson v City of Syracuse*, 17 NY3d 492, 497 [2011], quoting *Caristo v Sanzone*, 96 NY2d 172, 174 [2001]). "The doctrine recognizes that a person confronted with such an emergency situation 'cannot reasonably be held to the same accuracy of judgment or conduct as one who has had full opportunity to reflect, even though

it later appears that the actor made the wrong decision'" (*Lifson v City of Syracuse*, 17 NY3d at 497, quoting *Rivera v New York City Tr. Auth.*, 77 NY2d 322, 327 [1991], *rearg denied* 77 NY2d 990 [1991]).

In support of his motion, Volmar has relied upon, among other things, the deposition testimony of plaintiff and Douby. The plaintiff testified that his vehicle was stopped at a red traffic light where he was waiting to make a left turn and that the wheels of his vehicle were turned slightly to the left at the time of the accident. He also testified that there were three impacts to his vehicle, two from the rear and the third when his vehicle was pushed by the first two impacts into the intersection and into Volmar's vehicle. Douby testified that, although he did not know Volmar's vehicle was involved in the accident, he did observe the vehicle in front of him collide with another vehicle which traveled to the left and into the opposite lanes of travel on the roadway. Based upon this evidence, Volmar has demonstrated that he did not proximately cause or contribute to the accident.

In opposition, the plaintiff has argued that issues of fact exist as to whether Volmar could have avoided the accident and as to whether Volmar was traveling at an excessive rate of speed. EAN Holdings and Douby have adopted the plaintiff's arguments and evidence in opposition. However, despite their contention, the evidence submitted by plaintiff, EAN Holdings and Douby in opposition has not demonstrated that a triable issue of fact exists as to whether Volmar was comparatively negligent (*see Klein v Crespo*, 50 AD3d at 746; *Laino v Lucchese*, 35 AD3d at 673). Indeed, Volmar was not required to anticipate that the plaintiff's vehicle would cross over into his lane of travel and any speculations by the plaintiff, EAN Holdings and Douby's that Volmar might have done something to avoid the accident is insufficient to raise an issue of fact on this motion (*see Whitfield v Toense*, 273 AD2d at 878; *Jordan v Bowen*, 239 AD2d 910, 911 [1997]). Furthermore, their contention that Volmar was speeding is speculative (*see Batts v Page*, 51 AD3d 833, 834 [2008]; *McNamara v Fishkowitz*, 18 AD3d 721, 722 [2005]). Therefore, Volmar has demonstrated his entitlement to summary relief on his motion.

The plaintiff has moved for partial summary judgment on the issue of liability against Razzaq and Douby and argues that he was not negligent in causing or contributing to the accident because his vehicle was rear-ended while stopped at a red traffic light as a result of the collision between Razzaq's and Douby's vehicles. In support of his motion, the plaintiff has relied upon, among other things, his own and Razzaq's deposition testimony. The plaintiff testified that he was stopped at a red traffic light for approximately three to five seconds before he was rear-ended by Razzaq's vehicle. Razzaq testified that he observed the plaintiff's vehicle in front of his vehicle prior to the accident, that the plaintiff's vehicle was at a stop at the red traffic light, and that there were two impacts to his vehicle, the first when Douby's vehicle struck his vehicle and the second when the resulting impact propelled him forward into the rear of the plaintiff's vehicle. Based upon this evidence, the plaintiff has satisfied his prima facie burden (*see Zdenek v Safety Consultants, Inc.*, 63 AD3d 918, 919 [2009]; *Ramirez v Konstanzer*, 61 AD3d 837, 837-838 [2009]).

In opposition, Razzaq has adopted EAN Holdings' and Douby's arguments and evidence. EAN Holdings and Douby have argued that issues of fact exist as to how the accident occurred, which preclude summary relief. Razzaq, EAN Holdings and Douby have relied upon, among other things, Douby's deposition testimony, wherein, he testified that while he observed the plaintiff's and Razzaq's vehicles collide and that he was unable to avoid colliding with Razzaq's vehicle immediately following their accident. Since this evidence has raised a triable issue of fact as to how the accident occurred and, at least, as to whether the plaintiff may have been comparatively fault in causing or contributing to the accident, summary relief is precluded on this motion (*see Johnson v New York City Tr. Auth.*, 88 AD3d 321, 324-325 [2011]; *Alvarez v Prospect Hosp.*, 68 NY2d at 324).

Accordingly, EAN Holdings' motion for summary judgment dismissing the complaint and any and all cross claims is granted. Volmar's motion for summary judgment dismissing the complaint is granted. Plaintiff Larose's motion for partial summary judgment on the issue of liability against Razzaq and Douby is denied.

Dated: September 9, 2013

TIMOTHY J. DUFFICY, J.S.C.