Myers v Happy Time Truck
2016 NY Slip Op 31993(U)
September 2, 2016
Supreme Court, Bronx County
Docket Number: 304319/2012
Judge: Julia I. Rodriguez
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SUPREME COURT OF THE CITY OF NEW YORK
COUNTY OF BRONX: Part IA 27

----------X **INDEX # 304319/2012**

JOSEPH MYERS,

Plaintiff,

-against- **DECISION and ORDER**

HAPPY TIME TRUCK, JAMES SLOAN, JR. RYDER TRUCK RENTAL, ALEJANDRO VILLALOBOS, AMERICAN UNITED TRANSPORTATION, INC. and JE TAVAREZ-JIMINEZ,

Defendants.

Present: Hon. Julia I. Rodriguez
Supreme Court Justice

_____X

_____X

PAULASUAREZ,

Plaintiff, **INDEX # 303337/2013**

-against-

JAMES W. SLOAN, JR., ALEJANDRO VILLALOBOS, J.E. JIMINEZ-TAVAREZ, RAYMOND WARD, HAPPY TIME TRUCKING, LLC, H. BETTI INDUSTRIES, INC., RYDER TRUCK RENTAL, INC., AMERICAN UNITED TRANSPORTATION, INC. and SABRINA T. ASHBY,

Defendants.

Recitation, as required by CPLR 2219 (a), of the papers considered in review of motions for summary judgment on liability:

Papers Submitted	Numbered
Motion by Defendants Ryder,Alejandro & H Betti, Affirmation & Exhibits	1
Plaintiff's Affirmation in Opposition & Exhibits	2
Affirmation in Opposition by Happy Time & Sloan	3
Reply Affirmation	4

This action arises out of a four-vehicle accident on I-95 on January 24, 2012. Vehicle 1, pertaining to Defendants **Raymond Ward** and **Sabrina T. Ashby**, was rear ended by Vehicle 2, pertaining to **J.E. Jimenez-Tavarez** and **American United Transportation, Inc.,** which in turn was rear ended by Vehicle 3, pertaining to **Allejandro Villalobos, H. Betti Industries, Inc.** and **Ryder Truck Rental, Inc.** which, in turn, was rear ended by Vehicle 4, pertaining to **James Sloan** and **Happy Time Trucking, LLC**. Plaintiff Suarez was a passenger in Vehicle 2; Plaintiff Ward was a passenger in Vehicle 1.

Previously, Defendants Ward and Ashby in Vehicle #1, and Defendants Tavarez and American United Transportation in Vehicle #2, moved for summary judgment on liability alleging they were stopped because of traffic conditions when they were rear ended. By Decision and Order dated April 27, 2016, Defendants Ward an Ashby were granted summary judgment and the action was dismissed solely as to these defendants pertaining to Vehicle #1. However, this court denied summary judgment to Tavarez and American United (Vehicle #2) finding that there existed:

> issues of fact and credibility, *including but not limited to*, were the remaining defendant drivers, including Tavarez, operating their respective vehicles with reasonable care taking into account the actual and potential dangers existing from weather, road, and traffic conditions, were they keeping a proper lookout under the circumstances then existing to be seen and to be aware of what was in their view, and to use reasonable care to avoid an accident. See Pattern Jury Instruction 2:77.

At this juncture, Defendants **Allejandro Villalobos, H. Betti Industries, Inc.** and **Ryder Truck Rental, Inc.** [Vehicle 3] move for summary judgment alleging that they have no liability for the subject accident, or, in the alternative, seeking dismissal of the claims against Ryder Truck based upon the Graves Amendment.

The rule is that a rear-end collision creates a presumption of negligence by the operator of the offending vehicle unless the driver of the offending vehicle provides a non-negligent explanation for the collision. *Profita v.* Diaz, 100 A.D.3d 481, 954 N.Y.S.2d 40 (1st Dep't 2012); *Berger v. New York City Housing Authority*, 82 A.D.3d 531, 918 N.Y.S.2d 458 (1st Dep't 2011); *Agramonte v. City of New York*, 288 A.D.2d 75, 732 N.Y.S.2d 414 (1st Dep't 2001). Section 1129(a) of the Vehicle and Traffic Law requires that drivers "not follow another driver more closely than is reasonable and prudent" having due regard for the speed of the other vehicles and the traffic conditions then existing.

The relevant deposition excerpts of the parties was already cited in the Order dated April 27, 2016. To wit:

At his deposition Defendant Tavarez [vehicle 2] testified that he was traveling about 40 mph an hour in the middle lane maintaining a distance of "anywhere from 20 to 30 feet" between his car and the car in front of him [Tr. Pgs. 21 & 23], when a truck made impact with the rear of his vehicle [pg. 24]. After the impact Tavarez "put on [his] brakes, the car didn't stop and I hit the one in front of me" [pg. 26]. When asked whether the vehicle in front of him was stopped or moving when Tavarez struck vehicle #1 Tavarez testified:

A: It was moving.
Q. At the time your vehicle made contact with the rear of it?
A: I don't know.
Q: Can you approximate, at all?
A: I don't know, I can't.
[Tavarez transcript pg. 28, lines 10 - 19].

At his deposition Defendant Villalobos [vehicle 3] testified he was driving between 25 and 30 mph in the center lane, and that at time of impact his vehicle was in "slow motion" [Tr. pg. 24] when he felt a first impact to the back of his vehicle and then to the front of his vehicle [Tr. Pgs. 23-25]. Villalobos described maintaining the distance of "one car length" [pg. 27] between his vehicle and the vehicle in front of him during the 1 ½ miles he had driven in the center lane prior to impact; prior to impact the taxi in front of him "was moving in slow motion" [pg.27] and that when his vehicle made contact with the taxi in front of him the "taxi was pushed forward" [pg. 27].

Defendant James Sloane, Jr. [vehicle 4] was the driver of an empty tri-axle dump truck; at his deposition he testified he was in the middle lane traveling about 35 mph and a box truck in front of him was traveling about 30 mph [Tr. Pg. 28]. Sloane's vehicle was behind the box truck a distance of "about two car lengths" when he observed the box truck come a stop [pg. 30]. Sloane characterized the impact between the front of his truck and the rear of his box truck as "hard;" at the same time Sloane hit the truck in front Sloane was struck by another vehicle from his rear [pg. 31].

After consideration of the Defendants' testimony, the court finds that Defendant Villalobos failed to establish a non-negligent explanation for striking the rear of Vehicle #2. Villalobos failed to rebut the presumption that he violated Section 1129(a) of the VTL which requires that drivers "not follow another driver more closely than is reasonable and prudent" having due regard for the speed of the other vehicles and the traffic conditions then existing. Cf. *McCloskey v. Nieves*, 48 Misc.3d 1210(A), 18 N.Y.S.3d 579 (Sup. Ct. Bx. Co. 2015) (testimony that the front driver stopped short is insufficient to rebut presumption of negligence); *Santana v. Tic-Tak Limo Corp.*, 106 A.D.3d 572, 966 N.Y.S.2d 30 (1st Dept. 2013) (driver of front vehicle is entitled to summary judgment on liability; defendant driver's testimony that plaintiff stopped short and that he could not see plaintiff's brake lights is insufficient to rebut the presumption of negligence); *Rodriguez v. Chapman-Perry, et al.*, 82 A.D.3d 638, 920 N.Y.S.2d 306 (1st Dept.

2011) (rear most driver's explanation that front-most driver stopped short is not a non-negligent explanation for rear-most driver's failure to maintain a reasonably safe speed and distance behind first car). Consequently, that branch of the motion seeking summary judgment on liability in favor of Defendants **Allejandro Villalobos** and **H. Betti Industries, Inc**. is **denied,** for the same reasons set forth in the Order dated April 27, 2016, i.e., that there exists questions of fact and credibility, *including but not limited to*, were the remaining defendant drivers, including Villalobos, operating their respective vehicles with reasonable care taking into account the actual and potential dangers existing from weather, road, and traffic conditions, were they keeping a proper lookout under the circumstances then existing to be seen and to be aware of what was in their view, and to use reasonable care to avoid an accident. See Pattern Jury Instruction 2:77.

However, that branch of the defendants' motion seeking summary judgment on the ground that the Federal Transportation Equity Act precludes claims of vicarious liability against Ryder Truck is **granted**. [49 U.S.C.§30106 a/k/a as the "Graves Amendment"].

The proponent of a motion for summary judgment must tender sufficient evidence to show the absence of any material issue of fact and the right to judgment as a matter of law. *Alvarez v. Prospect Hospital*, 68 N.Y.2d 320 (1986). With respect to the Graves Amendment, Defendant Truck Ryder established that it is engaged in the business of renting and leasing motor vehicles, and specifically, that the vehicle in question was lawfully leased to Defendant **H. Betti Industries, Inc.** when the incident occurred, and that said vehicle had no prior maintenance, repair or performance problems. *See generally, Byrne v Collins,* 77 AD3d 782 (2nd Dept. 2010); *Burrell v Barreiro,* 83 AD3d 984 (2nd Dept. 2011); and *Cook v Schapiro*, 58 Ad3d 664 (2nd Dept. 2009); and there is no dispute that the driver of the leased vehicle had a valid driver's license. *Weinstein v Cohen,* 179 AD2d 806 (2nd Dept 1992) and (49 USC 30106).

For the foregoing reasons, it is

ORDERED that the complaint and all cross-claims are dismissed solely as to Defendant **Ryder Truck Rental, Inc.**

Dated: Sept. 2, 2016

Hon. Julia I. Rodriguez, Supreme Court Justice