Hill v Grant
2018 NY Slip Op 30977(U)
April 6, 2018
Supreme Court, Bronx County
Docket Number: 24307/2015E
Judge: Lizbeth Gonzalez

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: PART 10E

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Emile Hill and Stanley Coote,

Plaintiffs,

-against-

DECISION and ORDER
Index No 24307/2015E

Rohan Grant, Luttrell Bellamy and Lease Plan USA Inc.,

Defendants.

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HON. LIZBETH GONZÁLEZ

This is a personal injury action that arises out of a three-car collision between the parties' respective vehicles that allegedly occurred on 4/1/15. The rearmost vehicle was operated by defendant Grant, the middle vehicle was owned by defendant Lease Plan USA Inc. ("LPU") and operated by defendant Bellamy and the first vehicle was operated by plaintiff Hill in which plaintiff Coote was a passenger.

Motions

By Notice of Motion, the plaintiffs move pursuant to CPLR 3212 for partial summary judgment on the issue of liability. Defendants LPU and Bellamy cross-move for summary judgment dismissal of plaintiffs' complaint and all claims and cross-claims asserted against them. The plaintiffs and defendant Grant oppose the cross-motion.

By separate Notice of Motion, Emile Hill, as plaintiff on defendant Grant's counterclaim, moves for summary judgment on the basis that his vehicle was stopped when rear-ended. Mr. Hill adopts and incorporates the facts, arguments and evidence solely relative to himself that are set forth in the plaintiffs' motion for partial summary judgment.

DISCUSSION

CPLR 3212 provides that summary judgment is warranted if the movant shows through the submission of admissible evidence that the opposing party has no defense to the cause of action or that the cause of action or defense has no merit (CPLR 3212[b]).

New York State law requires drivers to maintain a safe distance between their vehicles and any vehicles in front of them (Vehicle and Traffic Law § 1129 [a]; *De La Cruz v Ock Wee Leong*, 16 AD3d 199 [1st Dept 2005]).

In a chain-reaction collision, responsibility presumptively rests with the rearmost

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driver (*De La Cruz v Ock Wee Leong*, 16 AD3d 199 [1st Dept 2005]; *Mustafaj v Driscoll and Lugo*, 5 AD3d 138 [1st Dept 2004]) and a duty is imposed upon him to come forward with a non-negligent explanation for the collision (*Dattilo v Best Transp. Inc.*, 79 AD3d 432 [1st Dept 2010] *citing Cabrera v Rodriguez*, 72 AD3d 553 [1st Dept 2010]).

In support of their motion, plaintiffs Hill and Coote proffer a certified police accident report that states:

> Driver #1 [defendant Grant] stated he was driving on East 233 St when he hit Driver #2.
> Driver #2 [defendant Bellamy] stated he was stopped on E 233 St because the car in front was making left turn. Driver #2 stated he then struck Driver #3 when hit from rear.
> Driver #3 [plaintiff Hill] stated he was making left turn into parking lot when struck from behind.

The plaintiffs proffer their respective affidavits. Both are signed, dated 10/4/17 and contain identical content. The plaintiffs state that on 4/1/15 at approximately 6PM, Mr. Hill's 2002 Toyota van was at a complete stop for approximately 10 to 20 seconds as he waited to turn left, with signal activated, into a supermarket parking lot on East 233rd Street at or near the intersection of Grace Avenue. Defendant Bellamy, who was driving a 2013 Ford directly behind plaintiffs' vehicle, "crashed directly into the rear of [plaintiff's] car." They heard no screeching brakes or tires prior to impact and felt and heard one impact.

Defendants LPU and Bellamy Opposition and Cross-Motion

Defendants LPU and Bellamy oppose plaintiffs' motion and cross-move for summary judgment dismissing plaintiffs' complaint and all claims and cross-claims against them on the ground that their vehicle was stopped behind plaintiffs' vehicle when rear-ended by defendant Grant's vehicle and propelled into plaintiffs' vehicle.

Defendants LPU and Bellamy posit that the plaintiffs' identical affidavits contradict their deposition testimony regarding the defendants' negligence. The defendants' counsel claims that "[i]nterestingly enough, plaintiffs choose not to submit their respective deposition transcripts" because their "limited observations" provide no evidentiary basis for the conclusions stated in their affidavits. The plaintiffs' affidavits and testimony are similar relative to the sequence of events leading up to and after the accident but the latter provides more detailed information. Significantly, the plaintiffs make no mention as to whether they

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observed the LPU/Bellamy vehicle or its location prior to impact.

In support of their position, defendants LPU and Bellamy proffer the plaintiffs' deposition transcripts; affidavits of defendant Bellamy and non-party Carolyn Todd; and the same above-referenced police accident report.

By affidavit, defendant Bellamy, an employee of Ecolab, states that he was operating a van within the scope of his employment when he was involved in an accident. Mr. Bellamy states that his vehicle was stopped about half of one car length behind plaintiffs' vehicle for approximately five to ten seconds waiting for it to turn left into a parking lot. While stopped, Bellamy's vehicle was rear-ended by defendant Grant's vehicle and pushed forward into plaintiffs' vehicle. Mr. Bellamy states that Mr. Grant informed him that he was looking toward the side at a food vendor and when he turned to look forward, he saw the stopped vehicles in front of him. Mr. Bellamy attests that his vehicle was operating properly and required no maintenance or repair. He maintains that he neither caused nor had an opportunity to avoid the accident.

In opposition to the defendants' cross-motion, counsel for plaintiffs Hill and Coote submit that there are triable issues of fact because "[i]f the impact between defendant Bellamy and the plaintiffs was the result of the impact of defendants Grant and Bellamy, it is more likely that the defendant Bellamy vehicle would not be touching the plaintiffs' vehicle." Counsel provides no evidence or reason for his theory. Plaintiff Hill testified that he exited his vehicle after the accident and observed that his and the Bellamy vehicle were still touching. Plaintiffs' counsel also posits that given the alleged damage between the defendants' respective vehicles, plaintiffs should have heard a "very loud collision" which neither of them heard prior to impact in the rear of their vehicle. No photographs of the vehicles after the accident are provided.

Defendant Grant opposes plaintiffs' motion for summary judgment, plaintiff Hill's motion on the counterclaim and defendants LPU and Bellamy's cross-motion. Mr. Grant asserts that triable issues of fact exist as to how the accident occurred. By affirmation, Mr. Grant's counsel erroneously states that the proffered police accident report is uncertified. He posits that the plaintiffs' deposition transcripts are unsigned and thus inadmissible. However, the transcripts are admissible because they are certified by the reporters as accurate (*Franco v Rolling Frito-Lay Sales, Ltd.*, 103 AD3d 543 [1st Dept 2013]; *Singh v Actors Equity Holding Corp.*, 89 AD3d 488 [1st Dept 2011] *citing Morchik v Trinity School*, 257 AD2d 534 [1st Dept

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1999]).

By affidavit, defendant Grant attests that he was traveling on East 233rd Street, a two-way roadway separated by double yellow lines. The intersection if East 233rd Street and Grace Avenue is controlled by a traffic light. Mr. Grant provides a different version of events indicating that the impact between LPU/Bellamy and plaintiffs' vehicle preceded the impact between his and the LPU/Bellamy vehicle:

> Immediately prior to the accident, the traffic light at the intersection of East 233rd Street and Grace Avenue was green. I proceeded through the intersection with the green traffic light. My vehicle was traveling no more than 10 to 15 miles per hour. After I was through the intersection, plaintiffs' vehicle attempted to make a sudden left-turn into a parking lot, but because of oncoming traffic, plaintiffs' vehicle came to a sudden stop. As a result, co-defendants' vehicle suddenly applied its brakes, but nonetheless, came into contact with plaintiffs' vehicle. In an attempt to avoid the two vehicles in front of me that had come into contact, I applied my brakes and turned my steering wheel to the right, but unfortunately, my vehicle came into contact with co-defendants' vehicle.

Defendant Lease Plan USA Inc.

Defendants contend that LPU, described by counsel as a "vehicle lessor," should be awarded summary judgment on the issue of liability pursuant to the Graves Amendment.

In New York, the Graves Amendment bars vicarious liability actions against businesses that rent or lease vehicles that would otherwise be permitted under New York VTL 388(1). (Hernandez v Sanchez, 40 AD3d 446 [1st Dept 2007]).

In support of their argument, the defendants proffer the affidavit of Carolyn Todd who self-describes as a "Senior Risk Analyst for Lease Plan USA, Inc." Ms. Todd attests that LPU is "engaged in the business of long term commercial leasing of vehicles and providing fleet-related services." Annexed to her affidavit is a Master Lease Agreement wherein LPU leased the subject 2013 Ford operated by defendant Bellamy to Ecolab Inc. on 2/25/04 giving it custody and control of the vehicle and responsibility for its maintenance and insurance.

CONCLUSION

Plaintiff-Operator Hill and plaintiff-passenger Coote, the occupants of the first car, move for partial summary judgment on the issue of liability. Plaintiff Hill seeks the same relief on the counterclaim. By affidavit and testimony, the plaintiffs assert that their vehicle was stopped as they waited to make a left turn into a parking lot when rear-ended. Defendant

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Bellamy corroborates the plaintiffs' version of events.

In their cross-motion for summary judgment, defendants LPU and Bellamy maintain that their van was stopped behind the plaintiffs' vehicle when rear-ended by the Grant vehicle. The plaintiffs proffer no evidence to establish the contrary.

Defendant Grant, the operator of the rearmost vehicle, attests in his affidavit that the plaintiffs' vehicle suddenly stopped, caused defendant Bellamy to suddenly stop and, as a result, caused Grant to make contact with the Bellamy van although he veered right to avoid contact. Mr. Grant, however, informed the responding officer that he "was driving on East 233 St when he hit Driver #2 [defendant Bellamy];" he made no "sudden stop" allegations to the police. Mr. Grant's claim that plaintiffs' vehicle and defendants Bellamy/LPU's van suddenly stopped - standing alone - is insufficient to rebut the presumption of negligence on his part as the driver of the rearmost vehicle (*Androvic v Metropolitan Transportation Authority*, 95 AD3d 610 [1st Dept 2012]). Interestingly, Mr. Grant alleges that he was only traveling 10 to 15 miles per hour but could not avoid contact.

After review and consideration of the evidence, the Court finds as follows:

1) Plaintiffs' motion for summary judgment on the issue of liability is GRANTED;

2) Plaintiff Hill's motion for summary judgment on the counterclaim is GRANTED;

3) Defendants Bellamy and Lease Plan USA Inc.'s cross-motion is GRANTED and all claims against them are dismissed.

Service of a copy of this Decision and Order with Notice of Entry shall be effected within 30 days.

Dated: April 6, 2018

So ordered,

Hon. Lizbeth González, JSC