Tucker v Corrado
2019 NY Slip Op 34309(U)
September 3, 2019
Supreme Court, Dutchess County
Docket Number: Index No. 2018-52663
Judge: Hal B. Greenwald

SUPREME COURT - STATE OF NEW YORK
DUTCHESS COUNTY

Present:
Hon. HAL B. GREENWALD
Justice.

SUPREME COURT: DUTCHESS COUNTY

x

REED TUCKER,

Plaintiff,

-against-

DECISION AND ORDER
Index No. 2018-52663
Motion Seq. No. 1

RONALD D. CORRADO,

Defendant.

x

The following documents were reviewed and considered by the Court in reaching the within Decision and Order.

NYSCEF Doc. No. 11-17, 20-24

HISTORY

This action arises from a motor vehicle accident that occurred on December 3, 2017 on Violet Avenue in the Town of Hyde Park. Plaintiff REED TUCKER (TUCKER) alleges he was driving in northbound direction when his vehicle was struck in the rear by a vehicle driven by and owned by defendant RONALD D. CORRADO (CORRADO).. The collision caused HARMANTAS to suffer "bodily injuries and mental anguish", constituting "serious injury". The Defendant interposed an answer containing denials and affirmative defenses.

SUMMARY JUDGMENT

TUCKER now moves for summary judgment on the issue of liability, alleging there is no triable issue of fact as TUCKER was struck in the rear by CORRADO's vehicle which he was driving. In support of the motion Plaintiff proffers an attorney affirmation, and, more importantly, a supporting Affidavit of TUCKER and of a non-party witness alleging and confirming that TUCKER was stopped when he was rear-ended by the car that CORRADO was driving. Defendant CORRADO interposed a Verified Answer containing denials and affirmative defenses.

The 2nd Department in *Liu v Lowe* 173 A.D.3d 946 decided June 12, 2019, citing *Tutrani v. County of Suffolk*, 10 N.Y.3d 906, *Grant v. Carrasco*, 165 A.D.3d 631, *Lopez v. Dobbins*, 164 A.D.3d 776, 777, 79 N.Y.S.3d 566. determined that liability in a rear end collision is found with the operator of the rear vehicle. When there is a stopped car, such as herein, and that car is struck

by another vehicle in the rear, the inference is that the operator of the rear vehicle is liable for the accident, and any resultant injuries to the driver of the other vehicle.

TUCKER, alleges CORRADO violated safety rules by following too closely. The defendant violated Vehicle and Traffic Law § 1129 when he rear ended TUCKER's vehicle, a negligent act, without any explanation for the accident. This violation constituted negligence as a matter of law. The intent of the statute, that prohibits tailgating is not just to protect against rear end collisions. That the most common accident that occurs as a result of this violation is rear-end collisions, other kinds of collision can occur. *Darmento v. Pacific Molasses, Vo., Inc.* 81 N.Y.2d 965 [1985]; *Inzano v. Brucculeri* 257 A.D.2d 605 [1999]; *Tam v Magiropoulos* 247 A.D. 2d 533 [1998]).

A movant seeking summary judgment in its favor must first make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence in admissible form to eliminate any material issues of fact from the case *Winegrad v. New York Univ. Med. Ctr.*, 64 N.Y.2d 851, 853, 487 N.Y.S.2d 316, 476 N.E.2d 642 [1985]). If this standard is met, the burden then shifts to the opposing party who, to defeat the motion, must demonstrate the existence of a triable issue of fact (*Zuckerman v. City of New York*, 49 N.Y.2d 557, 427 N.Y.S.2d 595, 404 N.E.2d 718 [1980]).

Herein, the plaintiff demonstrated, prima facie, her entitlement to summary judgment against CORRADO. The defendant failed to meet his burden of demonstrating that a triable issue of fact exists, as he submitted only the affirmation of his attorney, who did not personally witness the accident, in opposition to the plaintiff's motion. "Such an affirmation by counsel is without evidentiary value and thus [is] unavailing" *Zuckerman* supra.

INSUFFICIENT OPPOSITION

In *Dinham v. Wagner*, 48 A.D.3d 349, 350, 851 N.Y.S.2d 535, 536 (2008) the court decided a motion for summary judgment wherein the opposition was by attorney affirmation and found that Defendants failed to raise a triable issue of fact (*see Murchison v. Incognoli*, 5 A.D.3d 271, 773 N.Y.S.2d 299 [2004]). Further, the affirmation by defendants' counsel, who had no personal knowledge of the accident, was insufficient to raise an issue of fact as to whether HARMANTAS was comparatively negligent (*see Jenkins v. R.C. Alexander*, 9 A.D.3d 286, 780 N.Y.S.2d 133 [2004]).

The plaintiffs in *Piltser v. Donna Lee Mgmt. Corp.*, 29 A.D.3d 973, 974, 816 N.Y.S.2d 543, 545 (2006) were found to have met their burden of establishing their prima facie entitlement to judgment on the issue of liability as a matter of law. In opposition, the respondents failed to submit an affidavit from a person with personal knowledge of the facts either denying the plaintiffs' allegations or offering a nonnegligent explanation for the collision *Arbizu v. REM Transp.*, 20 A.D.3d 375, 376, 799 N.Y.S.2d 231..

DISCOVERY

CORRADO's attorney alleges that discovery is necessary before the court grants Summary Judgment as information pertaining to the accident is solely within the knowledge of the Plaintiff. However, it is well settled that "a claimed need for discovery, without some evidentiary basis indicating that discovery may lead to relevant evidence, is insufficient to avoid an award of summary judgment." *Hariri v. Amper*, 51 A.D.3d 146, 152 [1st Dept 2008], *as cited in Adorno v Lend Lease (US) Const. LMB Inc.*, No. 157374/2015, 2016 WL 2766449, at *1 [N.Y. Sup. Ct. May 06, 2016]).

LATE OPPOSITION

The subject motion for summary judgment was noticed to be returnable on March 20, 2019. By letter dated March 19, 2019 an adjournment request was made by defendant which was granted, adjourning the matter to April 22, 2019. Defendant inquired about a second adjournment which was acknowledge and rejected by plaintiff's counsel' letter of April 17, 2019. Simultaneously,on April 17, 2019 Defendant's counsel filed and served its opposition. At 4:59pm on April 17, 2019, plaintiff's counsel filed its reply. By reason of the foregoing the Court, in its discretion considers this matter to be fully submitted on April 17, 2019 and has reviewed the submissions accordingly.

For all the above reasons, it is

ORDERED, that Plaintiff REED TUCKER's Motion for Summary Judgment on the issue of liability is granted, and it is further

ORDERED that the parties complete the attached Preliminary Conference Order to determine a discovery scheduling Order and bring same to Court for a preliminary Conference on **October 22, 2019 at 9:30 a.m.**

The foregoing constitutes the decision and order of this court.

Dated: September 3, 2019
Poughkeepsie, New York

ENTER:

HON. HAL B. GREENWALD, J.S.C.

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Pursuant to CPLR Section 5513, an appeal as of right must be taken within thirty days after service by a party upon the appellant of a copy of the judgment or order appealed from and written notice of its entry, except that when the appellant has served a copy of the judgment or order and written notice of its entry, the appeal must be taken within thirty days thereof.

When submitting motion papers to Judge Greenwald's Chambers, please do not submit any copies. Submit only the original papers.