

Paino v Thrift Land USA of Yonkers, Inc.
2020 NY Slip Op 32025(U)
May 14, 2020
Supreme Court, Bronx County
Docket Number: 28611/2017E
Judge: John R. Higgitt
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: I.A.S. PART 14

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MICHAEL PAINO,

Plaintiff,

DECISION AND ORDER

- against -

Index No. 28611/2017E

THRIFT LAND USA OF YONKERS, INC. and ERNEST
O. GARCIA,

Defendants.
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John R. Higgitt, J.

Upon defendants' January 16, 2020 notice of motion and the affirmation and exhibits submitted in support thereof; plaintiff's February 14, 2020 affirmation in opposition and the exhibits submitted therewith; and due deliberation; defendants' motion to renew their prior motion for summary judgment is granted and, upon renewal, defendants' prior motion for summary judgment dismissing the complaint is granted.

This is a negligence action to recover damages for personal injuries that plaintiff allegedly sustained in a motor vehicle accident that took place on January 8, 2016.

Defendants seek renewal of their prior motion, which sought summary judgment dismissing the complaint. Defendants' prior motion (which was a cross motion to plaintiff's prior motion for relief under CPLR 3126) was denied with leave to renew by the court in its October 30, 2019 decision and order. The court found that the transcript of plaintiff's deposition testimony, upon which defendants relied in seeking summary judgment, was not admissible because it was not signed by plaintiff, and plaintiff contested its accuracy.

Defendants assert that renewal should be granted because on August 9, 2018 defendants sent plaintiff a copy of the transcript of his deposition testimony and that plaintiff failed to make any correction to the deposition. The deposition may therefore "be used as fully as though

signed” (CPLR 3116[a]). Defendants argue that, based on plaintiff’s testimony that his vehicle struck the rear of defendants’ vehicle when defendants’ vehicle was stopped, defendants are not liable for the accident.

In opposition, plaintiff asserts that defendants’ motion to renew their prior cross motion should be denied because defendants failed to provide a reasonable explanation for their failure to submit the August 9, 2018 letter. Plaintiff further asserts that, although he struck the rear of defendants’ vehicle, the motion for summary judgment should be denied because there is a question of fact as to whether defendants’ vehicle made a sudden stop.

The October 30, 2019 decision and order by the court granted defendants leave to renew. Additionally, the prior cross motion was denied for failure to provide proof that the transcript was sent to plaintiff for review, and defendants remedied that error by providing the August 9, 2018 letter to plaintiff. Thus, renewal is appropriate.

With respect to the merits of defendants’ summary judgment motion, plaintiff’s deposition transcript established that his vehicle struck the rear of defendants’ vehicle, triggering the presumption that the rearmost driver (plaintiff) was negligent and that the driver of the stopped vehicle (defendant Garcia) was not negligent (*see Giap v Pham* 159 AD3d 484 [1st Dept 2018]). Plaintiff’s assertion that defendant Garcia made a sudden stop is insufficient to raise a triable issue of fact as to whether plaintiff has a non-negligent explanation for the accident (*see Animah v Agvei*, 63 Misc 3d 783 [Sup Ct, Bronx County 2019])

Accordingly, it is

ORDERED, that defendants’ motion to renew their prior cross motion seeking summary judgment dismissing the complaint is granted; and it is further

ORDERED, that, upon renewal, defendants’ prior cross motion is granted; and it is further

ORDERED, that the complaint is dismissed; and it further

ORDERED, that the Clerk of the Court is directed to dismiss the action in its entirety.

This constitutes the decision and order of the court.

Dated: May 14, 2020



John R. Higgitt, J.S.C.