

Bailey v Rugova

2020 NY Slip Op 32624(U)

August 11, 2020

Supreme Court, New York County

Docket Number: 450091/2020

Judge: Laurence L. Love

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LAURENCE L. LOVE PART IAS MOTION 62

Justice

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BLONDELL BAILEY,

Plaintiff,

- v -

REEZA RUGOVA, NAHAL SINGH, XPRESS TRANSPORT, INC., CITY OF NEW YORK, NEW YORK CITY TRANSIT AUTHORITY

Defendant.

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INDEX NO. 450091/2020
MOTION DATE 08/05/2020
MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32

were read on this motion to/for JUDGMENT - SUMMARY.

Upon the foregoing documents, the motion is decided as follows:

Plaintiffs commenced this action by the filing of a summons dated April 2, 2019 and issue was joined by service of defendant, NYCTA's answer, dated June 4, 2019, defendant, Nahal Parmjit Singh's answer dated July 12, 2019 and defendant, the City of New York's answer and demand to change venue, dated July 23, 2019. In an Order entered January 6, 2020, venue was transferred to New York County. Defendant, Nahal Parmjit Singh s/h/a Nahal Singh now moves for summary judgment on the issue of liability dismissing all claims and cross-claims asserted against him.

In support of the motion, defendant, Singh, submits an affidavit which establish as follows: On January 3, 2018 at approximately 11:30 am, Singh was the operator and owner of a 2013 Toyota, bearing New York license plate number T684576C. While traveling northbound on the FDR Drive near East 71st Street in Manhattan, in the County of New York, Singh's vehicle was

struck in the rear by a 2010 Toyota, bearing New York license plate number T684346C, owned by Defendant Xpress Transport, Inc. and operated by Defendant, Reeza Rugova. Plaintiff, Blondell Bailey was a passenger on the XPRESS vehicle. Singh further established that at all relevant times, he operated his vehicle safely, did not make any sudden lane changes, acceleration or decelerations, and had no prior warning of the accident

Summary Judgment should not be granted where there is any doubt as to the existence of a material issue of fact. *Zuckerman v. City of New York*, 49 N.Y.2d 557, 562, 427 N.Y.S.2d 595 (1980). The function of the court when presented with a motion for Summary Judgment is one of issue finding, not issue determination. *Sillman v. Twentieth Century-Fox Film Corp.*, 3 N.Y.2d 395, 165 N.Y.S.2d 498 (1957); *Weiner v. Ga-Ro Die Cutting, Inc.*, 104 A.D.2d 331, 479 N.Y.S.2d 35 (1st Dept., 1984) *aff'd* 65 N.Y.2d 732, 429 N.Y.S.2d 29 (1985). 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 entitlement to judgment as a matter of law. *Alvarez v. Prospect Hospital*, 68 N.Y.2d 320 (1986); *Winegrad v. New York University Medical Center*, 64 N.Y.2d 851 (1985). Summary judgment is a drastic remedy that deprives a litigant of his or her day in court. Therefore, the party opposing a motion for summary judgment is entitled to all favorable inferences that can be drawn from the evidence submitted and the papers will be scrutinized carefully in a light most favorable to the non-moving party. *Assaf v. Ropog Cab Corp.*, 153 A.D.2d 520 (1st Dep't 1989). Summary judgment will only be granted if there are no material, triable issues of fact *Sillman v. Twentieth Century-Fox Film Corp.*, 3 N.Y.2d 395 (1957).

It is well established that when a driver approaches another vehicle from the rear, that driver is under a duty to maintain a safe distance between the cars (see Vehicle and Traffic Law §1129[a]), maintain a reasonably safe rate of speed, maintain control of the vehicle, and use

reasonable care to avoid colliding with the other vehicle (See *Shamah v Richmond County Ambulance Serv.*, 279 AD2d 564; *Benyarko v Avis Rent A Car Sys.*, 162 AD2d 572; *Young v City of New York*, 113 AD2d 833.) Therefore, a rear-end collision establishes a prima facie case of negligence on the part of the operator of the rear vehicle and imposes a duty on the operator of the rear vehicle to explain how the accident occurred. (See, *Leal v Wolff*, 224 AD2d 392; *Gambino v City of New York*, 205 AD2d 583). As such, defendant, Singh has established a prima facie entitlement to summary judgment on the issue of liability, dismissing this action.

In opposition, plaintiff argues that the summary judgment is premature as discovery is incomplete, however, plaintiff fails to offer an evidentiary basis to suggest that discovery may lead to relevant evidence or that facts essential to opposing the motion were exclusively within the defendant's knowledge and control (see CPLR 3212[f]; *Espada v. City of New York*, 74 A.D.3d 1276, 1277 (2d. Dept. 2010)). Specifically, plaintiff fails to submit an affidavit raising any of the above issues. As such, defendant, Nahal Parmjit Singh's motion must be granted.

ORDERED that the motion of defendant Nahal Parmjit Singh for summary judgment, dismissing the complaint herein is granted and the complaint and any counterclaims and cross-claims are dismissed in their entirety as against said defendant, with costs and disbursements to said defendant as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of said defendant; and it is further

ORDERED that the action is severed and continued against the remaining defendants; and it is further

ORDERED that the caption be amended to reflect the dismissal and that all future papers filed with the court bear the amended caption; and it is further

ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk’s Office (60 Centre Street, Room 119), who are directed to mark the court’s records to reflect the change in the caption herein; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk’s Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website at the address www.nycourts.gov/supctmanh).

8/11/2020
DATE



LAURENCE L. LOVE, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE