Campbridge v Pepsi Cola Bottling Co.
2020 NY Slip Op 33687(U)
September 23, 2020
Supreme Court, Queens County
Docket Number: 710291/18
Judge: Rudolph E. Greco, Jr.
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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: Honorable **RUDOLPH E. GRECO, JR.** IA PART 32
Justice

FILED
9/25/2020
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CHRIS CAMPBRIDGE, AS ADMINISTRATOR OF THE ESTATE OF MAURICE CAMPBRIDGE,

Plaintiff,

-against-

PEPSI COLA BOTTLING CO., and NEIL R. EWING,

Defendants.

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Index No.: 710291/18
Motion Date: 9/10/20
Motion Cal. No.: 18
Motion Seq. No.: 3

The following numbered papers read on this motion by plaintiff for summary judgment on the issue of liability, and this cross-motion by defendants to dismiss, or alternatively to compel, pursuant to CPLR 3126.

PAPERS	NUMBERED
Notice of Motion-Affidavits-Exhibits…...........	EF 51 - 62
Affirmation in Opposition-Exhibits…………..	EF 63 - 73
Replying………………………………………..	EF 74 - 77
Notice of Cross-Motion-Affidavits-Exhibits….	EF 63 - 73
Affirmation in Opposition-Exhibits…………..	EF 78 - 82
Replying………………………………………..	EF 83 - 87

Upon the foregoing papers, it is ordered that this motion by plaintiff for summary judgment on the issue of liability and this cross-motion by defendants to dismiss, or alternatively to compel, are determined as follows:

Plaintiff Maurice Campbridge, deceased, commenced the instant action to recover for injuries he allegedly sustained in a motor vehicle accident that occurred on March 15, 2018 on Union Turnpike at its intersection with Myrtle Avenue, Queens, NY. Now, plaintiff moves for summary judgment on the issue of liability on the grounds that his vehicle was rear-ended by a vehicle, owned by defendant Pepsi Cola Bottling Co. and operated by defendant Neil R. Ewing (Defendant-Driver; collectively: defendants). Defendants cross-move for an order dismissing plaintiff’s complaint, or alternatively, an order compelling discovery, precluding discovery, and/or extending defendants’ time to file a summary judgment motion, pursuant to CPLR 3126.

The proponent of a summary judgment motion has the initial burden of establishing entitlement to judgment as a matter of law, submitting evidence in admissible form demonstrating the absence of any triable issues of fact (*see Giuffrida v Citibank Corp.*, 100 NY2d 72 [2003]; *see also Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986]). Only when the movant satisfies its prima facie burden will the burden shift to the opponent “to lay bare his or her proof and demonstrate the existence of triable issues of fact” (*Alvarez*, 68 NY2d at 324; *see also Zuckerman v City of New York*, 49

NY2d 557 [1980]; *Chance v Felder*, 33 AD3d 645, 645-46 [2d Dept 2006]). Thus, where the movant fails to meet this initial burden, summary judgment must be denied regardless of the sufficiency of the opposing papers (*see Voss v Netherlands Ins. Co.*, 22 NY3d 728, 734 [2014]).

Plaintiff's Motion for Summary Judgment on the Issue of Liability:

The driver of a motor vehicle that approaches another vehicle from the rear, must maintain a reasonably safe rate of speed, a reasonably safe distance, and control over his vehicle, and use reasonable care to avoid colliding with a lead vehicle (*see Catanzaro v Edery*, 172 AD3d 995, 996 [2d Dept 2019]; *Comas-Bourne v City of New York*, 146 AD3d 855, 856 [2d Dept 2017]; *Cheow v Cheng Lin Jin*, 121 AD3d 1058, 1058 [2d Dept 2014]; *Billis v Tunjian*, 120 AD3d 1168, 1169 [2d Dept 2014]). It is well-settled law that a rear-end collision with a stopped or stopping vehicle creates a prima facie case of liability as to the rearmost vehicle, requiring that driver to rebut this inference of negligence by providing a nonnegligent explanation for the collision (*see Tutrani v County of Suffolk*, 10 NY3d 906, 908 [2008]; *Comas-Bourne*, 146 AD3d at 856; *see also* Vehicle and Traffic Law § 1129[a]). "A claim that the driver of the lead vehicle made a sudden stop, standing alone, is insufficient to rebut the presumption of negligence" (*see Robayo v Aghaabdul*, 109 AD3d 892, 893 [2d Dept 2013], quoting *Jumandeo v Franks*, 56 AD3d 614, 615 [2d Dept 2008]).

In support, plaintiff submits, inter alia, the EBT transcripts of Defendant-Driver and an uncertified police accident report. Defendant-Driver testified that on the date of the accident the weather was clear, and the roads were dry. He stated that the traffic was light, and plaintiff's vehicle was directly in front of him. Defendant-Driver testified that the subject intersection was controlled by a stop sign, and that plaintiff had stopped at said stop sign. He attested that plaintiff started making a right turn and suddenly stopped. Defendant-Driver stated that he applied his brakes, but rear-ended plaintiff's vehicle.

The police accident report is not certified as a business record and is inadmissible as hearsay, however, party admissions contained within it are admissible (*see* CPLR 4518[c]; *Harrinarain v Sisters of St. Joseph*, 173 AD3d 983, 983 [2d Dept 2019]; *Ganchrow v Kremer*, 157 AD3d 771, 773 [2d Dept 2018]; *Gezelter v Pecora*, 129 AD3d 1021, 1022-23 [2d Dept 2015]; *Jackson v Donien Trust*, 103 AD3d 851, 851-52 [2d Dept 2013]; *Cheul Soo Kang v Violante*, 60 AD3d 991 [2d Dept 2009]), where such party admissions are against their interest bearing on how the accident occurred (*see Ganshrow v Kremer*, 157 AD3d 771, 773 [2d Dept 2018]; *Adobea v Junel*, 114 AD3d 818, 820-21 [2d Dept 2014]). The subject police accident report contains the following: "[Defendant-Driver] states he was approaching stop sign when [plaintiff's vehicle] abruptly stopped causing [defendants' vehicle] to collide with rear of [plaintiff's vehicle]."

Therefore, plaintiff met his prima facie burden by showing that his vehicle was stopped or stopping when it was rear-ended by defendants' vehicle (*see Tutrani*, 10 NY3d at 908; *Comas-Bourne*, 146 AD3d at 856; *see also* Vehicle and Traffic Law § 1129[a]). Thus, it is incumbent upon defendants to raise a triable issue of fact (*id.*).

Defendants' challenges to the admissibility of plaintiff's evidence are without merit. Defendant-Driver's unsigned EBT transcript is admissible, as it was certified by the court reporter, and plaintiff cured any defect by submitting, in reply, evidence that plaintiff submitted the unsigned EBT transcript to Defendant-Driver for review, but that he failed to sign and return it within 60 days (*see* CPLR 2001; *Baptiste v Ditmas Park, LLC*, 171 AD3d 1001, 1002 [2d Dept 2019]; *Gallway v Muintir, LLC*, 142 AD3d 948, 949 [2d Dept 2016]). Furthermore, even in the absence of Defendant-Driver's EBT transcript, his party admissions contained within the uncertified police accident report establish plaintiff's prima facie burden (*see Tutrani*, 10 NY3d at 908; *Comas-Bourne*, 146 AD3d at 856; *see also* Vehicle and Traffic Law § 1129[a]). The Court finds that Defendant-Driver's testimony merely amounts to a claim that plaintiff's vehicle came to sudden stop which, standing alone, is insufficient to rebut the presumption of negligence on the part of defendants' vehicle (*see Buchanan v Keller*, 169 AD3d 989, 992 [2d Dept 2019]).

Furthermore, plaintiffs are not required to show an absence of comparative fault to be entitled to summary judgment on the issue of liability (*see Rodriguez v City of New York*, 31 NY3d 312 [2018]; *Marks v Rieckhoff*, 172 AD3d 847, 848 [2d Dept 2019]). Nevertheless, the evidence demonstrates that plaintiff was free of comparative fault (*id.; Edgerton v City of New York*, 160 AD3d 809, 811 [2d Dept 2018]). Moreover, defendants have failed to prove any comparative fault on behalf of plaintiff (*id.*).

Defendants' Motion Pursuant to CPLR 3126:

Defendants' motion to dismiss, or alternatively to compel discovery is granted to the following extent:

It is **ORDERED** that, to the extent not already provided, plaintiff shall provide the discovery referenced in the so ordered stipulation, dated February 13, 2020, to defendants, within thirty (30) days from the date of entry; and it is further

ORDERED that defendants' time to move for summary judgment is hereby extended to sixty (60) days from the date of receipt of the aforementioned outstanding discovery from plaintiff; and it is further

ORDERED that, in the event that plaintiff has already provided said discovery, then defendants' time to move for summary judgment is hereby extended to sixty (60) days from the date of service of a copy of this order with notice of entry; and it is further

ORDERED that defendants' motion is otherwise denied; and it is further

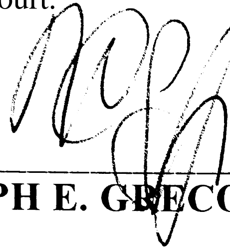
Accordingly, this motion by plaintiff for summary judgment on the issue of liability is granted, and this cross-motion by defendants is granted to the extent mentioned above; and it is further

ORDERED that plaintiff is found to be free of comparative fault; and it is further

ORDERED that plaintiff shall serve a copy of this order with notice of entry upon defendants, Pepsi Cola Bottling Co. and Neil R. Ewing, within thirty (30) days of the date of entry.

This constitutes the decision and order of this Court.

Dated: September 23, 2020



RUDOLPH E. GRECO, JR., J.S.C.

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