

Hale v Cruz
2020 NY Slip Op 35030(U)
May 7, 2020
Supreme Court, Suffolk County
Docket Number: Index No. 610392/2019
Judge: John H. Rouse
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Index Number: 610392/2019

**SUPREME COURT - STATE OF NEW YORK
I.A.S. PART I2 - SUFFOLK COUNTY**

PRESENT:

HON. JOHN H. ROUSE, ACTING J.S.C.

MOTION DATE: 01/02/2020
ADJ. DATE: 03/11/2020
MOT. SEQ. 001-MD
e-filed full participation

Dennis Hale,

Plaintiff

-against-

DECISION AND ORDER

Christian E. Cruz and Mid Island Salvage Corp.,

Defendants

TO:

CELLINO & BARNES, P.C.
600 OLD COUNTRY RD., STE 412
GARDEN CITY, NY 11530
(800) 888-8888

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This motion was fully submitted prior to the substantial disruptions occasioned by the outbreak of the COVID-19 virus (SARS-CoV-2) that affected this jurisdiction beginning on March 16, 2020.

Upon the reading and filing of the following papers in this matter: (1) Notice of Motion by Defendants For an Order, pursuant to CPLR 3212, granting summary judgment to defendants, CHRISTIAN E. CRUZ and MID ISLAND SALVAGE CORP. and dismissing the Complaint against CHRISTIAN E. CRUZ and MID ISLAND SALVAGE CORP. and for such other and further relief as to this Court deems to be just, proper, and equitable; and (2) e-filed documents 1-17; it is

ORDERED that Defendants' motion (Sequence 001) for summary judgment is denied; and it is further

ORDERED that Plaintiff is directed to serve upon the Defendants a copy of this decision and order with notice of entry as soon as is practicable.

DECISION

Plaintiff commenced this action on May 31, 2019 to recover for serious injuries he alleges he sustained in a motor vehicle collision on October 20, 2018 at 5:40 a.m. that occurred when he drove his 2018 Chevrolet Suburban into the trailer of the Mack Truck driven by Defendant Christian E. Cruz and owned by Defendant Mid Island Salvage Corp. Based upon the certified police report submitted, Defendant Christian E. Cruz was travelling westbound in the right line of the Long Island Expressway at Exit 51. Plaintiff told the responding officer that he was in the right lane of the Long Island Expressway and expected to get off at Exit 49, he did not see the truck and trailer in front of him, attempted to avoid it, but struck it anyway. Issue was joined on July 15, 2019. Defendants now move for summary judgment. Plaintiff made the following allegations in his bill of particulars in claiming that Defendant was negligent:

in failing and/or omitting to keep a proper lookout;

in failing and/or omitting to take heed of the road and traffic conditions then and there existing;

in failing and/or omitting to timely, reasonably and properly utilize the facilities at hand in order to avoid the accident;

in failing and/or omitting to divert the vehicle into an alternate path of travel in order to avoid the accident;

in operating the vehicle with disregard for the safety of the plaintiff;

in failing and/or omitting to observe the applicable rules and regulations of the road at the time and place of the occurrence;

in operating the vehicle in such a manner so that it unreasonably endangered the plaintiff;

in driving the vehicle in such a manner so that it unreasonably interfered with the free and proper use of a public highway;

in failing to give plaintiff's vehicle the right of way;

And continued onto a second page of his bill of particulars that Defendant was negligent:

in failing and/or omitting to be reasonably alert and attentive;

in being inattentive;

in failing and/or omitting to adequately, sufficiently and/or properly brake and/or stop the vehicle in a timely manner;

in failing and/or omitting to make proper use of the vehicle's brakes, lights, steering, horn or other safety devices;

in failing and/or omitting to exercise that degree of care which a reasonable and prudent person would have used in similar circumstance; and

in failing and/or omitting to avoid the incident which, in the exercise of reasonable care, could and should have been avoided.

The certified police accident report submitted by Defendants in support of their motion for summary judgment recorded the statements made by Plaintiff in which he stated that he was in the right lane of the Long Island Expressway driving westbound as was the truck and trailer into which he drove, but that he did not see the truck and trailer until the last moment.

Based upon the allegations of negligence in the bill of particulars and the sworn allegations of Defendant Christian E. Cruz that it was the Plaintiff that drove into the trailer of the truck he was operating Defendants move for summary judgment. *Allstate Ins. Co. v Liberty Lines Tr., Inc.*, 50 AD3d 712 (2d Dept 2008). Defendants have made a *prima facie* case that it was the Plaintiff's own negligence that was the sole proximate cause of this collision.

In opposition, Plaintiff alleges in an affidavit that he was not on the travelled portion of the Long Island Expressway at all, but that both his vehicle and the tractor trailer he drove into were on the entrance ramp to the Long Island Expressway, and that the Defendants' tractor trailer was stopped, was blocking the entrance, and had no lights on. Plaintiff has raised a material issue of fact. Defendants argue in reply that the Plaintiff's contentions are so divergent from statements attributed to him by the responding officer on the morning of the collision that they must be presumed to be fabrications. On the limited facts before this court, before depositions have been completed, the court cannot determine, as a matter of law, that the Plaintiff is incredible. Accordingly, Defendants' motion (Sequence 001) for summary judgment is denied.

The foregoing shall constitute the decision and order of the court.

Dated: May 7, 2020

ENTER:


A large, stylized handwritten signature in black ink is written over a horizontal line. The signature consists of several loops and a long tail stroke extending to the right.

JOHN H. ROUSE

ACTING J.S.C.

NON-FINAL DISPOSITION