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| Eiff v Rengifo-Candela |
| 2020 NY Slip Op 35288(U) |
| August 7, 2020 |
| Supreme Court, Westchester County |
| Docket Number: Index No. 70528/2019 |
| Judge: Terry Jane Ruderman |
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To commence the statutory time for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
THOMAS EIFF,

Plaintiff,

DECISION and ORDER

-against-

Motion Sequence Nos. 1 & 2
Index No. 70528/2019

ARFAXAD RENGIFO-CANDELA and
C. BLACKBURN INC.,

Defendants.

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RUDERMAN, J.

The following papers were considered in connection with the motion by plaintiff for partial summary judgment on the issue of liability against defendants (sequence 1) and defendants cross-move for summary judgment dismissing the complaint, and for an order denying plaintiff's motion for partial summary judgment (sequence 2) :

| <u>Papers</u> | <u>Numbered</u> |
|---|-----------------|
| Plaintiff's Notice of Motion (seq 1), Affirmation, Exhibits A - E | 1 |
| Defendants' Notice of Cross-Motion (seq 2), Affirmation in Support and Opposition, Exhibits A - D | 2 |
| Plaintiff's Affirmation in Opposition (seq 2) | 3 |
| Defendants' Reply Affirmation, Exhibit A | 4 |

This is an action for personal injuries allegedly sustained in a motor vehicle collision on August 23, 2017, at approximately 1:30 p.m. on I-95 southbound in New Rochelle New York. The action was commenced on December 20, 2019, defendants' answer was filed on February 27, 2020, and plaintiff then filed the present motion for partial summary judgment. In support, he submits his own affidavit and a certified copy of the police accident report.

Plaintiff states in his affidavit that he had been driving in the highway's far left lane, when a tractor-trailer operated by defendant Arfaxad Rengifo-Candela and owned by defendant C. Blackburn Inc., which had been driving in the center lane, suddenly and abruptly swerved into the left lane in front of him. Plaintiff states that although he tried to avoid a collision by braking and swerving to the right, he was unable to avoid striking the rear of defendants' trailer with the front of his vehicle. Strangely, his affidavit concludes with the assertion, "Defendant will not be able to provide a non-negligent explanation for striking my vehicle in the rear."

The submitted police report indicates what each driver told the officer. Plaintiff's reported statement comports with his affidavit. The statement by Rengifo-Candela as contained in the police report is that a gray car that had been driving directly in front of him came to a sudden stop in the lane, causing Rengifo-Candela to swerve left to avoid a collision with that car.

In support of their cross-motion and in opposition to plaintiff's motion, defendants submit an affidavit by Rengifo-Candela, who provides a more detailed version of the same scenario he described for the reporting police officer. He states that he was driving the tractor-trailer in the middle lane of I-95 when a gray vehicle that had been in the left lane moved into the middle lane in front of him and then slammed on its brakes. He says that he looked in his rearview mirror and did not see any traffic in the left lane, whereas his right-hand side mirror showed the presence of vehicles immediately to his right. He therefore swerved his truck into the left lane, not applying his brakes. He states that he felt the collision with the back of the tractor-trailer before he was fully in the left lane.

Both motions are denied. Plaintiff did not establish a prima facie right to relief against defendants in his moving papers. Although plaintiff's description of the accident, taken alone, may have created a prima facie showing of negligence on the part of Rengifo-Candela, even the

statement by Rengifo-Candela in the police report establishes the existence of an issue of fact as to whether Rengifo-Candela was at fault when he swerved into the left lane in front of plaintiff, or whether he was acted reasonably upon being “faced with a sudden and unexpected circumstance, not of [his] own making,” namely, the third car that he claimed was the cause of his sudden swerve (*see Marrì v New York City Tr. Auth.*, 106 AD3d 699, 700 [2d Dept 2013]). The affidavit submitted by defendants provides further basis for leaving to trial the question of whether Rengifo-Candela was negligent. Defendants’ affirmative defenses will similarly be left for trial.

Defendants allegations do not justify application as a matter of law of the rule that a lead vehicle that was rear-ended by another vehicle while lawfully traveling on a highway is entitled to summary judgment in its favor (citing *Russell v J.L. Femia Landscape Servs., Inc.*, 161 AD3d 1119 [2d Dept 2018]). The rule applicable to rear-end collisions does not authorize summary judgment against the rear driver where the collision was caused when the lead car suddenly swerved in front of the other car, leaving that rear car without time and space to avoid the collision; in such instances, questions of fact preclude summary judgment against the driver of the rear vehicle (*see Figueroa v Cadbury Util. Constr. Corp.*, 239 AD2d 285 [1st Dept 1997] [affidavit by rear driver asserting that he was cut off by the lead driver raises issues sufficient to defeat summary judgment]).

Nor have defendants established entitlement to summary judgment based on the emergency doctrine. Under the emergency doctrine, “those faced with a sudden and unexpected circumstance, not of their own making, that leaves them with little or no time for reflection or reasonably causes them to be so disturbed that they are compelled to make a quick decision without weighing alternative courses of conduct, may not be negligent if their actions are

reasonable and prudent in the context of the emergency” (*Lowhar-Lewis v Metropolitan Transp. Auth.*, 97 AD3d 728, 729 [2d Dept 2012] [internal quotation marks and citations omitted]). Not only is Rengifo-Candela’s claim regarding the unidentified third vehicle not sufficiently established to be accurate, but even if it were well corroborated, the question of whether his quick decision was reasonable and prudent in the context of the emergency would still present an issue of fact. As is most often the case where the emergency doctrine is raised, here, “the question of the existence of an emergency and the reasonableness of the response to it is an issue for the trier of fact” (see *Makagon v Toyota Motor Credit Corp.*, 23 AD3d 443, 444 [2d Dept 2005]). While the application of the doctrine “may in appropriate circumstances be determined as a matter of law” (*id.*; *Bello v Transit Auth. of N.Y. City*, 12 AD3d 58; 60 [2d Dept 2004]), this is not such a case.

Since neither party’s recitation of the facts establishes with certainty the exact and complete circumstances leading up to the collision, or whether either or both drivers violated any provisions of the Vehicle and Traffic Law, it is hereby

ORDERED that plaintiff’s motion for partial summary judgment on the issue of defendants’ liability, and defendants’ cross-motion for summary judgment against plaintiff, are both denied, and it is further

ORDERED that all parties are directed to appear in the Preliminary Conference Part of the Westchester County Courthouse located at 111 Dr. Martin Luther King Jr. Boulevard, White Plains, New York, 10601, on a date of which they will be notified by that Part.

This constitutes the Decision and Order of the Court.

Dated: White Plains, New York
August 7, 2020


HON. TERRY JANE RUDERMAN, J.S.C.