Fuentes-Aurea v Ryder Truck Rental, Inc.

2020 NY Slip Op 35484(U)

October 29, 2020

Supreme Court, Queens County

Docket Number: Index No. 710360/19

Judge: Timothy J. Dufficy

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Short Form Order

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NEW YORK SUPREME COURT - QUEENS COUNTY

PRESENT: HON. TIMOTHY J. DUFFICY **PART 35**
Justice

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WINSTON B. FUENTES-AUREA,

Plaintiff,

-against-

RYDER TRUCK RENTAL, INC., AARON L. BOURNE, and RYDER INTEGRATED LOGISTICS, INC.,

Defendants,

----------x

Index No.: 710360/19
Mot. Date: 10/27/20
Mot. Seq. Nos. 4 & 5

The following papers were read on the motion by plaintiff for an order granting summary judgment in his favor, pursuant to CPLR 3212, and striking the first affirmative defense in defendants' Answer (Mot. Seq. No. 4) and the motion by plaintiff seeking the identical relief (Mot. Seq. No. 5.)

	PAPERS NUMBERED
Mot. Seq. 4	
Notice of Motion-Affidavits-Exhibits.....	EF 47-54
Mot. Seq. 5	
Notice of Motion-Affidavits-Exhibits.....	EF 55-62
Answering Affidavits-Exhibits.....	EF 73-75
Replying Affidavits.....	EF 76-78

As an initial matter, the motions by plaintiff, marked as Motion Sequence Nos. 4 and 5, are joined for purposes of disposition.

Upon the foregoing papers, it is ordered that the motion, marked as Motion Sequence No. 4, and submitted without opposition, is denied, as it is duplicative of the fully submitted motion, marked as Motion Sequence No. 5, in that it seeks the identical relief. The motion, marked as Motion Sequence No. 5 is granted.

This is an action for personal injuries arising out of a two-car motor vehicle accident, that occurred on November 16, 2018, on Grand Street, at or near its intersection with Metropolitan Avenue, in Nassau County, New York. The evidence proffered in support of the motion, which evidence includes, *inter alia*, an affidavit of plaintiff reveals that: there was a rear-end collision wherein a vehicle operated by the plaintiff was stopped for about five (5) seconds in "stop and go traffic", when it was struck from behind by a vehicle owned by defendant Ryder Truck Rental, Inc. and operated by defendant Aaron L. Bourne, within the scope of his employment with defendant Ryder Integrated Logistics, Inc.

It is well established law that a rear-end collision with a stopped or stopping vehicle creates a *prima facie* case of negligence on the part of the driver of the rearmost vehicle, requiring the operator of that vehicle to proffer an adequate, non-negligent explanation for the accident. (*Reed v New York City Transit Authority*, 299 AD2 330 [2d Dept 2002]; *See also Velazquez v Denton Limo, Inc*., 7 AD3d 787 [2d Dept 2004], stating that: "[a] rear end collision with a stopped or stopping vehicle establishes a prima facie case of negligence on the part of the driver of the moving vehicle, requiring the operator of that vehicle to come forward with a non-negligent explanation for the accident.)"

In opposition, the defendants fail to rebut the inference of negligence by providing a non-negligent explanation for the collision (*see Markesinis v Jaquez,* 106 AD3d 961 [2d Dept. 2013; *Pollard v Independent Beauty & Barber Supply Co.*, 94 AD3d 845; *Gifford v Con Ed Company of NY*, 103 AD3d 773; [2d Dept. 2013]; *Niyazov v Bradford,* 13 AD3d 501 [2d Dept. 2004].) Pursuant to Vehicle and Traffic Law §1129(a), defendant Bourne was under a duty to maintain a safe distance between his vehicle and the plaintiff's vehicle and his failure to do so in the absence of an adequate, non-negligent explanation is deemed negligence, as a matter of law (*Leal v Wolff*, 224 AD2d 392 [2d Dept 1996]; *Silberman v. Surrey Cadillac Limousine Service, Inc.*, 109 AD2d 833 [2d Dept 1985]). The Police Accident Report states: "Vehicle 2 operator states vehicle 1 moved forward and stopped short causing him to strike vehicle 1 on the rear."

Defendants now submit an affidavit of Mr. Bourne wherein he admits that he struck the rear of plaintiff's vehicle, but invokes the emergency doctrine, claiming that the plaintiff's vehicle unexpectedly stopped and his own vehicle slid on ice.

Such explanation is insufficient to create a triable issue of fact**.** The Court notes that the Police Accident Report makes no mention of any ice. Additionally, the emergency doctrine recognizes "that 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" (*Bello v Transit Auth. of N.Y. City*, 12 AD3d 58, 60 [2d Dept 2004]). Generally, the emergency doctrine does not apply to typical accidents involving rear-end collisions because trailing drivers are required to leave a reasonable distance between their vehicles and vehicles ahead (*see* Vehicle and Traffic Law § 1129 [a]; *Jacobellis v New York State Thruway Auth.*, 51 AD3d 976, 976-977 [2d Dept 2008]; *Reed v New York City Tr. Auth*., 299 AD2d 330, 332 [2d Dept 2002]) Here, defendant's own submissions regarding the incident demonstrated that he was not reacting to an emergency, but, rather, to a common traffic occurrence (*see Campanella v Moore*, 266 AD2d 423, 424 [2d Dept 1999]). Defendant was not faced with any emergency, but rather, was complicit in causing the plaintiff's injuries by following too closely, to wit, failing to keep a proper distance between his vehicle and the plaintiff's vehicle. The explanation of a sudden stop, under the circumstances, is insufficient to rebut the presumption of negligence (*Lundy v Llatin,* 51 AD3d 877 [2d Dept 2008]*; Dileo v Greenstein*, 281 AD2d 586 [2d Dept 2001]). As such, no triable issue of fact has been created.

Defendants also oppose the motion on the grounds that the motion should be denied because discovery is not complete and depositions have not yet been held. Defendants have failed to demonstrate that facts essential to oppose the motion may exist but cannot then be stated. "Mere hope that somehow [a party] will uncover evidence that will prove a case provides no basis pursuant to CPLR 3212(f) for postponing a determination of a summary judgment motion." (*Plotkin v Franklin*, 179 AD2d 746 [2d Dept 1992]) (internal citations omitted). Thus, the prematurity argument is based on

mere speculation (*see Lopez v WS Distrib., Inc.,* 34 AD3d 759 [2d Dept 2006]), which is insufficient to defeat the motion.

As there are no triable issues of fact, summary judgment is warranted and a trial is unnecessary. Furthermore, the record before the Court is devoid of any evidence that the plaintiff's conduct somehow played a role in causing his own injuries. Therefore the branch of the motion seeking to dismiss the affirmative defense of culpable conduct is granted.

Accordingly, based upon the foregoing, it is,

ORDERED that the motion by plaintiff, marked as Motion Sequence No. 4, is denied, as it is duplicative of the motion by plaintiff, marked as Motion Sequence No. 5; and it is further

ORDERED, that the branch of the motion by plaintiff for an order granting summary judgment in his favor, pursuant to CPLR 3212 (Motion Seq. No. 5) is granted; and it is further

ORDERED that the branch of the motion by plaintiff seeking to dismiss defendants' first affirmative defense of culpable conduct (Motion Seq. No. 5) is granted.

The foregoing constitutes the decision and order of the Court.

Dated: October 29, 2020

TIMOTHY J. DUFFICY, J.S.C.

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