Smith v Graham
2021 NY Slip Op 31002(U)
March 29, 2021
Supreme Court, New York County
Docket Number: 160841/2019
Judge: J. Machelle Sweeting
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. J. MACHELLE SWEETING** **PART** **IAS MOTION 62**

Justice

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JOSEPH SMITH,

Plaintiff,

- v -

CARL GRAHAM, NEW YORK CITY FIRE DEPARTMENT, THE CITY OF NEW YORK

Defendant.

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INDEX NO. 160841/2019

MOTION DATE 06/17/2020

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26

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

Pending before the court is a motion filed by plaintiff seeking an order: (1) pursuant to CPLR §3212 seeking summary judgment on the issue of liability against defendants, CARL MICHAEL GRAHAM, NEW YORK CITY FIRE DEPARTMENT, and THE CITY OF NEW YORK, (collectively, the "City"); and (2) for an order pursuant to CPLR §3211[b] striking defendants' affirmative defenses alleging culpable conduct, assumption of risk and emergency operation.

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 [NY Ct. of Appeals 1957]; Weiner v. Ga-Ro Die Cutting, Inc., 104 A.D.2d331 [1st Dept. 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 [NY Ct. of Appeals 1986]; Winegrad v. New York

University Medical Center, 64 N.Y.2d 851 [NY Ct. of Appeals 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 Dept. 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 [NY Ct. of Appeals 1957]).

Here, the underlying action involves a three-car collision that occurred on the FDR Drive Service Road at or about East 23rd Street, in New York, NY on March 20, 2019. The car in the front was a 2005 Chrysler with license plate #JBD6720, operated by Tal Bloch (who is not a party in this case). The car in the middle was a white Ford vehicle with plate number T612943C, operated by the plaintiff. The car in the back was a Chevrolet SUV with license plate #BA1686, operated by defendant Carl Michael Graham ("Mr. Graham") of the defendant New York City Fire Department ("FDNY").

Plaintiff argues that he should be awarded summary judgment on the issue of liability because the vehicle he operated was at a complete stop when it was struck in the rear by the City's vehicle, and the City failed to offer a non-negligent explanation for the collision.

In opposition, the City argues:

> Considered in the light most favorable to the City, there are clear issues of fact as to the happening of this incident, including whether the 2005 Chrysler with license plate #JBD6720 operated by Tal Bloch, and plaintiff's vehicle stopped suddenly and without warning or cause.
>
> Mr. Graham observed the blue Chrysler with plate #JBD6720 stop short, causing the white Ford with plate #T612943C to stop short. When Mr. Graham observed these two vehicles stop short, he immediately applied his brakes, to come to a stop. However, Mr. Graham avers that due to the sudden, short stop of these two vehicles, he was unable to avoid the collision.

> Notably, Mr. Graham's affidavit attests that the 2005 Chrysler with plate #JBD6720 stopped unexpectedly without signaling in any manner, and that plaintiff also stopped unexpectedly without warning. Despite Mr. Graham's braking and stopping, he was unable to avoid striking plaintiff's vehicle. Given that both the operator of the 2005 Chrysler with plate #JBD6720 and Plaintiff stopped abruptly, it is respectfully submitted that Mr. Graham's conduct was non-negligent under the circumstances.

Contrary to the City's assertions, the First Department has consistently held that in a rear-end collision, a "sudden stop" by a vehicle in front is insufficient to rebut the presumption of liability of the vehicle in the rear. *See e.g.* Rodriguez v. Sharma, 178 A.D.3d 508 (Sup. Ct. App. Div. 1st Dept. 2019) (holding that a rear-end collision with a stopped vehicle creates a *prima facie* case of negligence on the part of the operator of the moving vehicle unless the operator presents evidence sufficient to rebut the inference of negligence. A sudden stop of the front vehicle is a non-negligent explanation for a rear-end collision); Agramonte v. City of New York, 288 A.D.2d 75 (Sup. Ct. App. Div. 1st Dept. 2001) (finding that plaintiff's sudden stop was insufficient to rebut the presumption of negligence since defendants failed to offer a non-negligent explanation for the happening of the accident); Morales v. Consol. Bus Transit, Inc., 167 A.D.3d 457 (Sup. Ct. App. Div. 1st Dept. 2018) (concluding that the driver's excuse for rear-ending a bus, namely, that the bus made a sudden stop, mid-block, is insufficient to rebut the presumption of negligence); Morgan v. Browner, 138 A.D.3d 560 (Sup. Ct. App. Div. 1st Dept. 2016) (claiming that the lead vehicle made a sudden stop, standing alone, is insufficient to rebut the presumption of negligence on the part of the rear driver); Johnson v. Phillips, 261 A.D.2d 269 (Sup. Ct. App. Div. 1st Dept. 1999) (upholding the principle that drivers must maintain safe distances between their cars and cars in front of them and that drivers have a "duty to see what should be seen and to exercise reasonable care under the circumstances to avoid an accident . . . even if the sudden stop is repetitive; when the front vehicle, although in stop-and-go traffic, stopped while crossing an intersection; … and

when the front car stopped after having changed lanes"). Here, Mr. Graham admits that he rear-ended plaintiff's vehicle, and fails to offer a non-negligent explanation.

The City also argues that plaintiff's motion is premature, as discovery in this matter remains incomplete. However, this court finds that further discovery is not required in light of the undisputed facts in this case and in application of the law as stated above. Here, a deposition of the plaintiff or of Mr. Bloch is unlikely to uncover facts favorable to the City, as the City's driver (Mr. Graham) is in the best position to give a non-negligent explanation for the subject accident. *See e.g.* Johnson v. Phillips, 261 A.D.2d 269 (Sup. Ct. App. Div. 1st Dept. 1999) (applying the law to the essential facts as asserted by defendant and upholding the trial court's finding that the defendant's failure to raise any factual issues to absolve him of liability defeated the need for discovery. Since the defendant is the party with knowledge of the factual circumstances as to how he collided with the front vehicle, discovery would serve no purpose); Soto-Maroquin v. Mellet, 63 A.D.3d 449 (Sup. Ct. App. Div. 1st Dept. 2009) (finding defendant's argument that summary judgment was prematurely granted prior to plaintiff's deposition unavailing, whereas here, defendant's passenger provided no information concerning road conditions other than plaintiff's alleged sudden stop and the defendant driver is the party with knowledge of any non-negligent reasons for the accident); Jeffrey v. DeJesus, 116 A.D.3d 574 (Sup. Ct. App. Div. 1st Dept. 2014) (concluding that the trial court erred in denying, as premature, plaintiff's motion for partial summary judgment on the issue of liability where plaintiff driver averred that the accident at issue occurred when defendant's vehicle struck the back of the vehicle she was operating).

Further, pursuant to CPLR 3211(b), a party may move to dismiss a defense on the ground that a defense is not stated or has no merit. In light of the caselaw above, this court finds that the City's affirmative defenses, that the accident occurred due to plaintiff's own negligence and/or

culpable conduct, are without merit. Finally, there is no indication here that Mr. Graham's lights or sirens were activated, or that the City was responding to an emergency. Accordingly, this court finds that the City's affirmative defense of emergency operation are also without merit.

Accordingly, this motion is GRANTED. Summary judgment on the issue of liability against the City defendants, CARL MICHAEL GRAHAM, NEW YORK CITY FIRE DEPARTMENT, and THE CITY OF NEW YORK, is GRANTED, and the City's affirmative defenses alleging culpable conduct, assumption of risk and emergency operation are hereby STRICKEN.

3/29/2021
DATE

J. MACHELLE SWEETING, J.S.C.

CHECK ONE:		CASE DISPOSED		X	NON-FINAL DISPOSITION		
	X	GRANTED	DENIED		GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT		REFERENCE