

Stubbs v Blake

2021 NY Slip Op 33397(U)

May 27, 2021

Supreme Court, Orange County

Docket Number: Index No. EF010981-2018

Judge: Sandra B. Sciortino

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This opinion is uncorrected and not selected for official publication.

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 ORANGE

-----X
CORNELIUS STUBBS and STEPHANIE ,
MARRERO,

Plaintiffs,

-against-

JACK BLAKE and KURT BLAKE,

Defendants.
-----X

DECISION AND ORDER
Index No.:EF010981-2018

Motion Date: 4/15/2021
Sequence No. 1

SCIORTINO, J.

The following papers numbered 1 to 11 were considered in plaintiff Cornelius Stubbs' motion for summary judgment on the issue of liability:

<u>PAPERS</u>	<u>NUMBERED</u>
Notice of Motion/Affirmation (Segal)/Exhibits A - D;	1 - 6
Affirmation in Opposition (Gaztambide)/Exhibits A - C	7 - 10
Reply Affirmation (Segal)	11

This personal injury action arises out of a motor vehicle accident that took place on April 14, 2016 on Balmville Road in Newburgh, New York. Plaintiff Stubbs was a passenger in a vehicle operated by plaintiff Stephanie Marrero. The Marrero vehicle was rear ended by a vehicle owned by defendant Kurt Blake and operated by defendant Jack Blake. Plaintiffs commenced this action by filing a Summons and Complaint on November 1, 2018. Issue was joined on November 27, 2018, with the filing of the defendants' answer containing seven affirmative defenses. Plaintiffs served a Bill of Particulars dated February 20, 2019.

Examinations before trial have not been held. Note of Issue has not been filed.

On January 13, 2021 plaintiffs advised this Court that the matter was settled as to the plaintiff

driver, Stephanie Marrero only.

Motion for Summary Judgment

By Notice of Motion filed on February 17, 2021, plaintiff Cornelius Stubbs moves for summary judgment on the issue of liability and seeks dismissal of the following affirmative defenses: second; third; and fourth, for comparative negligence; failure to use a seat belt, and assumption of the risk respectively. Plaintiff asserts a the rear-end collision establishes a *prima facie* case of negligence on the part of defendants. Defendants are unable to offer a non-negligent explanation for the accident. He is entitled to summary judgment on the issue of liability.

In support of the motion, plaintiff appends his affidavit in which he avers he was a passenger in a stopped vehicle which was rear-ended by a vehicle operated by defendant Kurt Blake. Plaintiff avers he did not cause or contribute to the accident. An uncertified police report is also submitted in support of the motion.

Opposition

Defendants only oppose the portion of the motion seeking dismissal of the third affirmative defense regarding failure to use a seat belt. The third affirmative defense pertains to damages, not liability. Plaintiff has failed to submit proof that he was wearing a seatbelt.

Reply

In reply, plaintiff argues that defendant has failed to raise a triable issue of fact precluding summary judgment on the issue of liability. Plaintiff relies on the uncertified police report to establish that plaintiff was wearing a seatbelt at the time of the accident.

Discussion

Summary judgment is a drastic remedy and is appropriate only when there is a clear

demonstration of the absence of any triable issue of fact. (*Piccirillo v. Piccirillo*, 156 AD2d 748 [2d Dept. 1989], citing *Andre v. Pomeroy*, 35 NY2d 361 [1974]) The function of the Court on such a motion is issue finding, and not issue determination. (*Sillman v. Twentieth Century-Fox Film Corp.*, 3 NY2d 395 [1957]) The Court is not to engage in the weighing of evidence; rather, the Court's function is to determine whether "by no rational process could the trier of facts find for the non-moving party." (*Jastrzebski v. N. Shore Sch. Dist.*, 232 AD2d 677, 678 [2d Dept. 1996]) The Court is obliged to draw all reasonable inferences in favor of the non-moving party. (*Rizzo v. Lincoln Diner Corp.*, 215 AD2d 546 [2d Dept. 1995])

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, in the absence of any negligence on the part of the plaintiff. (*Velazquez v. Denton Limo, Inc.*, 7 AD3d 787 [2d Dept. 2004]; *Trombetta v. Cathone*, 59 AD3d 526 [2d Dept 2009]) A driver of an automobile is charged with the duty to maintain a reasonably safe rate of speed and control over his vehicle and to exercise reasonable care to avoid a collision. A driver has a duty to see what should be seen. (*Filippazzo v. Santiago*, 277 AD2d 419 [2d Dept 2000]) Vehicle and Traffic Law Section 1129(a) provides, "The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon and the conditions of the highway.

In the matter at bar, plaintiff established *prima facie* entitlement to summary judgment on the issue of liability. The plaintiff's affidavit establishes that plaintiff's vehicle, in which he was a passenger, was struck from behind by a vehicle operated by defendant Kurt Blake. Such a showing requires defendant to come forward with a non-negligent explanation for the accident. (*Velazquez, citing Shamah v. Richmond County Ambulance Serv.*, 279 AD2d 564 [2d Dept. 2001]) If the operator

of the trailing vehicle cannot come forward with evidence to rebut the inference of negligence, the operator of the lead vehicle is entitled to summary judgment on liability. (*Cortes v. Whelan*, 83 AD3d 763 [2d Dept. 2011])

Here, defendant's opposition fails to rebut the inference of negligence by providing a non-negligent explanation for the collision. (*id.*) Plaintiff's alleged failure to wear a seatbelt is not relevant to the issue of liability, but can be introduced into evidence in mitigation of damages. (*Brabham v. City of New York*, 105 AD3d 881 [2d Dept. 2013]; Vehicle and Traffic Law 1229-c[8]) Furthermore, the uncertified police report upon which plaintiff relies is inadmissible hearsay. (*Yassin v. Blackman*, 188 AD3d 62, 65 [2d Dept. 2020])

In light of the foregoing,

Conclusion

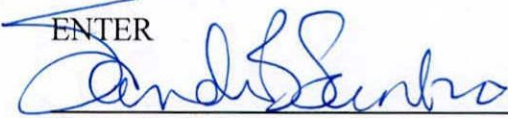
On the basis of the foregoing, it is hereby

ORDERED that plaintiff's motion for summary judgment on the issue of liability is granted, and the second and seventh affirmative defenses are dismissed. Plaintiff's motion is denied with respect to the third affirmative defense.

This matter shall be scheduled for virtual conference on August 9, 2021 at 9:15 a.m. A link will be provided during the week prior to the conference date.

This decision shall constitute the order of the Court.

Dated: May 27, 2021
Goshen, New York

ENTER

HON. SANDRA B. SCIORTINO, J.S.C.

To: *Counsel of Record Via NYSCEF*