

Greene v Ferreira

2021 NY Slip Op 33758(U)

March 17, 2021

Supreme Court, Westchester County

Docket Number: Index No. 55261/20

Judge: James W. Hubert

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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 WESTCHESTER

-----X
HENRY GREENE,

Plaintiffs,

DECISION AND ORDER

-against-

Motion Seq. No. 1

MARLON D. FERREIRA and LILAINE L.
REZENDE,

Index No. 55261 / 20

Defendants.

-----X
Hubert, J.S.C.

The following documents were read on this motion by Plaintiff, Henry Greene, pursuant to rule 3212 of the Civil Practice Law and Rules for an order granting Plaintiff summary judgment as against, and striking the affirmative defenses of, Defendants, Marlon D. Ferreira (hereafter, "Ferreira") and Lilaine L. Rezende (hereafter, "Rezende"):

- Notice of Motion - Affirmation - Exhibits
- Affirmation in Opposition - Exhibit
- Affirmation in Reply

Upon consideration of the foregoing, and for the following reasons, Plaintiff's motion is denied.

Factual and Procedural Background

This is an action to recover money damages for personal injuries sustained in a motor vehicle accident when Plaintiff's vehicle was struck in the rear by Defendants' vehicle. The

action was commenced by the filing via the New York State Courts E-Filing system (hereafter, "NYSCEF") of a Summons and Verified Complaint on May 26, 2020.

Plaintiff's Verified Complaint avers, *inter alia*, that on August 28, 2018, in the Village of Port Chester, he was operating his motor vehicle, when said vehicle came into contact with a motor vehicle which was owned by Rezende and being operated by Ferreira. Defendants appeared in the action on July 17, 2020, by filing a joint Verified Answer in which they plead four affirmative defenses, including Plaintiff's contributory negligence. Defendants simultaneously served Plaintiff with discovery demands, including a Notice Of Deposition scheduling examinations for October 17, 2020 (see NYSCEF DOC. NO. 4).

Plaintiff made the instant motion on August 1, 2020, by filing via NYSCEF. Although disclosure was stayed upon the filing of its motion (see CPLR 3214 [b]), Plaintiff simultaneously filed via NYSCEF a Request For Preliminary Conference (see NYSCEF DOC. NO. 11).

Defendants filed papers in opposition via NYSCEF on August 20, 2020, and Plaintiff filed reply papers in further support via NYSCEF on August 25, 2020, on which date the motion was deemed fully submitted.

Discussion

Plaintiff's Motion is Denied.

Pursuant to CPLR 3212 (b) a motion for summary judgment "shall be granted if, upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party[, and] the motion shall be denied if any party shall show facts sufficient to require a trial of any issue of fact." Thus, the movant must submit evidentiary proof in admissible form which establishes that he is entitled to judgment as a matter of law, and one opposing the motion "must produce evidentiary

proof in admissible form sufficient to require a trial of material questions of fact on which he rests his claim" (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). "A rear-end collision with a stopped or stopping vehicle establishes a prima facie case of negligence on the part of the operator of the rear vehicle, requiring that operator to come forward with evidence of a nonnegligent explanation for the collision in order to rebut the inference of negligence" (*Matzen v Armstrong*, 190 AD3d 848, 849 [2d Dept 2021]).

Plaintiff has demonstrated a prima facie case of Defendants' negligence. While Plaintiff does not aver that he was stopped or stopping at the time of the collision, he does aver that his vehicle was struck from behind by Defendants' vehicle (see Affidavit In Support [NYSCEF DOC. NO. 9] at ¶3), and he submits a certified police accident report in which the reporting officer indicates that Plaintiff "stated he was pulling his vehicle over to the side of the road to use his navigation," and that Ferreira "stated he was driving s/b on Midland Ave when driver of [Plaintiff's vehicle] stopped short suddenly" (Police Accident Report, a copy of which is annexed to the Affirmation In Support as Exhibit 1 [NYSCEF DOC. NO. 7] at 1). These submissions are sufficient to demonstrate a prima facie case of Defendants' negligence (see, e.g., *Modena v M&S Mech. Servs.*, 181 AD3d 802, 802 [2d Dept 2020]; *Pierre v Demoura*, 148 AD3d 736, 737 [2d Dept 2017]).

In opposition, Defendants have submitted evidence of a nonnegligent explanation for the collision sufficient to rebut Plaintiff's prima facie case. "A nonnegligent explanation may include evidence of a mechanical failure, a sudden stop of the vehicle ahead, an unavoidable skidding on wet pavement, or any other reasonable cause" (internal quotation marks and citations omitted) (*Clements v Giatas*, 178 AD3d 894, 894-895 [2d Dept 2019]).

In addition to Ferreira's statement related in the certified police accident report -- which evidence must be considered in the light most favorable to Defendants (see *Dorival v DePass*, 74 AD3d 729, 730 [2d Dept 2010]) -- Defendants submit Ferreira's affidavit, in which he avers that as he "was traveling within the speed limit . . . on Midland Avenue[, Plaintiff's vehicle] pulled out into the roadway, directly in front of my vehicle, from a driveway on the right side of the roadway[, and t]he operator . . . then suddenly and without warning slammed on the brakes and stopped short for no apparent reason" (Affidavit [NYSCEF DOC. NO. 14] at ¶4). These submissions are sufficient to rebut Plaintiff's prima facie case (see, e.g., *Matzen v Armstrong*, 190 AD3d at 849 [holding that affidavit of defendant driver in a rear-end collision, that "plaintiff's vehicle suddenly changed lanes without signaling, cutting in front of the defendants' vehicle," was sufficient]; *Adam v Catania*, 170 AD3d 636, 636-637 [2d Dept 2019]). At the very least, summary judgment must be denied because Defendants' "submissions showed that conflicting evidence exists as to how the collision occurred" (*Krutul v Tanner*, 139 AD3d 1015, 1016 [2d Dept 2016]). Therefore, Plaintiff's motion is denied.

Accordingly, for the foregoing reasons, it is hereby:

ORDERED, that the motion of Plaintiff, Henry Greene, pursuant to CPLR 3212 for an order granting him summary judgment as against, and striking the affirmative defenses of, Defendants, Marlon D. Ferreira and Lilaine L. Rezende, is denied; and it is further

ORDERED, that the parties shall resume disclosure in compliance with the terms of the Preliminary Conference Stipulation which was So Ordered by this court (Lefkowitz, J.) on September 4, 2020, and entered September 9, 2020 (NYSCEF DOC. NO. 18); and it is further

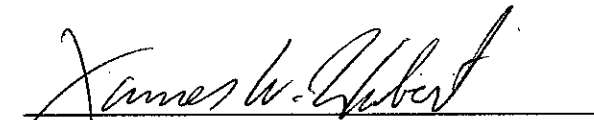
ORDERED, that Plaintiff, Henry Greene, shall within twenty days of the date of entry hereof, serve a copy of this Decision & Order, with notice of entry, upon all parties; and it is further

ORDERED, that Plaintiff, Henry Greene, shall within twenty days after service of notice of entry as aforesaid, file proof of said service via NYSCEF; and it is further

ORDERED, that counsel shall appear for a compliance conference at a time and date to be determined by the Compliance Part, in accordance with existing public health protocols.

The foregoing constitutes the Decision & Order of the Court.

Dated: White Plains, New York
March 17, 2021



Hon. James W. Hubert
Supreme Court Justice