

Insernia v Min Han

2021 NY Slip Op 33806(U)

March 3, 2021

Supreme Court, Orange County

Docket Number: Index No. EF000182-2020

Judge: Robert A. Onofry

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SUPREME COURT-STATE OF NEW YORK
IAS PART-ORANGE COUNTY

Present: HON. ROBERT A. ONOFRY, J.S.C.

SUPREME COURT : ORANGE COUNTY

-----X

VINCENT N. INSERNIA,

Plaintiff,

- against -

MIN HAN, KYONG HAN, and HONDA LEASE
TRUST,

Defendant.

-----X

To commence the statutory time period 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.

Index No. EF000182-2020

DECISION AND ORDER

Motion Date: December 22, 2020

The following papers numbered 1 to 4 were read and considered on a motion by the Plaintiff, pursuant to CPLR § 3212, for summary judgment on the issue of liability.

Notice of Motion- Insernia Affidavit- Exhibits A-D- Boughrum Affirmation-	
Exhibits 1-5	1-5
Opposition- McCoy-Evans Affirmation- Exhibit A	6-7
Reply- Boughrum Affirmation- Exhibits 6-10	8-9

Upon the foregoing papers, it is hereby,

ORDERED, that the motion is denied, without prejudice to renew after discovery.

Factual/Procedural Background

The Plaintiff Vincent Insernia commenced this action to recover damages arising from a motor vehicle accident.

According to a police report of the accident, a vehicle being driven by the Defendant Min Han lost control due to the weather, crossed over the center line, and struck a vehicle being driven by the Plaintiff.

The Plaintiff moves for summary judgment on the issue of liability as against Min Han and Kyong Han (hereinafter referred to collectively as the “Han Defendants”).¹

In support of the motion, the Plaintiff submits his own affidavit.

Insernia asserts that, on January 31, 2017, at approximately 5:02 p.m., he was driving within the speed limit on Long Mountain Parkway in the Town of Woodbury, County of Orange, State of New York. Insernia avers that he was headed westbound when suddenly, without warning, a vehicle traveling in the other direction appeared to lose control and crossed over the double yellow line into his lane of travel, violently crashing into the front end of his vehicle.

Insernia avers that he was traveling at a speed appropriate for the weather conditions, in his own lane of travel, and that “there was absolutely nothing [he] could have done to avoid the sudden and unexpected accident.”

Insernia asserts that the Police Accident Report indicates two factors that contributed to Min Han losing control of his vehicle. First, that the pavement was slippery due to snow and/or ice. Second, that Han disregarded a traffic control.

Insernia notes that both Min Han (the driver) and Kyong Han (the lessor) of the other vehicle submitted sworn affidavits denying that there were any mechanical difficulties with their vehicle on the day of the accident.

In opposition to the motion, the Han Defendants submit an affirmation from counsel, Tara McCoy-Evans.

McCoy-Evans argues that there is a question of fact whether an “emergency situation”

¹ By stipulation filed June 3, 2020, the action was discontinued as against the Defendant Honda Lease Trust.

existed at the time of the accident that was not of the Defendants' own making; thus relieving them of liability.

Moreover, she argues, summary judgment is premature because depositions have yet to be conducted. Therefore, the "emergency doctrine" has yet to be eliminated as a valid defense.

Further, she asserts, she should be allowed to question the Plaintiff about not only the condition of the road, but also about whether he was contributorily negligent in the happening of the accident.

In further opposition to the motion, the Defendant Min Han submits his own affidavit.

Min Han avers as follows.

On January 31, 2017, he was operating a 2015 Honda CRV leased by his wife, the Defendant Kyong Han.

It was "snowing heavily. The snow was covering the roadways."

Long Mountain Parkway is two lanes wide, with one lane of travel in each direction.

There were multiple vehicles in front of him.

He maintained a safe distance between his vehicle and the vehicle directly in front of him, and he was driving very slowly because of the heavy snow falling.

He had no problems operating his vehicle from the time he left the Woodbury Commons until the accident.

After he crested a hill and began to go down a decline, he saw that the car in front of him had applied its brakes.

He applied his brakes lightly, and his vehicle began to slide on ice that was covered by the snow on the roadway.

He lost control of his vehicle and it entered into the opposite lane of travel, where he collided with the Plaintiff's vehicle.

He had no mechanical problems with his vehicle on the date of the accident. Rather, he lost control of his vehicle due to heavy snow and the ice underneath the snow on the roadway.

In reply, the Plaintiff submits an affirmation from counsel, Andrew Boughrum.

Boughrum argues that the Han Defendants' motion papers attempt to feign an issue of fact concerning application of the "emergency doctrine."

Further, he argues, there is no question of fact whether the Plaintiff was contributorily negligent.

Moreover, he asserts, further disclosure is not needed.

Concerning disclosure, Boughrum denies that he cancelled depositions scheduled for September 17, 2020, a mere 30 minutes before they were to begin, or that he is responsible, in general, for the fact that depositions have not gone forward.

Rather, he asserts, the reality of the matter is that the parties were discussing settlement of Plaintiff's claims for the better part of a year, as there has never been any real question of fact regarding the Defendants' liability.

Discussion/Legal Analysis

A party seeking summary judgment bears the initial burden of establishing a *prima facie* entitlement to judgment as a matter of law by tendering competent evidence in admissible form sufficient to eliminate any triable, material issues of fact from the case. If the moving party fails to meet this burden, the papers submitted in opposition need not be considered. If the moving party makes such a *prima facie* showing, the burden shifts to the opposing party to demonstrate

the existence of an issue of fact requiring a trial. *Phillip v. D & D Carting Co., Inc.*, 136 A.D.3d 18 [2nd Dept. 2015]; *Dempster v. Liotti*, 86 A.D.3d 169 [2nd Dept. 2011].

Pursuant to CPLR 3212(f), a motion for summary judgment may be denied as premature when it appears that facts essential to justify opposition may exist but cannot then be stated.

Aurora Loan Services, LLC v. LaMattina & Associates, Inc., 59 A.D.3d 578 [2nd Dept. 2009].

This is especially so where the opposing party has not had a reasonable opportunity for disclosure prior to the making of the motion. *Aurora Loan Services, LLC v. LaMattina & Associates, Inc.*, 59 A.D.3d 578 [2nd Dept. 2009]. However, the proponent must offer an evidentiary basis for a determination that disclosure might reveal or lead to relevant evidence, or that facts essential to oppose the motion were exclusively within the knowledge and control of the plaintiff. *Yiming Zhou v. 828 Hamilton, Inc.*, 173 A.D.3d 943 [2nd Dept. 2019]. The mere hope or speculation that evidence sufficient to defeat a motion for summary judgment may be uncovered during the disclosure process is insufficient to deny the motion. *Cortes v. Whelan*, 83 A.D.3d 763, 922 N.Y.S.2d 419 [2nd Dept. 2011].

There can be more than one proximate cause of an accident. *Adobea v. Junel*, 114 A.D.3d 818 [2nd Dept. 2014]. This is because each driver has a duty to exercise reasonable care under the circumstances to avoid an accident. *Adobea v. Junel*, 114 A.D.3d 818 [2nd Dept. 2014]. An operator of a motor vehicle traveling with the right-of-way has an obligation to keep a proper lookout and see what can be seen through the reasonable use of his or her senses to avoid colliding with other vehicles. *Fried v. Misser*, 115 A.D.3d 910 [2nd Dept. 2014]. Thus, a driver traveling with the right-of-way may nevertheless be found to have contributed to the happening of the accident if he or she did not use reasonable care to avoid the accident. *Adobea v. Junel*,

114 A.D.3d 818 [2nd Dept. 2014]. However, a driver with the right-of-way who has only seconds to react to a vehicle that has failed to yield is not comparatively negligent for failing to avoid the collision. *Adobea v. Junel*, 114 A.D.3d 818 [2nd Dept. 2014].

To prevail on a motion for summary judgment on the issue of liability in a negligence case, the movant need no longer demonstrate that he or she was free from comparative fault. *Davis v. Commack Hotel, LLC*, 174 A.D.3d 501 [2nd Dept. 2019].

A violation of the Vehicle and Traffic Law constitutes negligence as a matter of law. *Adobea v. Junel*, 114 A.D.3d 818 [2nd Dept. 2014]. The driver with the right-of-way is entitled to anticipate that the other motorist will obey traffic laws which require him or her to yield. *Adobea v. Junel*, 114 A.D.3d 818 [2nd Dept. 2014].

Vehicle and Traffic Law § 1180(a) provides: “No person shall drive a vehicle at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing.”

Vehicle and Traffic Law § 1120(a) provides that, in general, “Upon all roadways of sufficient width a vehicle shall be driven upon the right half of the roadway.”

Vehicle and Traffic Law § 1126(a) provides: “When official markings are in place indicating those portions of any highway where overtaking and passing or driving to the left of such markings would be especially hazardous, no driver of a vehicle proceeding along such highway shall at any time drive on the left side of such markings.”

Conversely, the mere fact that an accident occurs does not necessarily mean that a defendant was negligent and may be held liable for the same. *Georgas v. Mays Dept. Stores, Inc.*, 299 A.D.2d 314 [2nd Dept 2002].

Further, a defendant may raise the defense of the emergency doctrine. The emergency doctrine is applicable “when an actor is faced with a sudden and unexpected circumstance which leaves little or no time for thought, deliberation or consideration, or causes the actor to be reasonably so disturbed that the actor must make a speedy decision without weighing alternative courses of conduct, the actor may not be negligent if the actions taken are reasonable and prudent in the emergency context.” *Rivera v. New York City Tr. Auth.*, 77 N.Y.2d 322; *Freder v. Costello Industries, Inc.*, 162 A.D.3d 984 [2nd Dept. 2018]. Except in the most egregious circumstances, it is normally left to the trier of fact to determine if a particular situation rises to the level of an emergency. *Freder v. Costello Industries, Inc.*, 162 A.D.3d 984 [2nd Dept. 2018]. However, where the claimed emergency resulted from a defendant's own actions, for example, from the defendant's failure to maintain a safe distance between his or her vehicle and the vehicle in front of him or her, it will not qualify as an emergency under the emergency doctrine. *Freder v. Costello Industries, Inc.*, 162 A.D.3d 984 [2nd Dept. 2018]. Nor will the emergency doctrine apply where the defendant encounters a known, foreseeable hazard which the defendant in fact observed enter his or her path prior to the accident, or where the defendant fails to be aware of the potential hazards presented by traffic conditions, including stoppages caused by accidents up ahead. *Freder v. Costello Industries, Inc.*, 162 A.D.3d 984 [2nd Dept. 2018].

Here, the Plaintiff demonstrated a *prima facie* entitlement to judgment as a matter of law with evidence that Min Han violated Vehicle and Traffic Law § 1126(a) by crossing over a double yellow line and striking his vehicle. Such conduct constitutes negligence as a matter of law, unless justified by an emergency situation not of the driver's making. *Hodnett v. Westchester County Department of Public Works and Transportation*, 181 A.D.3d 655 [2nd Dept.

2020]; *Haughey v. Noone*, 262 A.D.2d 284 [2nd Dept. 1999].

However, in opposition, the Han Defendants demonstrated that further disclosure might provide relevant information concerning the applicability of the emergency doctrine and the possible contributory negligence of the Plaintiff. *See generally, Hodnett v. Westchester County Department of Public Works and Transportation*, 181 A.D.3d 65 [2nd Dept. 2020]; *Sena v. Negron*, 38 A.D.3d 516 [2nd Dept. 2007]; *Campo v. Neary*, 52 A.D.3d 1194 [4th Dept. 2008].

Thus, summary judgment is denied as premature, without prejudice to renew after further discovery and disclosure.

Accordingly, and for the reasons cited herein, it is hereby,

ORDERED, that the motion is denied without prejudice to renew after disclosure; and it is further,

ORDERED that the parties are directed to appear for a status conference on Tuesday, May 4, 2021, at 1:30 p.m., at the Orange County Supreme Court, Court room #3, 285 Main Street, Goshen, New York. If the Courts are not open to the public at that time, the conference will be held virtually on said date, at a time to be designated by the Court.

The foregoing constitutes the decision and order of the court.

Dated: March 3, 2021
Goshen, New York

ENTER



HON. ROBERT A. ONOFRY, J.S.C.

VIA NYSCEF

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