Nam Quoc Long Hoang v Rodriguez
2021 NY Slip Op 34021(U)
March 31, 2021
Supreme Court, Bronx County
Docket Number: Index No. 31849/2018E
Judge: Bianka Perez
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX, PART 14

NAM QUOC LONG HOANG and NGA THI HOANG,

Plaintiffs, Index №. 31849/2018E

-against- **Hon. BIANKA PEREZ**

AYMER R. RAMOS RODRIGUEZ, ARI FLEET LT, TECHTRONIC INDUSTRIES NORTH AMERICA, INC., and R&B SALES AND MARKETING, INC.

Defendants. Justice Supreme Court

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The following papers numbered 1 to 6 were read on this motion (Seq. No. 2) for SUMMARY JUDGMENT LIABILITY noticed on July 6, 2020.

Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed	No(s). 1-3
Answering Affidavit and Exhibits	No(s). 4-5
Replying Affidavit and Exhibits	No(s). 6

Upon the foregoing papers, the plaintiff moves for an Order pursuant to CPLR 3212 granting the plaintiff partial summary judgment against the defendants on the issue of liability, striking defendants' affirmative defenses and cross-claims are to any comparative/contributory negligence by plaintiff, and awarding such other and further relief as this Court deems just and proper. Defendants oppose and cross-move for summary judgment based on the Graves Amendment.

Procedural History

This is an action to recover damages for personal injuries, which plaintiff allegedly sustained in a motor vehicle accident which occurred on April 1, 2018 at the intersection of Route 231 (southbound) and Nicolls Road in Deer Park, New York. Plaintiffs commenced this action on October 17, 2018 by filing of the summons and complaint. On December 19, 2018, issue was joined by defendants ARI Fleet LT and Rodriguez, by service of an answer. On July 17, 2019, plaintiffs served an amended complaint naming defendant Techtronic Industries North America, Inc. as a defendant. Plaintiffs filed a second amended complaint on January 28, 2020, naming defendant R&B Sales and Marketing, Inc. as a defendant. Some discovery has been exchanged, but depositions have not been held.

Plaintiff's Motion on Liability

In the instant motion, plaintiffs move for summary judgment on the issue of liability. Plaintiffs allege that while stopped at a red light for approximately 5-10 seconds, they were rear ended by defendants' vehicle (Exh. 1, Pl's Aff.; Exh. 2, Police Report). As such, plaintiffs contend that they did not cause or contribute to the subject accident, as their vehicle was hit in the rear by defendants' vehicle while they were at a complete stop.

In opposition, counsel for the defendants argues that the motion for summary judgment is premature, as depositions of plaintiffs have not been conducted. Defendants argue that plaintiffs are in exclusive possession of information pertaining to the operation of their own vehicle prior to the accident, among other information about the plaintiffs' conduct at the time of the accident. Defendants further contend that plaintiff failed to eliminate all triable issues of fact, as plaintiffs failed to set forth which defendant owned the subject vehicle, which defendant struck plaintiffs, and whether any defendants are vicariously liable for the accident.

In reply, plaintiffs contend that defendants failed to raise a triable issue of fact, as defendants did not submit an affidavit disputing moving plaintiff's version of events, or in any way demonstrating that the plaintiff caused or contributed to the accident.

Defendants' Cross Motion on the Graves Amendment

Defendant ARI Fleet LT ("ARI") cross move this Court for an order dismissing the complaint against it, alleging that under the Federal Transportation Equity Act of 2005, 49 U.S.C. § 30106, commonly known as the "Graves Amendment," a leasing or rental company vehicle owner cannot be held to be vicariously liable for the alleged negligent acts of the renter, its employees or agents.

In support, defendants annex an affidavit from Andrew Scott, a Risk and Contract Analyst employed by ARI (Exh. F), and copies of the lease agreements for the vehicle (Exh. G; Exh. H). Defendants allege that prior to delivering the vehicle to the lessee, ARI conducted an inspection of the vehicle, which did not reveal any mechanical problems (Exh. F). Defendants further allege that per the lease agreements between ARI and defendant Techtronic Industries North America ("Techtronic"), Techtronic was responsible for all maintenance and upkeep of the vehicle (Exh. G; Exh. H).

In opposition, plaintiffs contend that the cross motion should be denied because the affidavit by Andrew Scott of ARI was defective due to a lack of a certificate of conformity, and that material issues of fact preclude dismissal of the complaint against ARI. Plaintiffs alleged a claim of negligent maintenance against ARI, which they argue requires the motion to dismiss be denied.

Standard of Review

The court's function on this motion for summary judgment is issue finding rather than issue determination. *Sillman v. Twentieth Century Fox Film Corp.*, 3 N.Y.2d 395 (1957). Since summary judgment is a drastic remedy, it should not be granted where there is any doubt as to the existence of a triable issue. *Rotuba Extruders v. Ceppos*, 46 N.Y.2d 223 (1978). The movant must come forward with evidentiary proof in admissible form sufficient to direct judgment in its favor as a matter of law. *Zuckerman v. City of New York*, 49 N.Y.2d 557, 562 (1980). Thus, when the existence of an issue of fact is even arguable or debatable, summary judgment should be denied. *Stone v. Goodson*, 8 N.Y.2d 8, (1960); *Sillman v. Twentieth Century Fox Film Corp*., *supra*.

The proponent of a motion for summary judgment carries the initial burden of production of evidence as well as the burden of persuasion. *Alvarez v. Prospect Hospital*, 68 N.Y.2d 320 (1986). Thus, the moving party must tender sufficient evidence to demonstrate as a matter of law the absence of a material issue of fact. Once that initial burden has been satisfied, the "burden of production" (not the burden of persuasion) shifts to the opponent, who must now go forward and produce sufficient evidence in admissible form to establish the existence of a triable issue of fact. The burden of persuasion, however, always remains where it began, i.e., with the proponent of the issue. Thus, if evidence is equally balanced, the movant has failed to meet its burden. *300 East 34th Street Co. v. Habeeb*, 683 N.Y.S.2d 175 (1st Dept. 1997).

Discussion

Plaintiff's Motion

It is well established that a rear-end collision with a stationary vehicle creates a prima facie case of negligence on the part of the operator of offending vehicle and imposes a duty upon that operator to proffer a non-negligent explanation for his failure to maintain a safe distance between cars. *Agramonte v. City of New York*, 732 N.Y.S.2d 414 (1st Dept 2001); *Mitchell v. Gonzalez*, 703 N.Y.S.2d 124 (1st Dept 2000). "Drivers must maintain safe distances between their cars and cars in front of them and this rule imposes on them a duty to be aware of traffic conditions, including vehicle stoppages." *Johnson v. Phillips*, 690 N.Y.S.2d 545 (1st Dept 1999). In addition, a rear-end collision with a 'stopped' or 'stopping' vehicle creates a prima facie case of negligence with respect to the operator of the rearmost vehicle, thereby requiring that operator to rebut the inference of negligence by providing a non-negligent explanation for the collision" (*Sooklall v. Morisseav-Lafague*, 185 AD3d 1079 [2d Dept 2020]; *Buchanan v. Keller*, 169 AD3d 989 [2d Dept 2019]; Edgerton v. City of New York, 160 AD3d 809 [2d Dept 2018]).

Here, the court finds that plaintiffs have met their burden for entitlement to summary judgment on the issue of liability based upon the submission of their affidavit and certified police report, which were not controverted by any sworn testimony from defendant. (see *Rodriguez v. City of New York*, 31 NY3d 312 [2018]; *Arslan v. Costello, 164 AD3d 1408* [2d Dept 2018]). In particular, the plaintiff averred that they were at a complete stop at a red light when the defendant suddenly, and without warning, rear-ended their vehicle. In opposition, defendant fails to provide a non-negligent explanation as to why he did not maintain a safe distance between his vehicle and plaintiff's vehicle. Drivers are charged with a responsibility to maintain a safe distance between vehicles and to be prepared for such vehicle stoppages. see Vehicle and Traffic Law §1129(a). Defendants contend that plaintiffs failed to meet their burden as a notation on the side of the police report indicates that plaintiffs were "stopping" as opposed to "stopped." However, this distinction is irrelevant as the case law is clear that the rearmost vehicle is presumptively liable if the car is stopped or stopping (see *Sooklall v. Morisseav-Lafague*, 185 AD3d 1079 [2d Dept 2020]). Thus, defendant failed to raise a triable issue of fact.

Lastly, contrary to the defendant's contentions, the plaintiffs motion is not premature because depositions have not been completed. The motion is not premature because "the information as to why the defendant's vehicle struck the plaintiff's vehicle reasonably rests within the defendant's own knowledge" (*Rodriguez v Garcia*, 154 AD3d 581 [1st Dept 2017]; *see Castaneda v DO& Co New York Catering, Inc.,*144 AD3d 407 [1st Dept 2016]). The mere hope that a party might be able to uncover some evidence during the discovery process is insufficient to deny summary judgement (*see Castaneda, supra; Avant v Cepin Livery Corp*., 74 AD3d 533 [1st Dept 2010]; *Planned Bldg. Servs. Inc., v SL Green Realty Corp.*, 300 AD2d 89 [1st Dept 2002]). Notably the non-moving party did not provide an affidavit in connection with this motion, and no reason was given for their failure to do so.

<u>Defendant ARI's Cross Motion</u>

The Graves Amendment, regarding rented or leased motor vehicle safety and responsibility, bars vicarious liability actions against professional lessors and renters of vehicles, as would otherwise be permitted under Vehicle and Traffic Law § 388 (see *Gluck v Nebgen*, 72 AD3d 1023 [2d Dept. 2010,]; *Graham v Dunkley*, 50 AD3d 55 [2d Dept. 2008]; *Hernandez v. Sanchez*, 40 AD3d 446 [1st Dept. 2007]).

The Transportation Equity Act of 2005 (49 USC § 30106) provides in pertinent part: § 30106 Rented or leased motor vehicle safety and responsibility.

"(a) In general.--An owner of a motor vehicle that rents or leases the vehicle to a person (or an affiliate of the owner) shall not be liable under the law of any State or political subdivision thereof,

by reason of being the owner of the vehicle (or an affiliate of the owner), for harm to persons or property that results or arises out of the use, operation, or possession of the vehicle during the period of the rental or lease, if:

"(1) the owner (or an affiliate of the owner) is engaged in the trade or business of renting or leasing motor vehicles; and

"(2) there is no negligence or criminal wrongdoing on the part of the owner (or an affiliate of the owner)"

However, the courts have held in this regard that although the Graves Amendment bars negligence claims against car-rental companies based solely on a theory of vicarious liability (*Graham v Dunkley*, *supra*; *Hernandez v Sanchez*, *supra*.), a claim based upon negligent maintenance is not barred by the Graves Amendment since the statute does not absolve leasing companies of their own negligence (*Collazo v MTA-New York City Tr.*, 74 AD3d 642 [1st Dept. 2010]; *Novovic v Greyhound Lines, Inc.*, 2008 U.S. Dist LEXIS 94176 [EDNY 2008]). There is no question that the Graves Amendment preempts all state statutes to the extent they hold those owners in the business of renting or leasing motor vehicles vicariously liable for the negligence of drivers, except when there is negligence or criminal wrong doing on the part of the owner (*Clarke v Hirt*, 46 Misc. 3d 571 [N.Y. Sup. Ct. 2014]).

Here, the Court finds that ARI met its prima facie burden that there was no negligence or criminal wrongdoing on their part, though the affidavit of Andrew Scott and the lease agreements annexed to the cross motion. Though the affidavit lacks the proper certificate of conformity, the affidavit is nonetheless admissible (see *Ruchames v. New York and Presbyterian Hospital*, 176 A.D.3d 602 [1st Dept 2019]; *Matapos Technology Ltd. V. Compania Andina de Comercia Ltda*, 68 A.D.3d 672 [1st Dept 2009] ["courts are not rigid about this requirement . . . the absence of such a certificate is a mere irregularity, and not a fatal defect"]).

In opposition, plaintiffs failed to raise a triable issue of fact. Plaintiff contends that it raised a question of fact as to ARI's liability by alleging negligent maintenance in the complaint. However, it has been held that absent some evidence of a lessor's failure to properly maintain the subject vehicle, which the lessor expressly agreed to maintain per the lease agreement, or some other negligence by the lessor, the negligence clause of the Graves Amendment is rarely applicable and should be cautiously applied in light of Congress' clear intent to forestall suits againt vehicle leasing companies (see *Dubose v. Transp. Enter. Leasing, LLC*, 2009 U.S. Dist. LEXIS 5693 [2009]; *Terranova v. Waheed Brokerage*, Inc., 78 A.D.3d 1040 [2d Dept.2010]; *Collazo v. MTA New York City Tr.*, 74 A.D.3d 642 [1st Dept. 2010]). Although a

negligent maintenance claim can survive the Graves Amendment, ARI submitted evidence showing that the lessee is solely responsible for the maintenance of the subject vehicle during the lease term, and that ARI otherwise properly maintained the vehicle. Plaintiff's hope that further discovery would reveal the existence of triable issues of fact regarding the maintenance of the vehicle is insufficient to deny summary judgment [see *Castaneda v. DO & CO New York Catering, Inc.*, 144 A.D.3d 407 [1st Dept 2016]; *Avant v. Cepin Livery Corp.*, 74 A.D.3d 533 [1st Dept 2010]).

Conclusion

Accordingly, it is hereby

ORDERED that the plaintiffs' motion for summary judgment, pursuant to CPLR § 3212, is granted on the issue of liability, and it is further,

ORDERED that defendant ARI Fleet LT's cross motion for summary judgment is granted and the complaint is hereby dismissed as to ARI Fleet LT, and it is further

ORDERED, that the Clerk of the Court is directed to enter judgment in favor of ARI Fleet LT and against plaintiff dismissing all causes of action and cross-claims or counterclaims against said defendant.

This constitutes the Decision and Order of this Court.

Dated: March 31, 2021 **Hon.**______________________

BIANKA PEREZ, J.S.C.

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1. CHECK ONE...	☐ CASE DISPOSED IN ITS ENTIRETY ☐ CASE STILL ACTIVE
2. MOTION IS..	☐ GRANTED ☐ DENIED ☐ GRANTED IN PART ☐ OTHER
3. CHECK IF APPROPRIATE....................	☐ SETTLE ORDER ☐ SUBMIT ORDER ☐ SCHEDULE APPEARANCE
	☐ FIDUCIARY APPOINTMENT ☐ REFEREE APPOINTMENT