

Feyz v Guarasci

2021 NY Slip Op 34194(U)

May 3, 2021

Supreme Court, Kings County

Docket Number: Index No. 519741/2018

Judge: Lara J. Genovesi

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 34 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse thereof at 360 Adams St., Brooklyn, New York on the 3rd day of May 2021.

P R E S E N T:

HON. LARA J. GENOVESI,
J.S.C.

-----X
RAMIL FEYZ, MARINA YANOVSKY and
AKOP SARKISYAN,

Index No.: 519741/2018

Plaintiff,

DECISION & ORDER

-against-

RICHARD GUARASCI, WAGNER COLLEGE,
TIMOTHY LITTLE and UNITED PARCEL
SERVICE, INC.,

Defendants.

-----X
Recitation, as required by CPLR §2219(a), of the papers considered in the review of this motion:

Notice of Motion/Cross Motion/Order to Show Cause and
Affidavits (Affirmations) Annexed _____
Opposing Affidavits (Affirmations) _____
Reply Affidavits (Affirmations) _____

NYSCEF Doc. No.:

54, 55

68, 69

70

Introduction

Defendants, Timothy Little and United Parcel Service, Inc., move, by notice of motion, sequence number three, pursuant to CPLR § 3212, for summary judgment

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dismissing the complaint and cross-claim. Plaintiff,¹ Ramil Feyz, and defendants, Richard Guarasci and Wagner College, oppose this motion.

Background

This is an action seeking compensatory damages arising out of a multi-vehicle accident that occurred on June 14, 2018, in the westbound lanes of I-278 (the BQE). The BQE has three lanes of moving traffic with a divider on either side. It is undisputed that defendant Timothy Little (Little) was operating a tractor trailer truck (the UPS truck) owned by defendant United Parcel Service, Inc. in the middle lane. Plaintiff Ramil Feyz was operating a black Mercedes in the left lane, and defendant Richard Guarasci was operating a dark blue Lexus owned by defendant Wagner College in the right lane. Guarasci, who was allegedly struck in the rear by an unknown vehicle, lost control of his vehicle and struck the front right bumper of the UPS truck, causing his vehicle to spin in front of the UPS truck and into the left lane, then Guarasci's vehicle struck the back right wheel well of Feyz's vehicle. Feyz lost control of his vehicle and spun from the left lane to the right lane, colliding with the right divider, and then ricocheted back into the left lane, colliding with the left divider.

Defendant Guarasci testified at an Examination Before Trial (EBT) on October 20, 2020. Guarasci was driving a Lexus owned by co-defendant Wagner College in the right lane on the expressway, "all of a sudden I felt a push or hit from behind" (*see* NYSCEF Doc. # 62, Guarasci EBT at 18). Guarasci never looked behind him to see what struck

¹ The only remaining plaintiff in this action is Ramil Feyz.

the rear of his vehicle (*see id.* at 38, 39). Guarasci “struggle[ed] to maintain” his vehicle in the right lane and struck the UPS truck in the front right bumper (*see id.* at 20, 21).

After the impact with the UPS truck,

I was now impaled on the side of the truck and flipped around. Now, I was facing oncoming traffic. I was impaled on the driver side of that truck and my car was still in drive even though it was facing oncoming traffic. The truck was hauling me essentially forward and I was trying to get off that truck. I didn’t know what was going to happen to me. So, subsequently I would be pushed under the truck . . . I turned my steering wheel into the truck. I got loose from it. I got off of it. I began to swirl around. I hit the divider, the concrete divider in the road several times. As I swirled around and eventually came to a stop.

Defendant Little testified at an EBT on November 11, 2020. Little testified that the right lane vehicle² “struck the bumper [of his truck] and then it spun in front of me and did like a hook and it hit like the divider on the left lane” (NYSCEF Doc. # 63, Little EBT at 23). The right lane vehicle “spun out in front of me and then it went and hit the guardrail on the left lane” (*id.* at 24). After the impact, Little “slowed down, came to a stop, put my air brakes on, [and] turned the vehicle off” (*id.*). “seconds” separated the initial impact to Little’s front bumper and co-defendant Guarasci striking the divider (*see id.* at 68). Little did not see plaintiff’s vehicle until after the accident (*see id.* at 46).

Plaintiff testified at an EBT on May 20, 2019. Plaintiff testified that immediately after driving his vehicle in the left lane passed the UPS truck, he felt “one very strong hit”

² In his deposition testimony, Little testified that the right lane vehicle was a Mercedes, and that the left lane vehicle was a Lexus. Although no errata sheet was provided, counsel at oral argument agreed that Little’s recollection of the vehicles was inverted throughout his deposition. Counsel also agreed that this inversion has no bearing on this motion.

to his vehicle (NYSCEF Doc. # 61, Feyz EBT at 33, 86). Plaintiff was struck in the “rear right wheel” by Guarasci (*id.* at 34, 35). Plaintiff’s vehicle spun across the middle and right lane and collided with the divider on the right side, “bounced out of that divider and travelled all three lanes again” and hit the left divider, and stopped in the left lane facing against traffic (*see id.* at 39, 87). Plaintiff testified that he does not know whether his vehicle made contact with the UPS truck, and later testified that his vehicle did not make contact with the UPS truck (*see id.* at 42, 87).

Defendant annexed a copy of the certified Police Accident Report in support of this application. The report identifies three vehicles: the vehicle operated by Feyz (VEH 1), the vehicle operated by Guarasci (VEH 2), and the vehicle operated by Little (VEH 3) (*see* NYSCEF Doc. # 59, Certified Police Accident Report). The “Accident Description/Officer’s Notes” portion of the report reads:

AT TPO DRIVER OF VEH 1 STS WHILE TRAVELING W/B ON THE GOWANUS EXPY IN THE LEFT LANE DRIVER OF VEH 2 HIT VEH 3 THEN COLLIDED WITH VEH 1 CAUSING ABOVE DAMAGE. DRIVER OF VEH 2 STS WHILE TRAVELING W/B ON THE HOWANUS EXPY IN THE RIGHT LANE HE WAS HIT FROM BEHIND UNEXPECTEDLY BY UNKNOWN VEH CAUSING HIM TO SPIN OUT OF CONTROL AND FACE ONCOMING TRAFFIC. DRIVER OF VEH 2 THEN STS HE COLLIDED WITH VEH 3 AND SUBSEQUENTLY COLLIDED WITH HIGHWAY DIVIDER. DRIVER OF VEH 3 STS WHILE TRAVELING W/B ON THE GOWANUS EXPY IN THE MIDDLE LANE THE VEH IN THE RIGHT LANE DID SPIN OUT OF CONTROL IN FRONT OF HIM AND WAS FACING ONCOMING TRAFFIC AND COLLIDED WITH HIS DRIVER SIDE DOOR.

(*see* Certified Police Accident Report).

This action was commenced by the filing of the summons and complaint on October 1, 2018 (*see* NYSCEF Doc. # 1). Issue was joined on October 23, 2018 and January 3, 2019 (*see* NYSCEF Doc. # 2, 3). The note of issue was filed on November 20, 2020 (*see* NYSCEF Doc. # 53).

Discussion

Summary Judgment

“[T]he proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact” (*Stonehill Capital Mgmt., LLC v. Bank of the W.*, 28 N.Y.3d 439, 68 N.E.3d 683 [2016], citing *Alvarez v. Prospect Hospital*, 68 N.Y.2d 320, 501 N.E.2d 572 [1986]). Failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers (*see Chiara v. Town of New Castle*, 126 A.D.3d 111, 2 N.Y.S.3d 132 [2 Dept., 2015], citing *Vega v. Restani Const. Corp.*, 18 N.Y.3d 499, 965 N.E.2d 240 [2012]; *see also Lee v. Nassau Health Care Corp.*, 162 A.D.3d 628, 78 N.Y.S.3d 239 [2 Dept., 2018]).

Since there can be more than one proximate cause of an accident, a defendant moving for summary judgment has the burden of establishing freedom from comparative negligence as a matter of law “In order for a defendant driver to establish entitlement to summary judgment on the issue of liability in a motor vehicle collision case, the driver must demonstrate, prima facie, inter alia, that he or she kept the proper lookout, or that his or her alleged negligence, if any, did not contribute to the accident”. The issue of comparative fault is generally a question for the trier of

fact.

(*Ballentine v. Perrone*, 179 A.D.3d 993, 114 N.Y.S.3d 696 [2 Dept., 2020] [internal citation omitted]).

Once a moving party has made a prima facie showing of its entitlement to summary judgment, the burden shifts to the opposing party to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action (*see Fairlane Fin. Corp. v. Longspaugh*, 144 A.D.3d 858, 41 N.Y.S.3d 284 [2 Dept., 2016], citing *Alvarez v. Prospect Hospital*, 68 N.Y.2d 320, *supra*; *see also Hoover v. New Holland N. Am., Inc.*, 23 N.Y.3d 41, 11 N.E.3d 693 [2014]).

Here, defendants Timothy Little and United Parcel Service, Inc. established their prima facie showing entitlement to summary judgment as a matter of law by submitting the deposition testimony of co-defendant Guarasci, who admitted to striking the front right bumper of Little's vehicle and then spinning into the left moving lane, and against traffic, where plaintiff was driving passed Little's vehicle. It is undisputed that Little's vehicle never contacted plaintiff's vehicle. It is further undisputed that Little remained in the middle lane and drove below the speed limit until the moment of impact between his vehicle and co-defendant Guarasci, and that the entire incident transpired over a matter of seconds.

In opposition, defendants Richard Guarasci and Wagner College, and plaintiff Ramil Feyz failed to raise a triable issue of fact. The argument that Little breached his "duty to exercise due care and see that, which through proper use of his senses, he should have seen" is unpersuasive. "Speculation and surmise are insufficient to defeat a motion

for summary judgment” (*Pesantes v. Komatsu Forklift USA, Inc.*, 58 A.D.3d 823, 872 N.Y.S.2d 504 [2 Dept., 2009], *citing*, *Jaffe v. New York City Transit Authority*, 52 A.D.3d 784, 861 N.Y.S.2d 388 [2 Dept., 2008]; *Sokuras v. New York city Transit Authority*, 48 A.D.3d 547, 852 N.Y.S.2d 206 [2 Dept., 2008]).

On consent, the caption is amended as follows:

-----X
RAMIL FEYZ,

Plaintiff,

-against-


RICHARD GUARASCI and WAGNER COLLEGE,

Defendants.
-----X

Conclusion

Accordingly, defendant Timothy Little and United Parcel Service Inc.’s motion (sequence three) for summary judgment is granted in its entirety. This constitutes the decision and order of this case.

ENTER:



Hon. Lara J. Genovesi
J.S.C.

2021 MAY -5 AM 10:30
KINGS COUNTY CLERK
FILED

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