

Chappelle v Ean Holdings, LLC
2022 NY Slip Op 30158(U)
January 21, 2022
Supreme Court, New York County
Docket Number: Index No. 151850/2017
Judge: Lisa Headley
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LISA HEADLEY PART 22

Justice

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JASON CHAPPELLE,

Plaintiff,

- v -

EAN HOLDINGS, LLC, NELSON SKINNER, FEDERAL EXPRESS CORPORATION, MILTON AMOROSO

Defendant.

-----X

INDEX NO. 151850/2017

MOTION DATE 02/18/2021

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 74, 75, 76, 77, 78, 79, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 109, 110, 111, 112, 113, 114, 125, 126, 127, 128, 129, 130, 131, 137, 141, 142, 143, 144, 145

were read on this motion to/for JUDGMENT - SUMMARY

Upon the foregoing documents, it is hereby ORDERED that Plaintiff's Jason Chappelle (hereinafter "Plaintiff") motion for summary judgment pursuant to CPLR §3212 against Defendants Federal Express Corp., ("Fed Ex") and Milton E. Amoroso ("Amoroso") (hereinafter referred to collectively as "Defendants") is granted for the reasons stated herein. Defendants Fed Ex and Amoroso filed opposition.

Co-defendants' Nelson Tamek Skinner ("Skinner") and EAN Holdings, LLC ("EAN") (hereinafter referred to as "Co-defendants") cross-motion pursuant to CPLR §3212 against Plaintiff to dismiss all affirmative defenses concerning liability of the co-defendants is denied. Co-defendants EAN and Skinner submitted opposition to the motion and reply to Defendants Fed Ex and Amoroso's cross motion. Defendants Fed Ex and Amoroso submitted opposition to cross-motion. Plaintiff filed a reply.

This action stems from a motor-vehicle collision which occurred on October 21, 2016, at West 154th Street in New York, N.Y. Plaintiff was a rear seated passenger of a Toyota sedan vehicle bearing Pennsylvania license plate number KBF8772, which was operated by co-defendant Skinner and owned by co-defendant EAN. It is alleged that the Toyota sedan, in which plaintiff was a passenger, was proceeding on West 154th Street, a one-way street with cars parked on both the left and right sides of the street. The box truck vehicle bearing New York State license plate number 49334KA, which was operated by Defendant Amoroso and owned by Defendant Fed Ex. It is alleged that when the Fed EX truck moved from a double-parked position, the Fed Ex truck collided with the Toyota sedan operated by co-defendant Skinner and owned by Co-defendant EAN.

I. Plaintiff's motion for summary judgment against defendants on the issue of defendants' liability and plaintiff's lack of liability

In support of the plaintiff's motion for summary judgment on the issue of liability, Plaintiff submits inter alia, his own deposition testimony and a copy of a certified police report. Plaintiff

asserts that the Fed Ex truck operated by Defendant Amoroso pulled away from a double-parked position, and entered the moving travel lane at the same moment that the plaintiff's vehicle was approaching the area. Plaintiff alleges that Defendant Amoroso, the Fed Ex truck driver, failed to yield the right of way to the vehicle in which Plaintiff was a passenger, and that the Fed Ex truck pulled out of a parking space when it was not safe to do so. As a result of the collision, the Toyota sedan, in which Plaintiff was a passenger, struck a parked car on the other side of the road. Further, Plaintiff submits the deposition testimony of Defendant Amoroso's own admission that "he was double parked when he observed the vehicle Plaintiff was in attempting to pass his vehicle, so he started to drive east bound on West 154 Street heading toward Saint Nicholas Ave, when he was side swiped by the vehicle."

In opposition to plaintiff's motion for summary judgment, Defendants Fed Ex and Amoroso concede Defendant Amoroso operated the Fed Ex truck involved in the subject accident during the course of his employment for Defendant Fed Ex. Defendants argue, *inter alia*, that the Fed Ex truck began to pull forward and to the right, when the Toyota sedan unsuccessfully attempted to pass Defendant Fed Ex's truck on the right. In addition, Defendants argue that the evidence demonstrates that Defendant Fed Ex was not negligent and proceeded with extreme caution because Defendant, Fed Ex driver Amoroso, used his brake and not his gas pedal to move forward, and was travelling only two to three miles per hour. Defendant Amoroso contends that he only failed to notice the Toyota sedan because it was situated in his "blind spot." Further, Defendants assert the police accident report indicates that the operator of the Toyota sedan, co-defendant Skinner, was inattentive and distracted as he drove too close to the Fed Ex truck while trying to pass the truck.

In opposition to plaintiff's motion for summary judgment, co-defendants Skinner and EAN argue, *inter alia*, Plaintiff has failed to demonstrate any negligence on co-defendants' (Skinner and EAN) part that caused the subject accident. Specifically, co-defendants Skinner and EAN assert that Plaintiff's motion establishes the actions of Defendant Fed Ex driver Amoroso was the sole cause of the subject accident. Plaintiff concedes co-defendant Skinner was in the "moving lane for travel with the right of way... traveling straight ahead in the lane for moving travel" when the accident occurred. Additionally, co-defendants Skinner and EAN refer to Defendant Amoroso's deposition testimony which states that defendant Amoroso informed his supervisor that he struck the Toyota sedan (defendants Skinner and EAN's vehicle and the vehicle in which plaintiff was a passenger).

In reply, Plaintiff argues both Defendants Skinner and EAN, as well as co-defendants Fed Ex and Amoroso could be held liable because there can be more than one proximate cause of an accident. Furthermore, Plaintiff argues the named defendants have been able to absolve themselves from their negligent conduct. Specifically, plaintiff contends that defendants Amoroso and Fed Ex have failed to address the issue of Plaintiff's lack of liability as an innocent passenger, and defendants have failed to provide any admissible evidence to show the defendant Fed Ex truck had a blind spot. Furthermore, the plaintiff contends that defendants do not oppose the portion of plaintiff's motion which seeks summary judgment on the issue of plaintiff's lack of liability, and thus that portion of Plaintiff's motion should be granted on default.

II. Co-defendants Skinner and EAN Holdings cross-motion for summary judgment on the issue of defendants Fed Ex and Amoroso's liability and to dismiss plaintiff's complaint

Co-defendants Skinner and EAN filed a cross-motion for summary judgment on the issue of liability in favor of defendants, and dismissing plaintiff's complaint. In support of the motion,

co-defendants Skinner and EAN submit, *inter alia*, deposition testimony and police accident reports. Co-defendants argue that defendants Fed Ex and Amoroso are liable for the subject accident under negligence *per se* because defendant Fed Ex driver Amoroso violated *New York State Vehicle and Traffic Law §1162 and §1143* (“*VTL §§1162 and 1143*). *VTL §1162* states: “No person shall move a vehicle which is stopped, standing, or parked unless and until such movement can be made with reasonable safety.” *VTL §1143* states: “The driver of a vehicle about to enter or cross a roadway from any place other than another roadway shall yield the right of way to all vehicles approaching on the roadway to be entered or crossed.” Here, co-defendants Skinner and EAN argue that defendant Amoroso is negligent *per se* because he moved from a double-parked stopped position into the moving lane of traffic on West 154th Street, and caused the accident.

In opposition to the defendants Skinner and EAN’s cross-motion for summary judgment, co-defendants Fed Ex and Amoroso argue that the movants ignore material facts from the record establishing that their own negligence was the sole proximate cause of the accident. Specifically, defendants allege that co-defendant Skinner was inattentive and distracted as he drove too closely to the defendant Fed Ex’s truck while trying to pass the truck. Furthermore, co-defendant Skinner’s testimony demonstrates Skinner’s path was partially obstructed due to the presence of the Fed Ex truck double-parked within the only moving lane. Defendants Fed EX and Amoroso also argue that the movant-defendants’ motion should be denied because questions of fact exist as to whether Defendant Fed Ex was negligent in causing the accident. In addition, defendants Fed Ex and Amoroso argue that *VTL §1162* is inapplicable because Defendant Fed Ex proceeded with “extreme caution in safely easing its vehicle forward and to the right,” and *VTL §1143* is also inapplicable because Defendant Fed Ex driver Amoroso was already in the moving lane at the time of the accident.

In reply, co-defendants Skinner and EAN argue that the actions of co-defendant Skinner were not the proximate cause of the accident, and defendants Fed Ex and Amoroso failed to raise a triable issue of fact to defeat co-defendants’ summary judgment motion. Co-defendants Skinner and EAN assert that defendant Amoroso’s actions solely contributed to the accident. Furthermore, they argue that the police report fails to provide an explanation as to how co-Defendant Skinner was distracted, and how that distraction was a contributing factor to the accident.

In addition, co-defendants EAN and Skinner argue they have satisfied their *prima facie* burden to be entitled to summary judgment because, although co-defendant Skinner is precluded from testifying at trial or offering an affidavit, that does not hinder their opportunity to demonstrate that co-defendant Skinner did not contribute to the subject accident. Furthermore, defendants EAN and Skinner contend that defendant Amoroso testified that the vehicle he was operating struck the vehicle operated by co-defendant Skinner.

III. Discussion

“In determining whether summary judgment is appropriate, the motion court should draw all reasonable inferences in favor of the nonmoving party and should not pass on issues of credibility.” *Garcia v. J.C. Duggan, Inc.*, 180 A.D.2d 579, 580 (1st Dep’t 1992), *citing Dauman Displays, Inc. v. Masturzo*, 168 A.D.2d 204 (1st Dep’t 1990). As such, summary judgment is rarely granted in negligence actions unless there is no conflict at all in the evidence. *See, Ugarriza v. Schmieder*, 46 N.Y.2d 471, 475-476 (1979). A plaintiff who establishes that he was an innocent passenger is entitled to summary judgment on the issue of liability. *See, Mello v. Narco Cab Corp.*, 105 A.D.3d 634, 635 (1st Dep’t 2013). Here, plaintiff has made a *prima facie* showing that he was an innocent passenger free of any fault in the accident. *See, CPLR §3212(g); Ramirez v. Elias-*

Tejada, 168 A.D.3d 401, 405 (1st Dep't 2019) [innocent passengers entitled to summary judgment on their lack of culpable conduct].

Furthermore, defendants failed to raise a triable issue of fact as to any negligence on plaintiff's part. It is undisputed that the injured plaintiff was a passenger seated in defendant Skinner's vehicle. Thus, upon examination of the papers submitted to this Court, Plaintiff Jason Chappelle's motion is granted. However, co-defendants' EAN and Skinner cross-motion is denied because there are issues of fact precluding summary judgment, such as conflicting reports pertaining to whether the Fed Ex Truck driver Amoroso or defendant Skinner caused the collision.

Accordingly, it is

ORDERED that Plaintiff Jason Chappelle's motion for summary judgment is GRANTED; and it is further

ORDERED that co-defendants' EAN and Skinner cross-motion is DENIED; and it is further

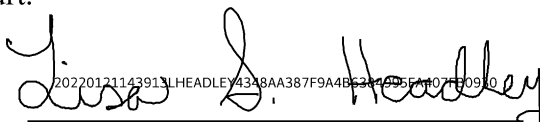
ORDERED that any relief sought not expressly addressed herein has nonetheless been considered; and it is further

ORDERED that within 30 days of entry, plaintiff shall serve a copy of this Decision and Order upon all named defendants with notice of entry.

This constitutes the Decision/Order of the Court.

1/21/2022

DATE


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LISA HEADLEY, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE