

Gormally v Uber Tech., Inc.

2022 NY Slip Op 30267(U)

January 28, 2022

Supreme Court, New York County

Docket Number: Index No. 151883/2020

Judge: Lisa S. Headley

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LISA HEADLEY **PART** **22**

Justice

-----X

THOMAS GORMALLY,

Plaintiff,

- v -

UBER TECHNOLOGIES, INC, UBER USA, LCC, RASIER-
NY, LLC, MUHAMMAD KHAN, JOHN LOGAN, JAMES
LOGAN, TIFFANY GOLDSOON,

Defendant.

-----X

INDEX NO. 151883/2020
MOTION DATE N/A
MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84

were read on this motion to/for PARTIAL SUMMARY JUDGMENT.

Plaintiff Thomas Gormally moves for partial summary judgment on the issue of liability against defendants Muhammad N. Kahn (Khan), John N. Logan (John Logan) and James H. Logan (James Logan). Defendant Khan filed opposition to plaintiff’s motion. Defendants John Logan and James Logan also filed opposition papers. Plaintiff filed a reply.

Co-defendant Tiffany M. Goldson (Goldson) cross-moves for summary judgment dismissing the complaint and all cross claims. Co-defendants Uber Technologies Inc., Uber USA, LLC and Raiser-NY, LLC (collectively, “Uber”) filed opposition to co-defendant’s Goldson’s cross-motion. Defendant Khan filed opposition to co-defendant’s Goldson’s cross-motion. Plaintiff also filed opposition to the cross-motion. Co-defendant Goldson filed a reply.

This is a personal injury action for alleged injuries sustained by plaintiff as a result of a motor vehicle accident that occurred on October 12, 2018 at approximately 7:34 pm on Interstate 87 (Northbound) near Mile Post Marker 1.6, in Yonkers, New York. The complaint alleges that plaintiff was a passenger in an Uber vehicle owned and operated by defendant Kahn (vehicle 2). Plaintiff alleges that defendant Kahn’s vehicle rear-ended another vehicle operated by co-defendant Goldson (vehicle 1), and defendant Kahn’s vehicle was also rear-ended by another vehicle operated by John Logan and owned by James Logan (vehicle 3). It is alleged that this three-car collision led to plaintiff’s severe neck and back injuries.

I. Plaintiff’s motion for summary judgment on the issue of liability against defendants

Plaintiff-passenger now moves for partial summary judgment on the issue of liability against the defendants, who owned and operated vehicle 1, vehicle 2 and vehicle 3. Plaintiff alleges that the defendants were negligent as a matter of law for following too closely to the vehicles ahead of them. In addition, plaintiff asserts that James Logan is liable on vicarious liability grounds as

the owner of vehicle 3, which was operated by defendant John Logan. In support of the motion, plaintiff submits the certified police accident report and his own affidavit. Based on the police accident report, defendant Kahn (vehicle 2) was slowing down his vehicle while John Logan (vehicle 3) drove too close behind him (vehicle 2), and hit vehicle 2. Defendant Khan (vehicle 2) was also driving too close behind defendant Goldson's vehicle (vehicle 1) and hit vehicle 1.

Plaintiff in his affidavit alleges that defendant Khan, in vehicle 2, rear-ended defendant Goldson, in vehicle 1, and that defendant Khan was rear-ended by defendant Logan, in vehicle 3. Plaintiff affirms that as a passenger in defendant Khan's vehicle (vehicle 2), that plaintiff did not contribute to the accident, or cause the collision. As a result, plaintiff moves this court for partial summary judgment on the issue of liability as plaintiff is free from negligence, and that defendant Khan and co-defendants John and James Logan were negligent. Plaintiff also seeks a hearing as it relates solely to damages, and to determine defendants' apportionment of fault to be determined at the time of trial. Plaintiff's motion is opposed by defendant Khan and defendants John and James Logan. The Logan defendants argue that the motion is premature as no discovery or depositions have been conducted. They insist on an opportunity to discover facts concerning the accident before this motion is decided. They also argue that there is an issue of fact as to the order of the contact among the three vehicles.

In opposition, John Logan's affidavit states that defendant Goldson (vehicle 1) and defendant Khan (vehicle 2) had already collided before he, in vehicle 3, rear-ended and hit Kahn's vehicle (vehicle 3). Further, defendants John and James Logan argue that the motion is premature as depositions had not yet taken place, and thus, defendant Goldson's role in the accident has not been analyzed.

Also, in opposition to plaintiff's motion, defendant Khan, argues that plaintiff's motion is premature. Defendant Khan submits that he was stopped in his vehicle (vehicle 2) when defendant Logan, in vehicle 3, rear-ended him into defendant Goldson's vehicle (vehicle 1). Defendant Khan contends that his statement contradicts plaintiff's affidavit which alleges that he first hit vehicle 1, and was then rear ended by vehicle 3. Further, defendant Khan argues that plaintiff's motion must be denied for a procedural error, and that plaintiff failed to comply with 22 *NYCRR* §§ 202.8-b and 202.8-g by failing to include a word count and a statement of material facts.

In reply, plaintiff argues that there is no question that the opposing defendants are liable, and the only issue is their proportion of liability. Plaintiff argues that no discovery is necessary if liability can be demonstrated as a matter of law. With respect to Khan's procedural defect argument, plaintiff argues that he provided a valid statement of facts but admits a failure to include a word count, and has submitted a word count with the reply papers.

II. Defendant Goldson's cross-motion to be dismissed from the case

Defendant Goldson, the operator of vehicle 1, cross-moves for summary judgment to dismiss her from this action on the ground that she is free of any liability. In support of her cross-motion to be dismissed from this action, defendant Goldson submits the police accident report and her own affidavit and the affidavit of plaintiff Gormally. In her affidavit, Goldson contends that there is no evidence that she stopped or slowed down abruptly before the collisions occurred. Defendant Goldson asserts that she was driving in a normal manner, and was slowing down gradually before her vehicle (vehicle 1) was rear-ended by the Uber vehicle operated by defendant Khan (vehicle 2).

The cross-motion is opposed by defendant Khan, defendants John and James Logan, and plaintiff. The opposing defendants, and plaintiff argue, *inter alia*, that defendant Goldson's affidavit contradicts their assessment of how the accident occurred, and that the cross-motion is also premature because of the lack of discovery.

In reply, Goldson reasserts the statements in her affidavit, and contends that there is no evidence of negligence on her part.

III. Discussion

"The proponent of a motion for summary judgment must demonstrate that there are no material issues of fact in dispute, and that it is entitled to judgment as a matter of law." *Dallas-Stephenson v. Waisman*, 39 A.D.3d 303, 306 (1st Dep't 2007), *citing*, *Winegrad v. New York Univ. Med. Ctr.*, 64 N.Y.2d 851, 853 (1985). Upon the proffer of evidence establishing a *prima facie* case by the movant, "the party opposing a motion for summary judgment bears the burden of 'produc[ing] evidentiary proof in admissible form sufficient to require a trial of material questions of fact.'" *People v. Grasso*, 50 A.D.3d 535, 545 (1st Dep't 2008), *quoting*, *Zuckerman v. City of New York*, 49 N.Y.2d 557, 562 (1980). If there is any doubt as to the existence of a triable issue of fact, summary judgment must be denied. *See*, *Grossman v. Amalgamated Hous. Corp.*, 298 A.D.2d 224, 226 (1st Dep't 2002).

Here, the negligence alleged by plaintiff against these particular defendants is reflected in *VTL §1129(a)* which states: "[t]he driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon and the condition of the highway." According to plaintiff, the defendant drivers had a duty to see what should be seen and to exercise reasonable care under the circumstances to avoid accidents. Further, plaintiff argues that defendants Kahn, in vehicle 2, and John Logan, in vehicle 3, both failed to maintain a safe distance between themselves and the vehicle in front of them. Thus, plaintiff argues that he is entitled to partial summary judgment on the issues of defendants' liability.

First, as it pertains to plaintiff's motion, this court finds that plaintiff is entitled to partial summary judgment on the issue of liability. The court accepts plaintiff's submission of the word count. "The right of an innocent passenger to an award of summary judgment on the issue of liability of a driver is not barred or restricted by potential issues of comparative fault as between drivers involved in the accident." *See*, *Garcia v. Tri-County Ambulette Service*, 282 A.D.2d 206 (1st Dep't 2001). The opposing defendants do not allege or assert that plaintiff-passenger was liable in any of their versions of how the three-car collision occurred, nor do the opposing defendants allege an issue of fact as to plaintiff's alleged contribution, or lack thereof, to the accident.

Next, as it pertains to defendant Goldson's cross-motion, the court finds that defendant Goldson is also entitled to partial summary judgment on the issue of liability. The opposing defendants argue that there is an issue of fact as to whether Goldson contributed to the accident, purportedly by stopping or slowing down too abruptly. In her affidavit, Goldson states that she was driving at a normal pace prior to the collisions. It is well settled that in a rear-end collision, the abrupt or sudden stop of the front vehicle, standing alone, is insufficient to rebut the inference of negligence on the part of the rear vehicle. *See*, *Jumandeo v. Franks*, 56 A.D.3d 614 (2d Dept. 2008); *Russ v. Investech Sec., Inc.*, 6 A.D.3d 602 (2d Dept. 2004); *Arias v. Rosario*, 52 A.D.3d 551 (2d Dept. 2008) Here, the defendants in vehicles 2 and 3 (defendant Khan and Defendants

Logan) were under a duty to maintain a safe distance between their vehicles and defendant Goldson’s vehicle (vehicle 1). The opposing parties have failed to rebut the presumption of negligence arising from the rear end collision, and in either of their versions, that being vehicle 2 already collided with vehicle 1, or vehicle 3 collided with vehicle 2, causing vehicle 2 to rear end vehicle 1, Goldson’s vehicle (vehicle 1) was rear-ended through no fault of her own – an abrupt stop alleged is insufficient. As such, the cross-motion for summary judgment on the issue of liability and to dismiss all claims and cross-claims against defendant Goldson is granted.

Accordingly, it is

ORDERED that plaintiff’s motion for partial summary judgment is **GRANTED** with regard to liability as against defendants Muhammad M. Kahn, John N. Logan and James H. Logan; and it is further

ORDERED that defendant Tiffany M. Goldson’s cross motion for summary judgment is **GRANTED**, and any and all claims and cross claims made against defendant Tiffany Goldson, **only** are **DISMISSED**; and it is further

ORDERED that a trial to determine damages to which plaintiff is entitled shall be scheduled at the time of trial of the remaining defendants; and it is further

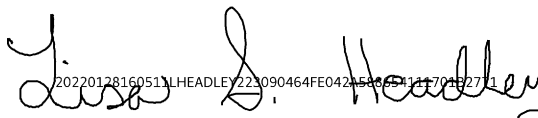
ORDERED that the remaining parties are directed to proceed with discovery in an expeditious manner; and it is further

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/order upon all parties with notice of entry.

This constitutes the Decision/Order of the Court.

1/28/2022
DATE


LISA S. HEADLEY, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART OTHER
SUBMIT ORDER
FIDUCIARY APPOINTMENT REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: