

Olivares v Mayhew

2022 NY Slip Op 31914(U)

June 17, 2022

Supreme Court, New York County

Docket Number: Index No. 151709/2014

Judge: Adam Silvera

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ADAM SILVERA PART 13

Justice

-----X

ADIB OLIVARES,

Plaintiff,

- v -

WENDY MAYHEW, WILLIAM SPIELSINGER, SONNY
AUTO SERVICE INC., FREDDY REYES,

Defendant.

-----X

WENDY MAYHEW, WILLIAM SPIELSINGER

Plaintiff,

-against-

THE PORT AUTHORITY OF NEW YORK & NEW JERSEY,
JOHN DOE

Defendant.

-----X

INDEX NO. 151709/2014
MOTION DATE N/A
MOTION SEQ. NO. 004

DECISION + ORDER ON MOTION

Third-Party
Index No. 595697/2016

The following e-filed documents, listed by NYSCEF document number (Motion 004) 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 121

were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER)

Upon the foregoing documents, it is ordered that third-party defendant The Port Authority of New York and New Jersey's (hereinafter referred to as "Third-Party Defendant Port Authority") motion for summary judgment of dismissal is decided below.

Here, Third-Party Defendant Port Authority argues that it was neither reckless nor negligent in its conduct, it was not the proximate cause of the accident, and that negligent training or supervision are not viable causes of action. In support of the motion, Third-Party Defendant Port Authority proffers, inter alia, its own deposition transcript, as well as the

deposition transcripts of plaintiff, defendant Mayhew and defendant Spielsinger. Here, it is undisputed that plaintiff was operating his vehicle in the left lane in the Holland Tunnel traveling from New York to New Jersey at the time of the subject accident. At that time, defendant Spielsinger was operating a vehicle, which was registered to defendant Mayhew, in the right lane of traffic behind the vehicle operated by defendant Reyes and registered to defendant Sonny Auto Service Inc. All three vehicles were traveling in the same direction. According to Third-Party Defendant Port Authority, immediately before the accident, defendant Reyes' vehicle was not moving when defendant Spielsinger's vehicle rear-ended it. Defendant Spielsinger's vehicle proceeded to cross into the left lane and made contact with the side of plaintiff's vehicle, pushing it into the left wall of the Holland Tunnel. At the time of the accident, a Port Authority vehicle, which had on spinning yellow emergency lights on the roof, was blocking both lanes of traffic in the tunnel approximately 10-12 car lengths ahead of the accident. An employee of Third-Party Defendant Port Authority had positioned such vehicle in both lanes of traffic in order to remove debris from the tunnel as per the regular operating procedure for debris removal. Third-Party Defendant Port Authority argues that it followed proper procedures and that its actions or inactions were not a proximate cause of the instant accident.

In opposition, defendants Mayhew and Spielsinger argue that issues of fact exist as to preclude summary judgment. Namely, whether Third-Party Defendant Port Authority caused, or contributed to causing, the accident by failing to properly warn approaching vehicles of the Port Authority vehicle blocking both lanes of traffic. Plaintiff also opposes the instant motion for summary judgment arguing that issues of fact exist as to whether a single spinning yellow emergency light on the top of the Port Authority vehicle was a reasonable safety measure when

stopping all lanes of traffic traveling through the Holland Tunnel. In reply, Third-Party Defendant Port Authority contends that the opposition fails to raise an issue of fact.

It is well settled that summary judgment is a drastic remedy, only to be granted if the moving party sufficiently established that it is warranted as a matter of law. *See Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 (1986). “The 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 eliminate any material issues of fact from the case”. *Winegrad v New York University Medical Center*, 64 NY2d 851, 853 (1985). “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 AD2d 579, 580 (1st Dep’t 1992), citing *Dauman Displays, Inc. v Masturzo*, 168 AD2d 204 (1st Dep’t 1990).

The Court notes that a review of the deposition transcripts reveals that defendant Spielsinger testified that defendant Reyes’ vehicle stopped abruptly in front of his vehicle causing him to brake and swerve to the left. While Third-Party Defendant Port Authority argues that it was not the proximate cause of the accident, defendant Spielsinger specifically testified that, at the time of the accident, defendant Reyes’ vehicle made a sudden stop while traveling through the Holland Tunnel. Here, it is undisputed that the only vehicle in front of defendant Reyes’ vehicle was the Port Authority vehicle which was blocking both lanes of traffic. Third-Party Defendant Port Authority concedes that its regular operating procedure was followed in stopping all lanes of traffic. Thus, issues of fact have been sufficiently raised to preclude summary judgment. Specifically, an issue of fact exists as to whether Third-Party Defendant Port Authority’s vehicle was negligent in blocking both lanes of traffic in the Holland Tunnel with a

mere spinning rooftop light to warn oncoming traffic, and whether such action or inaction was a contributing factor to the accident and plaintiff’s injuries. As stated above, “[i]n 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 AD2d 579, 580 (1st Dep’t 1992), citing *Dauman Displays, Inc. v Masturzo*, 168 AD2d 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 NY2d 471, 475-476 (1979). Here, there are conflicts in the evidence precluding summary judgment. Thus, Third-Party Defendant Port Authority’s motion for summary judgment is denied.

Accordingly, it is

ORDERED that Third-Party Defendant Port Authority’s motion for summary judgment of dismissal is denied in its entirety; and it is further

ORDERED that, within thirty days of entry, plaintiff shall serve a copy of this order upon all parties, together with notice of entry; and it is further

This constitutes the Decision/Order of the Court.

6/17/2022

DATE



ADAM SILVERA, 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