

Okonweze v H & M Distribs. Inc.
2022 NY Slip Op 32500(U)
July 25, 2022
Supreme Court, New York County
Docket Number: Index No. 159042/2019
Judge: James G. Clynnes
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. JAMES G. CLYNES PART 22M

Justice

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CHIBUZOR A. OKONWEZE,

Plaintiff,

- v -

H & M DISTRIBUTORS INC., MUSTAFA S. ALKAIFEE,
MOHAMMED R. UDDIN

Defendant.

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INDEX NO. 159042/2019

MOTION DATE 10/02/2020

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42

were read on this motion to/for

JUDGMENT - SUMMARY

Upon the foregoing papers, the motion by defendant, Mohammed R. Uddin (“Uddin”), pursuant to CPLR §3212, for summary judgment on the issue of liability and the cross-motion by plaintiff, pursuant to CPLR §3212, for summary judgment on liability in favor of plaintiff as an innocent passenger and against all defendants, or alternatively, against defendants H & M Distributors Inc. (H&M) and Mustafa Alkaiffee (Alkaiffee) only is decided as follows:

Plaintiff seeks recovery for injuries allegedly sustained as a result of a motor vehicle accident on April 14, 2018 between the vehicle operated by Uddin, in which plaintiff was a passenger, and a vehicle owned and operated by defendants H&M and Alkaiffee.

“[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 eliminate any material issues of fact” (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]; *see also, Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). Once the movant has made a *prima facie* showing, the burden shifts to the opposing party to “present evidentiary facts in admissible form sufficient to raise a genuine, triable issue of fact” (*Casper v Cushman & Wakefield*, 74 AD3d 669, 669 [1st Dept 2010]). If an issue of fact exists, summary judgment should be denied (*Stone v Goodson*, 8 NY2d 8, 12 [1960], *rearg denied* 8 NY3d 934 [1960]). It is well settled that “[a] driver is expected to drive at a sufficiently safe speed and to maintain enough distance

between himself and cars ahead of him so as to avoid collisions with stopped vehicles, taking into account the weather and road conditions” (*Mitchell v Gonzalez*, 269 AD2d 250, 251 [1st Dept 2000]), and any rear-end collision with a stopped or stopping vehicle establishes a prima facie case of negligence on the part of the operator of the moving vehicle and imposes a duty on him or her to explain how the accident occurred (*See, Gutierrez v. Trillium USA, LLC*, 111 A.D.3d 669, 670 [2d Dept 2013]; *see, Leal v. Wolff*, 224 AD2d 392, 393 [2d Dept 1996]). This rule has been applied when the front vehicle stops suddenly (*Diller v. City of N.Y. Police Dept.*, 269 AD2d 143, 144 [1st Dept 2000]; *Mascitti v Greene*, 250 AD2d 821, 822 [2d Dept 1998]), “[V]ehicle stops which are foreseeable under the prevailing traffic conditions, even if sudden and frequent, must be anticipated by the driver who follows, since he or she is under a duty to maintain a safe distance between his or her car and the car ahead” (*Shamah v Richmond County Ambulance Serv.*, 279 AD2d 564, 565 [2d Dept 2001]). If the operator of the moving vehicle cannot come forward with any evidence to rebut the inference of negligence, the plaintiff may properly be awarded judgment as a matter of law” (*Leal v Wolff*, 224 AD2d 392, 393 [2d Dept 1996]). The claim that the lead vehicle made a sudden stop, standing alone, is insufficient to rebut the presumption of negligence on the part of the following vehicle (*See, Cabrera v Rodriguez*, 72 AD3d 553, 553 [1st Dept 2010]; *Woodley v Ramirez*, 25 AD3d 451, 452-453 [1st Dept 2006]; *Malone v. Morillo*, 6 AD3d 324, 325 [1st Dept 2004]).

Uddin’s Motion for Summary Judgment on Liability

Uddin’s submission includes a police accident report identifying Uddin as the owner/operator of Vehicle Number 1 and H&M and Alkaifee as the owner and operator of Vehicle Number 2. Uddin’s affidavit, in which he avers, among other things, that he stopped for an ambulance that was making a U-turn with its emergency lights and siren on and that he was waiting for the ambulance to complete the U-turn when his vehicle was rear-ended by Vehicle Number 2; that after the impact the other driver came up to him and said that he was sorry, and that his passenger left the scene by another cab, establishes prima facie negligence by H&M and Alkaifee (*Winegrad*, 64 NY2d 851, 853 [1985]; *Casper v Cushman & Wakefield*, 74 AD3d 669, 669 [1st Dept 2010]) and the burden shifts to the non-moving parties to establish an issue of fact by providing a non-negligent explanation for the rear-end collision (*see Urena v GVC Ltd*, 160 AD3d 467 [1st Dept 2018]; *Morgan v Browner*, 138 AD3d 560 [1st Dept 2016]; *Corrigan v Porter Cab Corp*, 101 AD3d 471, 472 [1st Dept 2012]).

Alkaifee's affidavit in opposition in which he avers, among other things, that at the time of the accident he was employed by H&M and was operating a vehicle with Uddin's vehicle, in which plaintiff was a passenger, directly in front of him; that immediately prior to the collision Alkaifee was operating at about 5 miles per hour and kept his foot hovering over the brake and maintained approximately 20-30 feet between his vehicle and Uddin's vehicle; that without caution or any warning Uddin suddenly slammed on his breaks and came to an immediate stop; and that the accident was caused by the sudden and abrupt stop of Uddin, does not raise an issue of fact sufficient to preclude summary judgment on liability in Uddin's favor and against the non-moving defendants H&M and Alkaifee. Alkaifee's claim of a sudden stop, standing alone, is insufficient to rebut the presumption of negligence on the part of the following vehicle (*Cruz v Lise*, 123 AD3d 514 [1st Dept 2014]; *Cabrera*, 72 AD3d 553 [1st Dept 2010]; *Corrigan v Porter Cab Corp*, 101 AD3d 471 [1st Dept 2012]; *Woodley*, 25 AD3d 451, 452-453 [1st Dept 2006]; and *Malone v. Morillo*, 6 AD3d 324, 325 [1st Dept 2004]). Moreover, Uddin's affidavit explains that he stopped to allow an ambulance with lights and sirens on to make a U-turn.

Plaintiff's submission in opposition to Uddin's motion and in support of plaintiff's cross-motion does not create an issue of fact sufficient to preclude summary judgment on liability in favor of Uddin. Plaintiff's opposition is based upon an attorney affirmation only. Uddin's motion is granted.

Plaintiff's Motion for Summary Judgment on Liability

Plaintiff's motion for summary judgment on liability as an innocent passenger in Uddin's vehicle or, alternatively for summary judgment on liability in favor of plaintiff passenger, against defendants H&M and Alkaifee is denied with leave to renew after the note of issue has been filed. Plaintiff's cross-motion is supported by an attorney affirmation only and therefore does not establish that plaintiff was a passenger in Uddin's vehicle at the time of the accident (*Adam v Cutner & Rathkopf*, 238 AD2d 234 [1st Dept 1997]; *GTF Marketing, Inc. v Colonial Aluminum Sales, Inc.*, 66 NY2d 965, 968 [1985]). Uddin's affidavit does not identify plaintiff as the passenger in his vehicle at the time of the accident. Although Alkaifee's affidavit identifies plaintiff as a passenger in Uddin's vehicle at the time of the accident, the court declines to grant summary judgment on liability in favor of plaintiff and against defendants H&M and Alkaifee. The cross-motion is denied with leave to renew after the note of issue is filed. Accordingly, it is

ORDERED that the motion of defendant Mohamed R. Uddin to dismiss the complaint herein is granted and the complaint is dismissed in its entirety as against said defendant, and the Clerk is directed to enter judgment accordingly in favor of said defendant; and it is further

ORDERED that the action is severed and continued against the remaining defendants; and it is further

ORDERED that the caption be amended to reflect the dismissal and that all future papers filed with the court bear the amended caption; and it is further

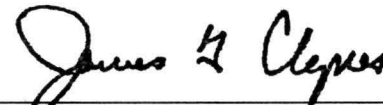
ORDERED that counsel for the moving defendant Uddin shall serve a copy of this order with notice of entry upon the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who are directed to mark the court's records to reflect the change in the caption herein; and it is further

ORDERED that plaintiff's cross-motion for summary judgment on liability is denied with leave to renew after the note of issue has been filed.

This constitutes the Decision and Order of the Court.

7/25/2022

DATE



JAMES G. CLYNES, 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