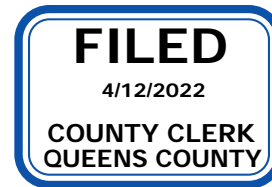


<b>Fredsall v Guttikonda</b>
2022 NY Slip Op 34737(U)
April 8, 2022
Supreme Court, Queens County
Docket Number: Index No. 710238/2019
Judge: Maurice E. Muir
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Short Form Order

NEW YORK SUPREME COURT – QUEENS COUNTY

Present: HONORABLE MAURICE E. MUIR  
Justice



JOHN FREDSELL,

Plaintiff

-against

SREEKANTH GUTTIKONDA and  
VENKATESWARULU KODAKIRTHI,

Defendants.

IAS Part - 42

Index No.710238/2019

Motion Date: 9/3/20

Motion Seq. No. 2

The following electronically filed documents read on this motion by John Fredsell (“Mr. Fredsell” or “plaintiff”) for an order: 1) granting the plaintiff leave to reargue the order of this court dated December 24, 2019, in accordance with CPLR § 2221 and, upon reargument, granting the plaintiff’s request for a finding that he was free from comparative negligence; and 2) granting such other relief as this court deems just and proper.

Notice of Motion-Affirmation-Exhibits-Service..... Papers  
Numbered EF 24 - 29

Upon the foregoing papers, it is ordered that this motion is determined as follows:

This is an action to recover damages for personal injuries allegedly sustained by Mr. Fredsell due to a motor vehicle collision. The plaintiff commenced this action to recover for personal injuries allegedly sustained as a result of a motor vehicle accident that occurred on April 6, 2019, on the JFK Expressway, near the Terminal 4 exit of the JFK Airport, Queens, New York. As a result, on June 12, 2019, the plaintiff commenced the instant action; and on August 5, 2019, issue was joined. On August 22, 2019, the plaintiff moved for summary judgment on the issue of liability and a finding that the defendants were the sole proximate cause of the

accident, and that the plaintiff is free from comparative fault, in accordance with CPLR § 3212. On December 24, 2019, Justice Leslie J. Purificacion rendered a decision, who granted the plaintiff's motion for summary judgment on the issue of liability against the defendant. Now, the plaintiff seeks an order to reargue Justice Purificacion's decision, dated December 24, 2019. From the onset, it should be noted that Justice Purificacion is a retired New York State Supreme Court Justice. As a result, this motion has been re-assigned to the undersigned to address the instant motion to reargue. (*see, Pettus v. Board of Directors*, 155 AD3d 485, 486 [1st Dept 2017]).

It is well settled that a motion to reargue is not based upon any new facts. The purpose of reargument is to convince the court that it overlooked or misapprehended the facts or the law on the prior motion, or for some reason mistakenly arrived at its earlier decision (CPLR § 2221[d]; *Fuessel v. Chin*, 179 AD3d 899 [2d Dept 2020]; *Deutsche Bank Nat. Trust Co. v. Ramirez*, 117 AD3d 674 [2d Dept 2014]; *Bolos v. Staten Island Hosp.*, 217 AD2d 643 [2d Dept 1995]). A motion to reargue is not to be used as a means by which the unsuccessful party is permitted to argue again the same issues previously decided (*William P. Pahl Equip. Corp. v. Kassis*, 182 AD2d 22 [1st Dept 1992]; *Pro Brokerage v. Home Ins. Co.*, 99 AD2d 971 [1st Dept 1984]), nor does it provide an unsuccessful party with a second opportunity to present new or different arguments from those originally asserted (*Giovanniello v. Carolina Wholesale Off. Mach. Co., Inc.*, 29 AD3d 737 [2d Dept 2006]; *Gellert & Rodner v. Gem Community Mgt., Inc.*, 20 AD3d 388 [2d Dept 2005]; *Pryor v. Commonwealth Land Tit. Ins. Co.*, 17 AD3d 434 [2d Dept 2005]; *Amato v. Lord & Taylor, Inc.*, 10 AD3d 374 [2d Dept 2004]; *Frisenda v. X Large Enters.*, 280 AD2d 514 [2d Dept 2001]; *Foley v. Roche*, 68 AD2d 558 [1st Dept 1979]). Furthermore, a motion to reargue is addressed to the sound discretion of the court. (*see MAAD Constr., Inc. v. Cavallino Risk Mgt. Inc.*, 178 AD3d 816 [2d Dept 2019]; *HSBC Bank USA, N.A. v. Halls*, 98 AD3d 718 [2d Dept 2012]; *Matter of Swingeam*, 59 AD3d 556 [2d Dept 2009]; *Schneider v. Solowey*, 141 AD2d 813 [2d Dept 1988]; *Rodney v. New York Pyrotechnic Products, Inc.*, 112 AD2d 410 [2d Dept 1985]).

Here, the plaintiff submitted, *inter alia*, his duly sworn affidavit wherein he states that he was stopped at a red light when his vehicle was struck in the rear by a vehicle operated by Sreekanth Guttikonda ("Mr. Guttikonda") and owned by Venkateswarulu Kodakirthi ("Ms.

Kodakirthi). Moreover, the plaintiff submitted a certified copy of the police accident report, which states the following:

T/P/O DRIVER OF VEHICLE #1 STATES HE WAS STOPPED AT A STALE RED TRAFFIC LIGHT WHEN HE WAS STRUCK FROM BEHIND BY VEHICLE #2 WHICH APPEARED TO BE TRAVELING AT A HIGH RATE OF SPEED AND APPEARED TO MAKE TO ATTEMPT TO STOP FOR THE RED TRAFFIC LIGHT \* \* DRIVER OF VEHICLE #2 STATES HE WAS UNABLE TO SEE THE TRAFFIC LIGHT DUE TO SUN GLARE AND WAS DISTRACTED BY TRYING TO READ HIGHWAY INFORMATIONAL/DIRECTIONAL SIGNS. DRIVER OF VEHICLE #2 STATES HE STRUCK VEHICLE #1 FROM BEHIND WHICH CAUSED DAMAGE TO VEHICLE AND DISABLING DAMAGE TO HIS VEHICLE \* \* \* VEHICLE #2 DRIVERS SIDE AIRBAG DEPLOYED. VEHICLE #2 TOWED FROM ACCIDENT SCENE BY RUNWAY TOWING. #1

It is well settled, according to the Court of Appeals, a plaintiff is no longer required to show freedom from comparative fault in order to establish his or her prima facie entitlement to judgment as a matter of law on the issue of a defendant's liability (*see Rodriguez v. City of New York*, 31 NY3d 312 [2018]; *Sooklall v. Morisseav-LaFague*, 185 AD3d 1079 [2d Dept 2020]; *Merino v. Tessel*, 166 AD3d 760 [2d Dept 2018]; *Dolores v. Grandpa's Bus Co., Inc.*, 189 AD3d 1539 [2d Dept 2020]). "A driver of a vehicle approaching another vehicle from the rear is required to maintain a reasonably safe distance and rate of speed under the prevailing conditions to avoid colliding with the other vehicle" (*Catanzaro v. Edery*, 172 AD3d 995 [2d Dept 2019], quoting *Witonsky v. New York Tr. Auth.*, 145 AD3d 938 [2d Dept 2016]; *see* Vehicle and Traffic Law § 1129(a)). Furthermore, "[a] rear-end collision with a stopped or stopping vehicle creates a prima facie case of negligence with respect to the operator of the rearmost vehicle, thereby requiring that operator to rebut the inference of negligence by providing a non-negligent explanation for the collision" (*Edgerton v. City of New York*, 160 AD3d 809 [2d Dept 2018]; *Buchanan v. Keller*, 169 AD3d 989 [2d Dept 2019]).

Here, the plaintiff established his *prima facie* entitlement to judgment as a matter of law on the issue of liability by submitting his own uncontroverted affidavit, which demonstrated that he was stopped at a red light when the defendant struck his vehicle in the rear. (*see Xiao v. Martinez*, 185 AD3d 1014 [2d Dept 2020]). In fact, the plaintiff's un rebutted affidavit that his vehicle was at a complete stop for several seconds when it was struck in the rear by Mr. Guttikonda's vehicle is sufficient as a matter of law to place sole responsibility for the accident with the defendants: Clearly, Mr. Fredsall has demonstrated that he is free from comparative

negligence. Moreover, Mr. Guttikonda admitted to the police that he rear-ended the plaintiff's vehicle. (CPLR § 4518(a); *Yassin v. Blackman*, 188 AD3d 62 [2d Dept 2020]; *Memenza v. Cole*, 131 AD3d 1020 [2d Dept 2015]). Additionally, Mr. Guttikonda's unsupported claim that the sun glare caused the accident is not sufficient to raise a triable issue of fact. Here the court finds that Mr. Guttikonda failed to see what should be seen and to exercise reasonable care under the circumstances to avoid an accident. (VTL § 1146(a); *Johnson v. Phillips*, 261 AD2d 269 [1<sup>st</sup> Dept 1999]; *Fernandez v. Ortiz*, 183 AD3d 443 [1<sup>st</sup> Dept 2020]). In fact, he failed to submit affidavit refuting Mr. Fredsall's contentions; and his attorneys' affirmation lacks probative value because, it is not based on personal knowledge or supported by documentary evidence. (*Nerayoff v. Khorshad*, 168 AD3d 866 [2d Dept 2019]; *Warrington v. Ryder Truck Rental, Inc.*, 35 AD3d 455 [2d Dept 2006]; *Amato v. Fast Repair, Inc.*, 15 AD3d 429 [2d Dept 2005]; *Roche v. Hearst Corp.*, 53 NY2d 767 [1981]).

Contrary to defendants' contentions, the plaintiff's motion for summary judgment was not premature, as the defendants failed to offer an evidentiary basis to suggest that discovery might lead to relevant evidence and that facts essential to justify opposition to the motion is exclusively within the knowledge and control of the plaintiff. (*Harrinarain v. Sisters of St. Joseph*, 173 AD3d 983 [2d Dept 2019]; *Lopez v. Suggs*, 186 AD3d 589 [2d Dept 2020]; *Theresa Striano Revocable Trust v. Hoffman*, 71 AD3d 993 [2d Dept 2010]; *Sooklall v. Morisseav-Lafague*, 185 AD3d 1079 [2d Dept 2020]; *Edgerton v. City of New York*, 160 AD3d 809 [2d Dept 2018]). Here the court finds that the defendants' contention that discovery is required is meritless. In fact, Mr. Guttikonda admitted that he struck the plaintiff's vehicle in the rear while he was stopped at the red light; and there was evidence that Mr. Guttikonda was speeding at the time to the accident. In fact, the airbags deployed. As the Appellate Division has repeatedly held "[t]he mere hope or speculation that evidence sufficient to defeat a motion for summary judgment may be uncovered during the discovery process is an insufficient basis for denying the motion." (*Kimyagarov v. Nixon Taxi Corp.*, 45 AD3d 736 [2d Dept 2007]; see also *Martinez v. Kuhl*, 165 AD3d 7784 [2d Dept 2018]; *Niyazov v. Hunter, EMS, Inc.*, 154 AD3d 954 [2d Dept 2017]).

Accordingly, it is hereby

ORDERED that plaintiff's motion to reargue the order of Justice Leslie J. Purificacion, dated December 24, 2019, pursuant to CPLR § 2221(d), is granted without opposition; and it is further,

ORDERED that the plaintiff's motion for summary judgment on the issue of liability and comparative negligence, pursuant to CPLR § 3212, is granted; and it is further,

ORDERED that plaintiffs shall serve a copy of this Order with Notice of Entry upon the defendants on or before April 25, 2022.

The foregoing constitutes the Decision and Order of the court.

Dated: April 8, 2022  
Long Island City, NY

  
MAURICE E. MUIR, J.S.C.