

Nrecaj v Alexx, Inc.
2022 NY Slip Op 35085(U)
June 2, 2022
Supreme Court, Bronx County
Docket Number: Index No. 28374/2019E
Judge: Ben R. Barbato
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

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ANTON NRECAJ,

Plaintiff,

-against-

Index No.: 28374/2019E

ALEX, INC., SALEH UDDIN, BRUNI ELECTRIC
INC., SALI SINANI, MAMADY KEITA and
BOUBACAR DOUMBIA,

Defendants.
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HON. BEN R. BARBATO:

The following four Motions, and one Cross Motion, are decided in this same decision and order:

The Motion by Plaintiff ANTON NRECAJ (**Seq #3**), for partial summary judgment in his favor on liability, as against two Defendants ALEX, INC., and SALEH UDDIN, and for dismissal Defendants' affirmative defenses alleging Plaintiff's culpable conduct, and failure to wear a seatbelt, and for related relief; and

The Motion by Defendants MAMADY KEITA and BOUBACAR DOUMBIA (**Seq #4**), for summary judgment dismissing this action and any cross claims as against them, and for related relief; and the (duplicative) Motion by Defendants MAMADY KEITA and BOUBACAR DOUMBIA (**Seq #5**), for summary judgment dismissing this action and any cross claims as against them, and for related relief; and

The Cross Motion by Defendants BRUNI ELECTRIC, and SALI SINANI (**Seq #5**), for summary judgment dismissing this action and any cross claims as against them, and for related relief; and

The Motion by Defendant UDDIN (**Seq #6**), to strike Defendant ALEX's Answer for the failure to provide relevant discovery, or, in the alternative, to compel Defendant ALEX to provide maintenance, repair, and inspection records for its subject vehicle, and for related relief.

This is an action to recover damages for alleged personal injuries sustained by Plaintiff NRECAJ in a motor vehicle accident, which occurred on or about May 1, 2019, at about 3:21 p.m., on Second Avenue, southbound, near its intersection with East 74th Street, in Manhattan, New York. The cab owned and operated by Defendants, ALEX and UDDIN, respectively, came into contact with the motor vehicle owned and operated by Defendants DOUMBIA and KEITA, respectively, in which Plaintiff NRECAJ was a front-seat passenger. It is, also, alleged that the said cab owned and operated by Defendants, ALEX and UDDIN, came into contact with the parked van which was owned and operated by Defendants BRUNI and SINANI, respectively.

On the motions and cross motion, the submissions include the pleadings, the Police Accident Report, the deposition transcripts of Plaintiff NRECAJ, Defendant UDDIN, and Defendant KEITA. Defendant ALEX did not oppose the motions and cross motion. Discovery has not been completed, and the Note of Issue has not been filed.

Alleged Facts:

Defendant KEITA testified that his vehicle was stopped at the red traffic light, for about 30 seconds, when ALEX/UDDIN's cab struck his vehicle in the rear.

KEITA's vehicle was registered in the name of his father, BOUBACAR DOUMBIA.

(See KEITA's deposition, dated July 30, 2021).

Likewise, Plaintiff NRECAJ testified that, at the time of the impact, Defendant DOUMBIA/KEITA's vehicle was completely stopped at the red light for about 20 to 30 seconds. Plaintiff felt several hits from behind. This caused his body to be jolted forward, and twisted around. Both his knees, and face, hit up against the vehicle's front dashboard. Plaintiff, who was a front-seat passenger in DOUMBIA/KEITA's vehicle, was wearing his seat belt. Second Avenue is a one-way road, with three lanes for moving traffic. (See Plaintiff's deposition, dated May 20, 2021).

Defendant UDDIN acknowledges that he was driving the Toyota Camry which rear-ended Defendant DOUMBIA/KEITA's vehicle while it was stopped at the red traffic light.

However, UDDIN explains that, although he pressed the brake pedal, the brake did not work and the vehicle would not slow or stop. He lost control of the vehicle; he turned its steering wheel to the right, to try to avoid hitting the car ahead of him, and it hit BRUNI/SINANI's parked white van. Then, UDDIN turned the wheel to go straight, and it hit DOUMBIA/KEITA's vehicle ahead of him.

UDDIN further alleges that, a few days prior to the accident, he had rented the Toyota Camry from ALEXX, who was responsible for its maintenance. After the accident, a gentleman from ALEXX came to the accident site, and UDDIN gave him the keys and told him to take the car. (See UDDIN's deposition, dated July 27, 2021).

In the Police Accident Report, the accident is described as follows:

"AT T/P/O V1 [SINANI] STATES HE WAS OUTSIDE HIS VEHICLE WHICH WAS PARKED AND UNATTENDED ON 2 AVENUE IN THE RIGHT LANE WHEN V3 [ALEXX/UDDIN] REAR ENDED V1 [SINANI] IN THE DRIVER SIDE REAR BUMPER, THEN REAR ENDING V2 [DOUMBIA/KEITA] AND BOUNCED OFF AND HIT V1 [SINANI] IN THE FRONT DRIVER SIDE FRONT BUMPER. V2 [KEITA] STATES HE WAS TRAVELING SOUTHBOUND IN THE MIDDLE LANE ON 2 AVENUE WHEN THE LIGHT TURNED RED, V2 [KEITA] FURTHER STATES HE CAME TO A COMPLETE STOP WHEN V3 [ALEXX/UDDIN] REAR ENDED HIM. V3 [UDDIN] STATES HE WAS TRAVELING SOUTHBOUND IN THE MIDDLE LANE ON 2 AVENUE, MOTORIST [UDDIN] STATES HE DOESN' T REMEMBER WHAT OCCURRED...OFFICER DID NOT WITNESS ACCIDENT".

Applicable Law/Analysis:

Vehicle and Traffic Law § 1129(a) "Following too closely", provides that:

"The 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."

A "driver is expected to maintain enough distance between himself and cars ahead of him so as to avoid collisions with stopped vehicles, taking into account weather and road conditions" (*Matos v Sanchez*, 147 AD3d 585, 586 [1st Dept 2017]).

"Plaintiff established her entitlement to judgment as a matter of law by submitting evidence that her vehicle was stopped at a red light when it was rear-ended by defendants' vehicle" (*Vasquez v Chimborazo*, 155 AD3d 432, 433 [1st Dept 2017]; see *Rodriguez v Garcia*, 154 AD3d 581 [1st Dept 2017]; see *Castaneda v DO&CO NY Catering, Inc.*, 144 AD3d 407 [1st Dept 2016]).

" "A rear-end collision with a stopped or stopping vehicle establishes a prima facie case of negligence on the part of the driver of the rear vehicle, and imposes a duty on the part of the operator of the moving

vehicle to come forward with an adequate, nonnegligent explanation for the accident" (Matos v Sanchez, 147 AD3d 585, 586, 47 NYS3d 307 [1st Dept 2017]). Here, defendant driver's assertion that plaintiffs' vehicle stopped abruptly does not explain why defendant driver failed to maintain a safe distance, and is insufficient to constitute a nonnegligent explanation"

(Urena v GVC Ltd., 160 AD3d 467, 467 [1st Dept 2018]).

Where, as here, a plaintiff was an innocent passenger, and "there is no basis for finding that plaintiff ... did anything to cause the accident or could have prevented it", the Court properly found no culpable conduct by a plaintiff passenger on the issue of liability (*Mello v Narco Cab Corp.*, 105 AD3d 634, 635 [1st Dept 2013]). "CPLR 3212 (g) permits the court to limit issues of fact for trial, by specifying which facts are not in dispute or are incontrovertible, and such facts shall be deemed established for all purposes in the action" (*Garcia v Tri County Ambulette Serv.*, 282 AD2d 206, 207 [1st Dept 2001]).

In addition, an "innocent ... driver exists in a case where the ... driver did not contribute to the happening of the accident in any way. A typical example is the case at bar where ... [the] driver, while stopped, was rear-ended by the following driver" [emphasis added] (*Oluwatayo v Dulinayan*, 142 AD3d 113, 119 [1st Dept 2016]).

Accordingly, Plaintiff NRECAJ made a *prima facie* showing of his entitlement to partial summary judgment in his favor, as to the liability of Defendants, ALEXX, and UDDIN, and to Plaintiff's lack of culpable conduct; and Defendants DOUMBIA/KEITA, and Defendants BRUNI/SINANI, respectively, made *prima facie* showings of their entitlement to summary judgment dismissing this action and any

cross claims as against them -- by the aforesaid testimony, including that Defendants ALEXX/UDDIN's cab rear-ended DOUMBIA/KEITA's vehicle, in which Plaintiff was a seat-belted passenger, while it was stopped at a red traffic light.

Thus, the burden shifted to said Defendants, UDDIN, and ALEXX, respectively, to advance a non-negligent explanation for the accident.

In this regard, Defendant UDDIN maintains, in relevant part, that, a few days prior to the accident, he had rented the vehicle from Defendant ALEXX, who was responsible for its maintenance; and that this vehicle's brakes failed at the time of the accident. Thus, Defendant UDDIN's Counsel had duly demanded, during the course of discovery, that Defendant ALEXX provide the vehicle's maintenance, repair, and inspection, records. However, Defendant ALEXX failed to provide the requested discovery.

Therefore, on the issue of Defendant UDDIN's negligence, summary judgment is denied, as premature, because the aforesaid discovery has not been exchanged, and essential facts may exist, which cannot yet be stated within the meaning of CPLR 3212 (f) "Facts unavailable to opposing party", which provides that:

"Should it appear from affidavits submitted in opposition to the motion that facts essential to justify opposition may exist but cannot then be stated, the court may deny the motion or may order a continuance to permit affidavits to be obtained or disclosure to be had and may make such other order as may be just".

Accordingly, herein, the parties should have the "opportunity to develop the record regarding the factual basis of defendants' [allegations,] ... the applicability

of which is generally an issue of fact.” (*Nelson v Bestway Coach Express*, 36 AD3d 488, 488 [1st Dept 2007]; *see Diaz v Jadan*, 116 AD3d 600 [1st Dept 2014]); *see Belziti v Langford*, 105 AD3d 649 [1st Dept 2013]; *see Yant v Mile Sq. Transp., Inc.*, 89 AD3d 492 [1st Dept 2011]).

Thus, the parties should have the opportunity, *for example*, to obtain the requested records regarding the subject vehicle’s maintenance, repair, and inspection, and to have a mechanic examine the subject vehicle, if warranted.

However, with respect to Defendant ALEXX, it did not oppose the instant motion seeking summary judgment as against it. A motion for partial summary judgment on liability is properly granted, where, as here, in “opposition to plaintiff’s prima facie showing, defendants failed to submit any evidence to raise a triable issue of fact, ... defendants have personal knowledge of the facts, yet “failed to meet their obligation of laying bare their proof and presenting evidence sufficient to raise a triable issue of fact”” (*Thompson v Pizzaro*, 155 AD3d 423, 423 [1st Dept 2017]).

Conclusion:

Accordingly, that part of Plaintiff’s Motion (**Seq #3**), for partial summary judgment on liability, as against Defendant ALEXX, is granted, without opposition, to the extent that said Defendant is found liable. Also, Defendants’ affirmative defenses alleging Plaintiff’s culpable conduct, and failure to wear a seatbelt, are dismissed.

However, this Court makes no determination as to other issues herein, namely, whether Plaintiff’s alleged injuries were proximately caused by the

negligence of said Defendant; and whether Plaintiff sustained a "serious injury" within the meaning of the Insurance Law.

That part of the Plaintiff's Motion (**Seq #3**), for partial summary judgment on liability, as against Defendant UDDIN, is denied, without prejudice to the making of a timely motion, if warranted, after the completion of discovery and the filing of the Note of Issue.

The Motions by Defendants DOUMBIA/KEITA (**Seq #4 and Seq #5**), for summary judgment dismissing this action and any cross claims as against them, and for related relief, are granted, without opposition.

The Cross Motion by Defendants BRUNI/SINANI (**Seq #5**), for summary judgment dismissing this action and any cross claims as against them, and for related relief, is granted, without opposition.

The Motion by Defendant UDDIN (**Seq #6**), to strike Defendant ALEXX's Answer for the failure to provide relevant discovery, or, in the alternative, to compel Defendant ALEXX to provide maintenance, repair, and inspection records for its subject vehicle, is granted to the extent that Defendant ALEXX shall provide the requested discovery within thirty (30) days from the date of the entry of this Order.

This constitutes the decision and order of this Court.

Dated: JUN 02 2022, 2022


HON. BEN R. BARBATO, J.S.C.