

Zadow v Zhuravelev

2023 NY Slip Op 32659(U)

July 21, 2023

Supreme Court, Kings County

Docket Number: Index No. 521547/2022

Judge: Francois A. Rivera

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 52 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 21st day of July 2023.

HONORABLE FRANCOIS A. RIVERA

BRETT M. ZADOW

Plaintiff,

-against-

SERGEY V. ZHURAVELEV and A.I. TRANSPORT HOLDINGS, LLC.

Defendants.

DECISION & ORDER

Index No.: 521547/2022

Oral Argument: 5/18/2023

Cal. No.: 37, Ms. No.: 1

Recitation in accordance with CPLR 2219 (a) of the papers considered on the notice of motion filed on February 16, 2023, under motion sequence number one by plaintiff Brett M. Zadow (hereinafter plaintiff of Zadow) for an order pursuant to CPLR 3212 granting summary judgment in plaintiff's favor on the issue of liability and dismissing the affirmative defenses asserted by Sergey V. Zhuravelev and A.I. Transport Holdings, LLC (hereinafter the defendants) alleging comparative negligence and failure to properly use a seatbelt. The motion is unopposed.

- Notice of Motion
- Affirmation of counsel in support
- Exhibits A-E
- Statement of material facts

BACKGROUND

On July 27, 2022, plaintiff commenced the instant action for damages for personal injury by filing a summons and verified complaint with the Kings County Clerk's office.

On October 17, 2022, the defendants joined issue by filing a joint verified answer. As relevant here, the fourth affirmative defense alleges that the plaintiff failed to properly

use a seatbelt, and the fourth affirmative defense alleges that the plaintiff's negligence contributed to causing the subject accident.

Plaintiff's verified complaint and affidavit in support of the motion allege the following salient facts. On November 9, 2021, the plaintiff was wearing a seat belt and driving a 2016 Ford bearing New York State license plate number GJX8654 in the middle lane of CR 111 northbound toward Chapman Boulevard in the town of Brookhaven, Suffolk County, New York.

On the same date, time and location, Sergey V. Zhuravlev was operating 2014 Dodge motor vehicle bearing New York State license plate number GSG8659 with the permission of its owner, A.I. Transport 1 Holdings, LLC. At that time, while plaintiff was stopped behind other vehicles waiting for about four seconds for the red light to change, defendant Zhuravlev crashed into the rear of plaintiff's vehicle (hereinafter the subject accident). The subject accident was caused by Zhuravlev's negligent operation of his vehicle and caused plaintiff to sustain serious physical injury.

LAW AND APPLICATION

A plaintiff moving for summary judgment on the issue of liability in a negligence action must establish, prima facie showing that the defendant breached a duty owed to the plaintiff and the defendant's negligent actions were a proximate cause of the alleged injuries (*Hall v Powell*, 183 AD3d 576 [2nd Dept 2020]). A rear-end collision establishes a prima facie case of negligence on the part of the operator of the rear vehicle, thereby requiring that operator to rebut the inference of negligence by providing a non-negligent explanation for the collision (*Witonsky v New York City Transit Authority*, 145

AD3d 938 [2nd Dept 2016]; *Hall v Powell*, 183 AD3d 576 [2nd Dept 2020]; *Tsyganash v Auto Mall Fleet Mgt., Inc.*, 163 AD3d 1033 [2nd Dept 2018]).

A motion for summary judgment shall be supported by an affidavit, by a copy of the pleadings and by other available proof, such as, depositions and written admissions (CPLR 3212 (b); *Poon v Nisanov*, 162 AD3d 804 [2nd Dept 2018]; *Marriot v Jackson*, 67 Misc3d 1211(A) [Kings Supreme Court 2020]).

In support of their motion, the plaintiff submitted his own affidavit and a copy of a police accident report containing the defendant driver's admission that he struck the rear of plaintiff's vehicle while the plaintiff was stopped. The plaintiff has established prima facie entitlement to judgment as a matter of law through his own affidavit and certified police report. Plaintiff's affidavit averred that he was stopped for about four seconds behind other cars waiting for a red light when he was struck in the rear by the defendant's vehicle.

The defendants did not oppose the motion and therefore failed to raise a triable issue of fact as to whether there was a nonnegligent explanation for the rear end collision (*Hall*, 183 AD3d 576). 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 (Vehicle and Traffic Law § 1129 [a]; *Witonsky*, 145 AD3d 938). Here, the defendant breached a duty owed to the plaintiff, thus causing the subject accident.

It is well established that summary judgment may be granted only when it is clear that no triable issue of fact exists. A failure to make that showing requires the denial of

the summary judgment motion, regardless of the adequacy of the opposing papers.

(*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851 [1985]; *Campbell v Mehmood*, 68 Misc3d 1205(A) [Kings Supreme Court 2020]).

Plaintiff's affidavit was also sufficient to establish prima facie, that he was not at fault in the happening of the accident, as it demonstrated that in operating his vehicle, he exercised due care stopped for a and therefore could not avoid the collision. The affidavit also established that he was wearing a seat belt. The defendants did not oppose the motion and consequently failed to raise a triable issue of fact.

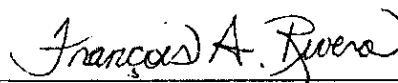
CONCLUSION

The motion by plaintiff Brett M. Zadow for an order pursuant to CPLR 3212 granting summary judgment in plaintiff's favor on the issue of liability as against the defendants Sergey V. Zhuravelev and A.I. Transport 1 Holdings, LLC is granted.

The motion by plaintiff Brett M. Zadow for an order pursuant to CPLR 3212 granting summary judgment in plaintiff's favor and striking the defendants' affirmative defenses alleging comparative negligence and failure to properly use a seat belt is granted.

The foregoing constitutes the decision and order of this Court.

ENTER:



J.S.C.

HON. FRANCOIS A. RIVERA
J.S.C.