

Griggs v Call-A-Head Corp.

2023 NY Slip Op 32866(U)

August 7, 2023

Supreme Court, Kings County

Docket Number: Index No. 517991/2021

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 7th day of August 2023

HONORABLE FRANCOIS A. RIVERA

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KEYON GRIGGS,

Plaintiff,

- against -

CALL-A-HEAD CORP., and JOHN DOE, a driver not yet identified,

Defendants.

-----X

Recitation in accordance with CPLR 2219 (a) of the papers considered on the notice of motion filed on December 30, 2022, under motion sequence number one by plaintiff Keyon Griggs (hereinafter plaintiff of Griggs) 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 Call-A-Head Corp., and John Doe (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
- Affidavit in support

BACKGROUND

On July 20, 2021, 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 June 21, 2022, the defendant Call-A-Head Corp joined issue by filing a verified

answer. As relevant here, the fifth affirmative defense of Call-A-Head Corp.'s answer alleges that the plaintiff's negligence contributed to causing the subject accident and the seventh affirmative defense alleges that the plaintiff failed to properly use a seatbelt and thereby contributed to his injuries.

Plaintiff's verified complaint and affidavit in support of the motion allege the following salient facts. On April 28, 2021, at approximately 5:00 P.M., plaintiff was operating a motor vehicle bearing New York State license plate number KKL5902 eastbound in the Queens-Midtown Tunnel. Plaintiff had brought his car to a complete stop for approximately three (3) seconds due to traffic ahead. While the plaintiff was stopped in the traffic, plaintiff's vehicle was hit in the rear (hereinafter the subject accident) by the driver of defendant Call-A-Head Corp.'s vehicle, a white truck bearing New York State license plate number 83829JZ. The subject accident caused the plaintiff to sustain serious physical injury and was caused by the rear vehicle driver's negligent operation of his vehicle.

LAW AND APPLICATION

It is well established that summary judgment may be granted only when 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]). 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 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]).

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]).

In support of their motion, the plaintiff submitted his own affidavit and a notice to admit. The plaintiff has established prima facie entitlement to judgment as a matter of law through his own affidavit. Plaintiff's affidavit averred that he was traveling eastbound in the Queens-Midtown Tunnel and had brought his car to a complete stop for approximately three seconds due to traffic ahead when he was struck in the rear by the defendant's vehicle, a white truck bearing New York State license plate number 83829JZ.

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.

Plaintiff's affidavit also established prima facie, his freedom of fault in the happening of the subject accident, as it demonstrated that in operating his vehicle, he stopped due to traffic conditions and was struck in the rear while stopped. The defendant's affirmative defense of failure to properly use a seat belt is struck as abandoned by the defendant's failure to oppose the plaintiff's motion to dismiss it (*See Elam v Ryder Sys., Inc.*, 176 AD3d 675, 676 [2nd Dept 2019], citing *Pita v Roosevelt Union Free Sch. Dist.*, 156 AD3d 833, 835 [2nd Dept 2017]; *see also Kronick v L.P. Thebault Co.*, 70 AD3d 648, 649 [2nd Dept 2010], citing *Genovese v Gambino*, 309 AD2d 832, 833 [2nd Dept 2003]). The defendants did not oppose the motion and therefore failed to raise a triable issue of fact.

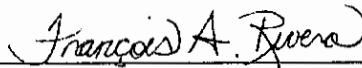
CONCLUSION

The motion by plaintiff Keyon Griggs for an order pursuant to CPLR 3212 granting summary judgment in plaintiff's favor on the issue of liability as asserted against Call-A-Head Corp., and John Doe is granted.

The motion by plaintiff Keyon Griggs for an order pursuant to CPLR 3212 dismissing the affirmative defenses asserted by Call-A-Head Corp., and John Doe alleging comparative negligence and failure to properly use a seatbelt is granted.

The foregoing constitutes the decision and order of this Court.

ENTER:



J.S.C.