

Alexander v Jennings

2023 NY Slip Op 33876(U)

October 30, 2023

Supreme Court, Kings County

Docket Number: Index No. 514801/2023

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 30th day of October 2023

HONORABLE FRANCOIS A. RIVERA

-----X
KENNETH ALEXANDER and TINA GRIFFITH,

Plaintiffs,

- against -

WAYNE A. JENNINGS and JOHN DOE - "Driver",
a/k/a DEVANTAY T. BARRETT,

Defendant.

-----X
Recitation in accordance with CPLR 2219 (a) of the papers considered on the notice of motion filed on August 2, 2023, under motion sequence number one, by plaintiffs Kenneth Alexander and Tina Griffith for an order pursuant to CPLR 3212 granting summary judgment in plaintiff's favor on the issue of liability and dismissing the defendants' affirmative defenses alleging comparative negligence, contributory negligence and culpable conduct. The motion is opposed.

- Notice of Motion
- Statement of material facts
- Affirmation in support
 - Exhibits A-D
- Affirmation in opposition
- Defendant's affidavit in opposition
- Reply affirmation

BACKGROUND

On May 18, 2023, the plaintiffs commenced this action by filing a summons and verified complaint with the Kings County Clerk's office. On July 13, 2023, defendants Wayne A.

Jennings and John Doe - "driver" a/k/a Devantay T. Barrett joined issue by filing a verified answer.

The plaintiffs' verified complaint and the affidavits of both Tina Griffith and Kenneth Alexander allege the following salient facts. On March 26, 2021, at approximately 4:15 p.m., Kenneth Alexander was driving a motor vehicle on Kings Highway at or near its intersection with Remsen Avenue and Linden Boulevard, in the County of Kings, City and State of New York. At that time and place, he was stopped approximately 15 seconds at a traffic light on Kings Highway with Tina Griffith as a passenger. While stopped at the traffic light, a motor vehicle owned by Wayne A. Jennings and operated by defendant, John Doe - "Driver" a/k/a Devantay T. Barrett (hereinafter the adverse vehicle) struck the rear of Kenneth Alexander's motor vehicle (hereinafter the subject accident). The subject accident was caused by the negligence of the driver of the adverse vehicle. The subject accident caused serious physical injuries to the plaintiffs.

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 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, each plaintiff submitted an affidavit and photographs of the motor vehicles involved in the subject accident. Their affidavits averred that their vehicle was

stopped at a red light for approximately 15 seconds on Kings Highway at or near its intersection with Remsen Avenue and Linden Boulevard, in Kings County, City and State of New York when they were struck in the rear by the adverse vehicle.

Defendant Devantay T. Barrett submitted an affidavit in opposition which offered the following explanation for the collision. On the date of the subject accident, he was driving a white 2014 Isuzu box truck with the owner's permission. He was stopped at a red light on Kings Highway at or near its intersection with Remsen Avenue and Linden Boulevard, in Kings County, City and State of New York for approximately four minutes with heavy traffic. When the light turned green, he proceeded approximately 8-15 miles per hour. Kenneth Alexander stopped short in front of him while he was going 8-15 miles per hour. The impact to the rear of Kenneth Alexander's vehicle was very light with little to no damage.

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 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 plaintiffs, thus causing plaintiffs' injuries. 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]).

Plaintiffs made a prima facie showing that the defendants were negligent by violating VTL § 1129 [a]. The defendant's affidavit did not provide a non-negligent explanation for the rear end collision and therefore failed to raise a triable issue of fact.

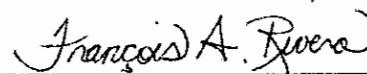
CONCLUSION

The motion by Kenneth Alexander and Tina Griffith for an order pursuant to CPLR 3212 granting summary judgment in their favor on the issue liability against the defendants is granted.

The motion by Kenneth Alexander and Tina Griffith for an order pursuant to CPLR 3212 granting summary judgment dismissing the defendants' affirmative defenses alleging comparative negligence, contributory negligence and culpable conduct is granted.

The foregoing constitutes the decision and order of this Court.

ENTER:



J.S.C.

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