

Scott v Cenord

2023 NY Slip Op 34816(U)

March 1, 2023

Supreme Court, Kings County

Docket Number: Index No. 515431/2019

Judge: Delores J. Thomas

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This opinion is uncorrected and not selected for official publication.

At an I.A.S. Trial Term, Part 11 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at 360 Adams Street, Borough of Brooklyn, State of New York, on the 1st day of March, 2023.

P R E S E N T :

HON. DELORES J. THOMAS, J.S.C.

-----X
ANTHONY SCOTT,

Plaintiff,

Index No.: 515431/2019

- against -

DECISION and ORDER

Mot. Seq. # 2-3

TABITHA CENORD, EAN HOLDINGS, LLC, and
PATRICK LATTAMORE,

Defendants.

-----X

Recitation, as required by CPLR § 2219(a), of the papers considered in the review of these motions are as follows:

Papers:

NYSCEF Document Nos.

Notice of Motions and Affidavits (Affirmations) Annexed

NYSCEF Doc Nos. 26-31; 93-107

Answering Affidavits (Affirmations) _____

NYSCEF Doc Nos. 110-114

Reply Affidavits (Affirmations) _____

NYSCEF Doc Nos. 118

Upon the foregoing cited papers, in this action for damages from personal injuries, the decision and order on these motions are as follows:

Plaintiff moved in motion sequence two for an order, pursuant to CPLR § 3212, granting him summary judgment on the issues of liability as against all defendants and dismissing all affirmative defenses as to liability. Defendants Tabitha Cenord and EAN Holdings, LLC (“EAN”) opposed the motion.

EAN moved in motion sequence three for an order, pursuant to CPLR § 3212 and 49 U.S.C. § 30106, dismissing and/or granting summary judgment on its behalf; and dismissing all claims against it on the grounds that the Federal Transportation Equity Act precludes any such claims against it. This motion is unopposed.

The action arises from a car accident that occurred on June 9, 2017. Plaintiff, in support of his summary judgment motion, states, in his affidavit, he was riding in a vehicle operated by defendant Patrick Lattamore (“Lattamore”) when it was struck by a vehicle driven by defendant Tabitha Cenord (“Cenord”). Plaintiff says the

vehicle he rode in was in the intersection when Cenord's vehicle suddenly, and without warning, made a left turn in front of it, causing the collision. Plaintiff also affirms there was no time for the car he was in to avoid the collision.

In opposition, Cenord submitted, inter alia, an affidavit, in which she avers she stopped, checked for traffic, and turned on her left turn signal before turning and ultimately being impacted by Lattamore's vehicle.

"A plaintiff in a negligence action moving for summary judgment on the issue of liability must establish, prima facie, that the defendant breached a duty owed to the plaintiff and that the defendant's negligence was a proximate cause of the alleged injuries" (*Whitehead v David Rosen Bakery Supplies, Inc.*, 208 AD3d 533, 534 [2d Dept 2022] quoting *Ortiz v Zurita*, 195 AD3d 734 [2d Dept 2021]). To be entitled to summary judgment on the issues of liability, "a plaintiff does not bear ... the burden of establishing ... the absence of his or her own comparative fault" (*Whitehead* quoting *Balladares v City of New York*, 177 AD3d 942, 943 [2d Dept 2019]). "The right of an innocent passenger to summary judgment, however, is not restricted by potential issues of comparative negligence as between two drivers" (*Choi v Schwabenbauer*, 124 AD3d 574 [2d Dept 2015]). "If one party has established that the other party has committed negligence per se, the burden then falls to the opposing party to submit a non-negligent explanation for the action" (*Orellana v Mendez*, 208 AD3d 888 [2d Dept 2022]). The default or non-appearance of a defendant does not preclude an appearing defendant from contesting the issue of the non-appearing or defaulting defendant's negligence (*see Balanta v Stanlaine Taxi Corp.*, 307 AD2d 1017 [2d Dept 2003]).

Further, "a violation of a standard of care imposed by the Vehicle and Traffic Law constitutes negligence per se" (*Whitehead*, quoting *Callahan v Glennon*, 208 AD3d 533 [2d Dept 2021]). Pursuant to VTL § 1128, whenever any roadway has been divided into two or more clearly marked lanes for traffic the following rules in addition to all others consistent herewith shall apply: (a) a vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety. Pursuant to VTL § 1163, no person shall turn a vehicle at an intersection unless the vehicle is in proper position upon the roadway as required in section eleven hundred sixty, or turn a vehicle to

enter a private road or driveway, or otherwise turn a vehicle from a direct course or move right or left upon a roadway unless and until such movement can be made with reasonable safety.

Here, plaintiff established, prima facie, that the defendant breached a duty owed to him and that the defendant's negligence was a proximate cause of his injuries. Specifically, plaintiff contends in his affidavit that Cenord was driving when she suddenly and without warning made a left turn into the path of the car he rode in and caused the collision (NYSCEF Doc. No. 31) (*see Marks v Rieckhoff*, 172 AD3d 847 [2d Dept 2019]). In opposition, Cenord raised a triable issue of fact as to whether she was completely free from fault in the happening of the accident. Specifically, in her affidavit, Cenord avers she stopped, checked for traffic, and turned on her left turn signal before turning and ultimately being impacted by Lattamore's vehicle (*see Pinilla v New York City Transit, Authority*, 122 AD3d 703 [2d Dept 2014]). Accordingly, plaintiff's motion for summary judgment on the issue of liability is denied.

EAN also moved for summary judgment. It contends the Graves Amendment warrants dismissal of the action against it. The motion is unopposed.

The Graves Amendment provides, generally, that the owner of a leased or rented motor vehicle cannot be held liable for personal injuries resulting from the use of such vehicle by reason of being the owner of the vehicle for harm to persons or property that results or arises out of the use, operation, or possession of the vehicle during the period of the rental or lease if: (1) the owner is engaged in the trade or business of renting or leasing motor vehicles, and (2) "there is no negligence or criminal wrongdoing on the part of the owner (or an affiliate of the owner)" (49 USC § 30106[a]; *see Cioffi v S.M. Foods, Inc.*, 129 AD3d 888 [2d Dept 2015]).

Here, EAN established its prima facie entitlement to judgment as a matter of law by showing that it was engaged in the business of renting vehicles, that the subject accident occurred during the period of lease or rental, and that it was not negligent in maintaining the vehicle (*see Caputo v Brown*, 196 AD3d 456 [2d Dept 2021]).

Accordingly, it is hereby

ORDERED that plaintiff's motion for summary judgment as against all defendants is denied; and it is further

ORDERED that defendant EAN Holdings, LLC's motion for summary judgment and dismissal of the complaint against it is granted and the complaint is dismissed in its entirety as against said defendant; and it is further

ORDERED that the claims against defendant EAN Holdings, LLC, are severed and the balance of the action shall continue; and it is further

ORDERED that the Clerk of the Court shall enter judgment in favor of defendant EAN Holdings, LLC; and it is further

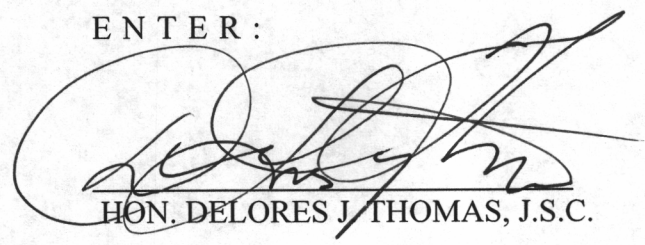
ORDERED that the caption be amended to reflect the dismissal and that all future papers filed with the court bear the amended caption; and it is further

ORDERED that within 30 days of entry, defendant EAN Holdings, LLC, shall serve a copy of this decision and order upon all parties with Notice of Entry.

Any issue raised and not specifically addressed by this decision and order is denied.

This constitutes the decision and order of the Court.

ENTER :



HON. DELORES J. THOMAS, J.S.C.

HON. DELORES J. THOMAS, J.S.C.

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