

Castillo v Grace Indus. LLC
2023 NY Slip Op 35104(U)
September 29, 2023
Supreme Court, Queens County
Docket Number: Index No. 709881/2021
Judge: Mojgan C. Lancman
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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

PRESENT: HON. MOJGAN C. LANCMAN

IAS PART 20

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HENRY CASTILLO,

Index No.: 709881/2021

Plaintiff,

Motion Seq. No.: 4

-against-

Motion Date: 5.31.2023

Motion Cal. No.: 7

GRACE INDUSTRIES LLC, and MATTHEW GANUN,

Defendants.
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The papers bearing NYSCEF Doc. Nos. 98-108, 111 and 127-134 were read on the motion made by the plaintiff, Henry Castillo (the "Plaintiff" or "Castillo"), for an Order, *inter alia*, granting summary judgment against the defendants, Grace Industries LLC ("Grace") and Matthew Ganun ("Ganun") (collectively, the "Defendants"), on the issue of liability.

The Plaintiff commenced this cause seeking to recover monetary damages for personal injuries allegedly sustained in a motor vehicle accident (the "Accident"). Presently before the Court is the Plaintiff's motion for an Order: (1) granting summary judgment on the issue of liability against the Defendants; (2) determining that the Plaintiff is free from comparative/contributory negligence; (3) striking all affirmative defenses as to comparative/contributory negligence; and (4) setting this cause down for an immediate trial on the issue of damages. For the following reasons, the motion is granted in part and denied in part.

I. Background

The Accident occurred on December 11, 2020 on the Long Island Expressway in Nassau County, New York, and involved two vehicles. Jesus R. Vera Brito ("Brito") was the owner and operator of one of the vehicles, a van. Castillo was a passenger in Brito's van. The other vehicle was operated by Ganun and owned by Grace.

This Action and the action entitled *Jesus R. Vera Brito v Grace Industries, et al.*, which is pending in this Court under index number 705838/2021 (the "*Brito* Action"), arise out of the same Accident. The actions were joined for purposes of discovery and joint trial pursuant to the Order of this Court dated August 2, 2022 (*see* NYSCEF Doc. No. 30).

Pursuant to the Order of this Court dated April 24, 2023 in the *Brito* Action (*see* NYSCEF Doc. No. 71, index no. 705838/2021), Brito, the operator of the vehicle Castillo was riding in, was granted summary judgment on the issue of liability against the Ganun and Grace.

Castillo's prior motion for summary judgment in this Action was denied without prejudice on the ground that he failed to submit an affidavit from a translator relative to his affidavit in support.

In his present motion for summary disposition, Castillo submits an affidavit (the "Affidavit"), wherein he avers, *inter alia*, the following: that he was a passenger in the vehicle owned and operated by Brito; that said vehicle came to a complete stop; and that, while completely stopped, Brito's vehicle was rear-ended by vehicle operated by Ganun and owned by Grace. Castillo also submits, as required, an affidavit from a translator pursuant to CPLR § 2101 [b].

The Defendants oppose this motion without submitting an affidavit from either Ganun or Grace.

II. Discussion

A. Collateral Estoppel

Collateral estoppel may be invoked in a subsequent action to prevent a party from relitigating an issue decided against that party in a prior action (*see Langdon v WEN Management Co.*, 147 AD2d 450, 451 [2d Dept 1989]). The doctrine applies when "(1) the issues in both proceedings are identical, (2) the issue in the prior proceeding was actually litigated and decided, (3) there was a full and fair opportunity to litigate in the prior proceeding, and (4) the issue previously litigated was necessary to support a valid and final judgment on the merits" (*Milne v City University of New York*, 153 Ad3d 807, 808 [2d Dept 2017]).

"Collateral estoppel allows the determination of an issue of fact or law raised in a subsequent action by reference to a previous judgment of a different cause of action in which the same issue was necessarily raised and decided" (*Ryan v New York Telephone Co.*, 62 NY2d 494, 499 [1984]). "What is controlling is the identity of the issue which has necessarily been decided in the prior action or proceeding" (*see id.*).

Pursuant to the Order of this Court dated April 24, 2023 in the *Brito* Action, Brito was granted summary judgment on the issue of liability against Ganun and Grace (*see* NYSCEF Doc. No. 71 under Index No. 705838/2021). Specifically, the Court concluded that Ganun and Grace were responsible for the Accident. This same exact liability issue is raised by Castillo's motion in the action at bar.

The issue of the Defendants' negligence was actually and decided against them in the *Brito* Action. They had the full and fair opportunity to litigate the issue of liability in the *Brito* Action. Lastly, the determination that the Defendants were negligent was necessary to support the grant of summary judgment against them with respect to liability. Ganun and Grace are thus collaterally estopped from contesting the issue of their negligence in the action at bar. Therefore, Castillo is granted partial summary judgment against the Defendants on the issue of liability.

B. The Dismissal of the Affirmative Defenses

Castillo also seeks to dismiss the affirmative defenses of comparative fault, contributory negligence and culpable conduct.

There is no evidence of any comparative fault, contributory negligence and culpable conduct on Castillo's part. The record demonstrates that he was an innocent passenger in Brito's vehicle, which was rear-ended. The Defendants present no evidence in admissible form that Castillo in any way contributed to or caused the Accident. Consequently, the affirmative defenses of comparative fault, contributory negligence and culpable conduct are dismissed (*see Reyes v Gropper*, 212 AD3d 565 [1st Dept 2023]; *Vasquez v Strickland*, 211 AD3d 414 [1st Dept 2022]).

In light of the foregoing, it is also determined that the Plaintiff is not legally responsible for the Accident.

C. Immediate Trial on the Issue of Damages

Lastly, Castillo moves for an immediate trial on the issue of damages (*see* CPLR 3212 [c]). This request is denied because the grant of summary judgment in his favor on the issue of liability "... should not and does not deprive ... [the Defendants] of ... [their] right to discovery on that issue" (*Barr v Raffo*, 96 AD2d 800 [1st Dept 1983]). The trial of this cause with respect to damages shall be held after discovery on said issue is concluded, and thereafter, the filing of a note of issue by Castillo.

III. Conclusion

For the reasons stated above, it is hereby:

ORDERED, that the Plaintiff's motion is granted in part and denied in part; and it is further,

ORDERED, that the Plaintiff is granted summary judgment on the issue of liability against the Defendants; and it is further,

ORDERED, that it is determined that the Plaintiff is not legally responsible for the Accident; and it is further,

ORDERED, that the Plaintiff's application to dismiss the Defendants' affirmative defenses of comparative fault, contributory negligence and culpable conduct is granted; and it is further,

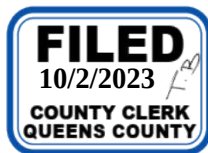
ORDERED, that the Plaintiff may file a note of issue for the purpose of a trial on the issue of damages after the completion of discovery with respect to this issue; and it is further,

ORDERED, that the Plaintiff shall serve a copy of this Order with Notice of Entry upon

Ganun and Grace via NYSCEF by November 29, 2023.

This constitutes the Decision and Order of the Court.

Dated: Jamaica, New York
September 29, 2023



A handwritten signature in black ink, consisting of a large, stylized loop followed by a vertical stroke and a horizontal tail.

MOJGAN C. LANCMAN, J.S.C.