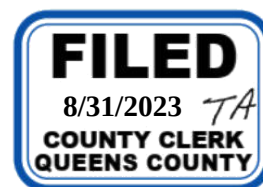


Compass v Prestige Caterers, Inc.
2023 NY Slip Op 35301(U)
August 24, 2023
Supreme Court, Queens County
Docket Number: Index No. 724538/2021
Judge: Maurice E. Muir
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Short Form Order

NEW YORK STATE SUPREME COURT – QUEENS COUNTY

Present: HONORABLE MAURICE E. MUIR
Justice



NEIL COMPASS,

IAS Part - 42

Index No.: 724538/2021

Plaintiff,

Motion Date: 12/1/22

-against-

Motion Cal. No. 11

PRESTIGE CATERERS, INC., PRESTIGE
CATERERS OF ROCKLAND, LTD., PRESTIGE
CATERERS OF GREAT NECK, LTD., PRESTIGE
CATERERS OF LAWRENCE, INC., PRESTIGE
CATERERS OF NASSAU, LTD, and MARLON
MAITUTE,

Motion Seq. No. 8

Defendants.

The following electronically filed (“EF”) documents read on this motion by Neil Compass (“Mr. Compass” or “plaintiff”) for an order: pursuant to § CPLR 3212, granting Plaintiff partial summary judgment on the issue of liability and freedom of comparative fault as against Defendants, Prestige Caterers, Inc., and Marlon Maitute, and for such other relief that this Court deems just and proper.

	Papers Numbered
Notice of Motion-Affirmation-Exhibits-Service.....	EF 22 - 29
Affirmation in Opposition-Exhibits.....	EF 30 - 40
Affirmations in Reply.....	EF 41 - 42

Upon the foregoing papers, it is ordered that the motion is determined as follows:

This is an action to recover damages for personal injuries Neil Compass (“Mr. Compass” or “plaintiff”) allegedly sustained in a motor vehicle collision on May 29, 2008. As a result, May 27, 2011, the plaintiff commenced the instant action; and on November 28, 2012, issue was

joined. After the parties exchanged discovery, on or about January 3, 2014, the plaintiff filed the note of issue and certificate of readiness for trial (“Note of Issue”). However, on March 9, 2015, during the pre-trial conference, the Honorable Jeremy Weinstein issued an order, which vacated the note of issue. Thereafter, the case was erroneously marked disposed, which required the plaintiff to file a motion to restore the case to active status. Thereafter, on November 3, 2022, the latter filed the instant motion. In support of said motion, the plaintiff provides his examination before trial (“EBT”), wherein he testified that on May 29, 2008, he was on the northbound exit ramp of the Cross-Island Parkway at the stop sign when a motor vehicle owned by Prestige Caterers, Inc. (“Prestige”) and operated by Marlon Maitute (“Mr. Maitute”) struck him in the rear of his vehicle. Moreover, the plaintiff provides Mr. Maitute’s deposition transcript, wherein he that “. . . I was entering, he was in front of me. And then to enter Hemstead, I’m looking at the street, because I looked and he was in the front. He goes with his car and then he applies the brakes, and then I go, and then when he applies the brake, so I hit him.”

According to the Court of Appeals, a plaintiff is no longer required to show freedom from comparative fault in order to establish his or her *prima facie* entitlement to judgment as a matter of law on the issue of a defendant's liability (*see Rodriguez v. City of New York*, 31 NY3d 312 [2018]; *Sooklall v. Morisseav-LaFague*, 185 AD3d 1079 [2d Dept 2020]; *Dolores v. Grandpa’s Bus Co., Inc.*, 189 AD3d 1539 [2d Dept 2020]; *Capuozzo v. Miller*, 188 AD3d 1137 [2d Dept 2020]). Furthermore, it is well settled law that “[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” (*Catanzaro v. Edery*, 172 AD3d 995 [2d Dept 2019], quoting *Witonsky v. New York Tr. Auth.*, 145 AD3d 938 [2d Dept 2016]; *see also Grier-Key v. Lyons*, 195 AD3d 798 [2d Dept 2021]; Vehicle and Traffic Law § 1129(a)). Moreover, “[a] rear-end collision with a stopped or stopping vehicle creates a *prima facie* case of negligence with respect to the operator of the rearmost vehicle, thereby requiring that operator to rebut the inference of negligence by providing a non-negligent explanation for the collision” (*Edgerton v. City of New York*, 160 AD3d 809 [2d Dept 2018]; *Arslan v. Costello*, 164 AD3d 1408 [2d Dept 2018]; *Buchanan v. Keller*, 169 AD3d 989 [2d Dept 2019]).

Here, the plaintiff established his *prima facie* entitlement to judgment as a matter of law on the issue of liability by submitting, *inter alia*, the parties’ deposition transcript, which

demonstrated that Mr. Maitute's vehicle struck him in the rear while he was stopped northbound exit ramp of the Cross-Island Parkway, in the County of Queens, city and state of New York. In opposition, Mr. Maitute failed to provide a non-negligent explanation for the subject accident sufficient to raise a triable question of fact. (*Pomerantsev v. Kodinsky*, 156 AD3d 656 [2d Dept 2017]; *Strickland v. Tirino*, 99 AD3d 999 [2d Dept 2012])). It is well settled law that while a nonnegligent explanation for a rear-end collision may include evidence of a sudden stop of the lead vehicle, "vehicle stops which are foreseeable under the prevailing traffic conditions, even if sudden and frequent, must be anticipated by the driver who follows, since he or she is under a duty to maintain a safe distance between his or her car and the car ahead " (*Theo v. Vazquez*, 136 AD3d 795 [2d Dept 2016]; *Brothers v. Bartling*, 130 AD3d 554 [2d Dept 2015]; *see also Buchanan v. Keller*, 169 AD3d 989 [2d Dept 2019]; *Gil v. Manhattan Beer Distribs., LLC*, 207 AD3d 525 [2d Dept 2022])). The claim that the lead vehicle made a sudden stop, standing alone, is insufficient to rebut the presumption of negligence on the part of the rearmost vehicle (*see Kastritsios v. Marcello*, 84 AD3d 1174 [2d Dept 2011]; *Perez v. Persad*, 183 AD3d 771 [2d Dept 2020]; *Genao v. Cassetta*, 214 AD3d 626 [2d Dept 2023])).

Furthermore, the defendants correctly argue that pursuant to CPLR § 3212(a), it requires motions for summary judgment be made no later than 120 days after the filing of the note of issue; and this statutory deadline is strictly enforced and can only be extended upon a showing of good cause (*Brill v. City of New York*, 2 NY3d 648 [2004]). Whether good cause exists is a matter committed to the court's discretion and requires a showing of a "satisfactory explanation for the untimeliness - rather than simply permitting meritorious, nonprejudicial filings, however tardy." (*Id.* at 652; *O'Neil v. Environmental Products Corp.*, 2020 NY Slip Op 05516 [2d Dept 2020]; *Wells Fargo Bank, N.A. v. Apt*, 179 AD3d 1145 [2d Dept 2020])). Here, however, on March 9, 2015, Justice Weinstein vacated the note of issue, which returns the case to pre-note of issue status. (*Montalvo v. Episcopal Health Services, Inc.*, 172 AD3d 1357 [2d Dept 2019]; *Montalvo v. Mumpus Restorations, Inc.*, 110 AD3d 1045 [2d Dept 2013]; *Farrington v. Heidkamp*, 26 AD3d 459 [2d Dept 2006]; *Wells Fargo Bank, N.A. v. APT*, 179 AD3d 1145 [2d Dept 2020])).

Additionally, the defendants' reliance upon the emergency doctrine is also unavailing. "The emergency doctrine acknowledges that when an actor is confronted with a sudden and unanticipated situation which leaves little or no time for deliberation and requires him to make a

speedy decision without weighing alternative courses of conduct, the actor may not be liable for negligence if the actions taken are reasonable and prudent when evaluated in the context of the emergency conditions” (*Aiken v. Liotta*, 167 AD3d 826 [2d Dept 2018] citing *Wu Kai Ming v. Grossman*, 133 AD3d 742 [2d Dept 2015]; see *Rivera v. New York City Tr. Auth.*, 77 NY2d 322 [1991]; *Amaro v. City of New York*, 40 NY2d 30, 36 [1976]; *Marri v. New York City Tr. Auth.*, 106 AD3d 699,700 [2d Dept 2013]). This is not to say that an emergency automatically absolves one from liability for his or her conduct. “Both the existence of an emergency and the reasonableness of a party’s response thereto will ordinarily present questions of fact” (*Pavane v. Marte*, 109 AD3d 970,971 [2d Dept 2013] [internal quotation marks omitted]; see *Hendrickson v. Philbor Motors, Inc.*, 101 AD3d 812, 813 [2d Dept 2012]; *Williams v. City of New York*, 88 AD3d 989, 990 [2d Dept 2011]; *Crawford-Dunk v. MV Transp., Inc.*, 83 AD3d 764 [2d Dept 2011]). Here, the defendants failed to demonstrate the applicability of the emergency doctrine. In fact, the defendants failed to interpose the emergency doctrine as an affirmative defense in its answer. Lastly, the defendants’ remaining contentions and arguments are either without merit or need not be addressed in light of the foregoing determinations.

Accordingly, it is hereby

ORDERED that the plaintiff’s motion for partial summary judgment, on the issue of liability, pursuant to CPLR § 3212, is granted; and it is further,

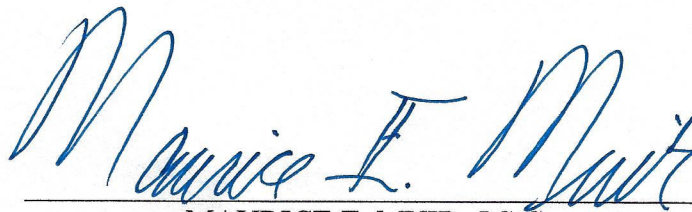
ORDERED that there shall be a trial on damages only; and it is further,

ORDERED that plaintiff shall serve a copy of this decision and order with notice of entry upon defendants’ counsel, via certified mail and NYSCEF, on or before October 5, 2023.

The foregoing constitutes the Decision and Order of the court.

Dated: August 24, 2023

Long Island City, New York


MAURICE E. MUIR, J.S.C.

