

Deroche v Thorne

2024 NY Slip Op 31767(U)

May 20, 2024

Supreme Court, Kings County

Docket Number: Index No. 520916/2021

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 20th day of May 2024

HONORABLE FRANCOIS A. RIVERA

-----X
TEDDY DEROCHE,

Plaintiff,

- against -

LANCELOT THORNE,

Defendants.

-----X

Recitation in accordance with CPLR 2219 (a) of the papers considered on the notice of motion filed on February 26, 2024, under motion sequence number two, by Teddy Deroche (hereinafter the plaintiff), seeking an order pursuant to (i) pursuant to CPLR 3212(b) and CPLR 3212(c) granting Summary Judgment to the Plaintiff against the Lancelot Thorne (hereinafter the defendant) on the issue of liability; (ii) dismissing the Answer and affirmative defenses as to liability and comparative negligence defenses in Defendants' Answer; (iii) setting this matter down for an assessment of damages before a jury; and (iv) for such other and further relief as to this Court may seem just and proper. The motion is opposed.

- Notice of motion
- Affirmation in support of motion
 - Exhibits A through I
- Statements of material facts
- Notice of compliance dated February 23, 2024
- Affidavit of service
- Affirmation in opposition
 - Exhibit A through B
- Response to statement of material facts
- Affirmation in reply
- Affidavit of service of plaintiff's affirmation in reply
- Notice of compliance dated April 12, 2024

DECISION & ORDER

Index No.: 520916/2021

Oral Argument: 4/18/2024

Ms. 2

BACKGROUND

On August 16, 2021, plaintiff commenced the instant action by filing a summons and verified complaint with the Kings County Clerk's office (KCCO). On November 18, 2021, the defendant interposed and filed a verified answer with the KCCO.

The plaintiff's verified complaint, bill of particulars, and affidavit in support of the motion allege the following salient facts. On May 26, 2019, at approximately 6:00 p.m., plaintiff was operating a motor vehicle and was rear-ended by a motor vehicle operated by the defendant (hereinafter the subject accident). The subject accident occurred while the plaintiff was stopped for a red light on Schenectady Avenue at its intersection with Linden Boulevard, in the County of Kings, City and State of New York. The subject accident caused the plaintiff to sustain serious physical injury.

LAW AND APPLICATION

“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” (*Bello v Masters Auto Collision of Long Is., Inc.*, 216 AD3d 726, 727 [2d Dept 2013]; see Vehicle and Traffic Law § 1129[a]). Thus, “[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, 810 [2d Dept 2018]; see *Tutrani v County of Suffolk*, 10 NY3d 906, 908 [2008]).

Here, the plaintiff established prima facie entitlement to judgment as a matter of law

on the issue of liability by submitting his affidavit, which demonstrated that he was stopped for a red light when he was struck in the rear by the defendant's vehicle (see *Quintanilla v Mark*, 210 AD3d 713, 714 [2d Dept 2022]; *Mahmud v Feng Ouyang*, 208 AD3d 861, 862 [2d Dept 2022]; *Lopez v Dobbins*, 164 AD3d 776, 777 [2d Dept 2018]). The plaintiff also established prima facie entitlement to judgment as a matter of law dismissing the defendant's affirmative defense alleging comparative negligence against the plaintiff by demonstrating that he was not at fault in the happening of the accident (see *Quintanilla*, 210 AD3d at 714; see *Mahmud*, 208 AD3d at 862).

Defendant submitted his own affidavit in which he testified that he was driving when he came to red light, once the light turned green, his foot slipped from the brake and lightly touched the gas pedal. This allegedly caused the defendant's car to move forward a little bit and touch the rear of the plaintiff's car.

The defendant's affidavit, however, was inconsistent with the statement he gave the police at the time of the subject accident. At that time, he stated that as he was waiting at a red light his foot slipped and he rear ended the plaintiff's vehicle. The defendant's affidavit was a belated attempt to avoid the consequences of his earlier admission to the police at the accident scene and thus was insufficient to defeat plaintiff's motion with respect to the issue of defendant's negligence (*Abramov v. Miral Corp.*, 24 A.D.3d 397, 398 [2d Dept 2005]).

Furthermore, contrary to the defendant's contention, the plaintiff's motion was not premature. A party who contends that a summary judgment motion is premature is required to demonstrate that discovery might lead to relevant evidence or the facts

essential to justify opposition to the motion were exclusively within the knowledge and control of the movant (*Kagan v Ameriprise Financial Services Inc.*, 191 A.D.3d 654 [2nd Dept 2021] citing, *Cajas-Romero v Ward*, 106 AD3d 850, 852 [2nd Dept 2013]). The mere hope or speculation that evidence to defeat a motion for summary judgment may be uncovered during the discovery process is insufficient to deny a motion for summary judgment (*Paul v Village of Quogue*, 178 AD3d 942, 944 [2nd Dept 2019]). The defendant has failed to establish how further discovery may lead to the disclosure of facts necessary to properly oppose plaintiff's motion. In sum, the defendant's evidentiary submission did not raise a triable issue of fact.

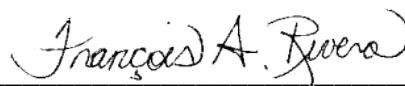
CONCLUSION

The branch of the motion by plaintiff Teddy Deroche for an order pursuant to CPLR 3212 granting summary judgment in plaintiff's favor on the issue of liability as against defendant Lancelot Thorne is granted.

The branch of the motion by plaintiff Teddy Deroche for an order striking the affirmative defense of culpable conduct asserted by defendant Lancelot Thorne is granted.

The foregoing constitutes the decision and order of this Court.

ENTER:



J.S.C.