

Jones v Grant

2024 NY Slip Op 33647(U)

October 9, 2024

Supreme Court, New York County

Docket Number: Index No. 158940/2019

Judge: James G. Clynes

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respect to prior court orders. In Motion Sequence # 005, Gonzalez moved for summary judgment dismissing the complaint and cross-claims by arguing that Grant was solely negligent when his vehicle rear-ended Gonzalez's vehicle after Gonzalez stopped before a traffic light. In Motion Sequence # 006, plaintiffs moved for partial summary judgment on the issue of liability against the moving defendants by also arguing that Grant was solely negligent in causing the accident by rear-ending Gonzalez's vehicle after Gonzalez stopped at a traffic light.

The moving defendants contend that in opposing both motions, they relied on an affidavit from Grant which stated that Gonzalez stopped abruptly at the traffic light preventing Grant from stopping in a normal manner. This statement allegedly provided a non-negligent explanation for the rear-ending by Grant and a triable issue of fact. The affidavit also stated that a non-party driver named Aisha Batts had stopped abruptly in front of Gonzalez, causing an abrupt reaction from Gonzalez.

The court rejected the evidence because the affidavit was not signed and notarized. In the absence of any other evidence in opposition, the motions were granted. The moving defendants concede that the non-signed and non-notarized affidavit was mistakenly submitted at the time. However, they argue that a proper copy of this affidavit was previously submitted in opposition to an earlier motion for summary judgment brought by plaintiffs, which was denied as premature by this court. They contend that the proper copy has already been in the record. Alternatively, the moving defendants contend that the submission of the improper copy constituted a law office mistake and should be excused. They claim that since the affidavit was dismissed on a procedural ground, the motions should be reargued and renewed based on the meritorious argument raised by them, the issue of a non-negligent explanation for the collision.

Once, the motion for renewal and rerargument is granted, the moving defendants argue that the two prior motions should be denied because an issue of fact as to the cause of the collision has been raised and should be determined by a trier of fact.

In separate oppositions, Gonzalez and plaintiffs make similar arguments against the granting of the motion to renew and reargue. The arguments are that neither renewal or reargument is appropriate, that the moving defendants are trying to present new theories, that no non-negligent excuse was made because an abrupt stop is an insufficient rebuttal to a presumption of negligence, that the affidavit is not new evidence, and there was no justifiable excuse in failing to submit a proper copy. According to the opposition papers, the moving

defendants' lack of diligence in submitting the proper copy does not merit the granting of this motion.

In reply, the moving defendants defend their position that the failure to submit the proper copy, which is already part of the recorded information, is excusable. They contend that the affidavit, when admissible, is sufficient evidence to rebut the presumption of Grant's negligence and raises a triable issue of fact.

CPLR 2221 (d) provides that a motion for leave to reargue shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion, but shall not include any matters of fact not offered on the prior motion. CPLR 2221 (e) provides that a motion for leave to renew shall be based on new facts not offered on the prior motion that would change the prior determination or shall demonstrate that there has been a change in the law that would change the prior determination.

The court shall deny the motion to renew. The affidavit does not constitute new evidence, as acknowledged by the moving defendants. As for the motion to reargue, this court properly applied the law by dismissing the affidavit. The affidavit copy submitted was not signed or notarized and was inadmissible evidence. The moving defendants argue that the affidavit in its proper form had been submitted as opposition evidence to plaintiffs' first motion for partial summary judgment (Motion Sequence #001), and therefore was part of the record. They contend that the court had overlooked this evidence in deciding plaintiffs' motion to renew. However, the affidavit in opposition to that motion was not considered in the prior decision to deny plaintiffs' motion. The court found that plaintiffs failed to make out summary judgment because their affidavits were inadequate and the motion was premature in the absence of completed discovery. Failure to make out a prima-facie showing of summary judgment requires a denial of the motion, regardless of the sufficiency of the opposition papers (*see Smalls v AJI Industries, Inc.*, 10 NY3d 733, 735 [2008]). Moreover, the improper copy of the affidavit was submitted in opposition to Gonzalez's separate motion for summary judgment, although both motions were decided simultaneously by the court.

Even if the Court were to consider Grant's affidavit, in which he averred that Goonzalez made a sudden stop, the Grant affidavit would not have changed the prior determinations on Motion Sequence Numbers 005 and 006. An allegation of a sudden stop standing alone is "insufficient to rebut the presumption of negligence" (*Bajrami v Twinkle Cab Corp.*, 147 AD3d

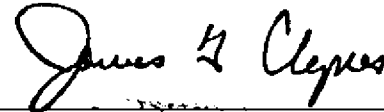
649, 649 [1st Dept. 2017] [claim that the lead vehicle stopped short was insufficient to raise an issue of fact as to the plaintiff's comparative negligence]; *Diller v City of NY Police Dept.*, 269 AD2d 143, 143 [1st Dept 2000] [defendant driver's failure to anticipate and react to the slow and cautious movement of a plaintiff's vehicle is not an adequate, non-negligent explanation for a rear-end collision accident]). "A driver is expected to drive at a sufficiently safe speed and to maintain enough distance between himself and cars ahead of him so as to avoid collisions with stopped vehicles" (*LaMasa v Bachman*, 56 AD3d 340, 340 [1st Dept. 2008]).

Defendants' motion is denied because neither reargument nor renewal is appropriate here.

Accordingly, it is

ORDERED that defendants' motion for reargument and renewal is denied.

This constitutes the Decision and Order of the Court.



JAMES G. CLYNES, J.S.C.

10/9/2024

DATE

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE