Glanz v Kirwin
2024 NY Slip Op 34850(U)
September 11, 2024
Supreme Court, Suffolk County
Docket Number: Index No. 200522/2022
Judge: Christopher Modelewski

SHORT FORM ORDER

Index No. 200522/2022

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 17 - SUFFOLK COUNTY

PRESENT:

HON. CHRISTOPHER MODELEWSKI
Justice of the Supreme Court

MOTION DATE 07/15/2024 (001)
ADJ DATE 08/19/2024
Mot. Seq. # 001-MG

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PAUL GLANZ,

Plaintiff,

- against -

PETER S. KIRWIN and FOWLER'S GARDEN CENTER, INC.

Defendants.

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Upon the E-file document list numbered 20 to 32, 35 to 37, and 41 to 42, read and considered on the motion by plaintiff for an order pursuant to CPLR 3212 granting him summary judgment on liability; it is

ORDERED that plaintiff's motion for summary judgment on liability is granted, for the reasons set forth herein.

This is a personal injury action involving a motor vehicle accident that occurred on June 28, 2022 at approximately 11:30 a.m. on the southbound lane of Route 114 near the intersection of Swamp Road in the Town of East Hampton, County of Suffolk, State of New York. At the time of the accident, plaintiff was operating a 2005 Triumph Bonneville motorcycle and defendant Peter S. Kirwin ("defendant") was operating a 2011 International 4900 flatbed truck owned by his employer, defendant Fowler's Garden Center, Inc. ("Fowler's"). This action was commenced by the filing of a summons and complaint on September 14, 2022. Issue was joined by the service of an answer on October 11, 2022. Plaintiff now moves for summary judgment on the issue of liability and submits in support thereof, an attorney affirmation, a statement of material facts, the pleadings, his verified bill of particulars, the Suffolk County Police Department certified police accident report, the transcripts of the deposition testimony of plaintiff and defendant, and various exhibits. Defendant opposes the motion and submits an attorney affirmation and a response to the statement of material facts. Plaintiff replies.

Plaintiff testified at his deposition that he was traveling south on Route 114 at approximately 45 miles per hour and that before the intersection of Route 114 with Swamp Road, he began to slow down slightly to approximately 40 miles per hour because vehicles in front of him were slowing down. Plaintiff testified that when he slowed down, the rear of his motorcycle was struck by the truck operated

Gutierrez v Trillium USA, LLC, *supra*; ***Volpe v Limoncelli***, *supra* at 795-796, 902 NYS2d 152 [2d Dept 2010] quoting ***Shamah v Richmond County Ambulance Serv.***, 279 AD2d 564, 565, 719 NYS2d 287 [2d Dept 2001]). "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" (***Volpe v Limoncelli***, *supra* at 795-796, 902 NYS2d 152 [2d Dept 2010] quoting ***Shamah v Richmond County Ambulance Serv.***, 279 AD2d 564, 565, 719 NYS2d 287 [2d Dept 2001]; *see also* ***Brothers v Bartling,*** *supra*; ***Gutierrez v Trillium, USA, LLC***, *supra*). If the operator of the rear vehicle cannot come forward with evidence to rebut the inference of negligence, then the plaintiff is entitled to summary judgment (***Gibson v Levine***, 95 AD3d 1071, 944 NYS2d 610 [2d Dept 2012]; ***Kimyagarov v Nixon Taxi Corp.***, 45 AD3d 736, 846 NYS2d 309 [2d Dept 2007]). A plaintiff may obtain summary judgment on the issue of liability without demonstrating the absence of his or her own comparative fault (***Rodriguez v City of New York***, 31 NY3d 312, 76 NYS3d 898 [2018]; ***Poon v Nisanov***, 162 AD3d 804, 79 NYS3d 227 [2d Dept 2018]; ***Edgerton v City of New York***, 160 AD3d 809, 74 NYS3d 617 [2d Dept 2018]).

Here, plaintiff established his prima facie entitlement to summary judgment through his sworn testimony that his motorcycle was struck in the rear by the truck operated by defendant (*see* ***Rodriguez v City of New York***, 31 NY3d 312, 76 NYS3d 898 [2018]; ***Binkowitz v Kolb***, 135 AD3d 884, 24 NYS3d 186 [2d Dept 2016]; ***Volpe v Limoncelli***, *supra*; ***Johnson v Spoto,*** 47 AD3d 888, 850 NYS2d 204 [2d Dept 2008]. Furthermore, the police accident report contains a statement attributable to defendant that "upon observing heavy traffic ahead, did attempt to slow down and stop, but was unable to do so in time to prevent rear-ending Vehicle 2," that being plaintiff's motorcycle. Having made the requisite prima facie showing of entitlement to summary judgment, the burden shifts to defendant to rebut the inference of negligence by offering a non-negligent explanation for the accident (*see* ***Bene v Dalessio,*** 135 AD3d 679, 22 NYS3d 237 [2d Dept 2016]; ***Cortes v Whelan***, 83 AD3d 763, 922 NYS2d 419 [2d Dept 2011]; ***Balducci v Velasquez***, 92 AD3d 626, 938 NYS2d 178 [2d Dept 2012]).

In opposition, defendant argues that the emergency doctrine applies and affords him a non-negligent explanation for the subject accident. In this regard, defendant asserts that his vision was "suddenly and unexpectedly" temporarily blinded by the light from the sun glare that ricocheted off the windshield of a street sweeper on the shoulder of the opposite side of Route 114.

"Pursuant to the emergency doctrine, a driver faced with a sudden and unexpected circumstance, not of the driver's own making, that leaves little or not time for reflection or causes that driver to be reasonably so disturbed as to compel a quick decision without weighing alternative courses of conduct, may not be negligent if the actions taken are reasonable and prudent in the context of the emergency" ***Blake v New York City Tr. Auth.,*** 217 AD3d 914, 914-915, 192 NYS3d 231 [2d Dept 2023] quoting ***Welch v Suffolk Coach, Inc.,*** 162 AD3d 1097, 80 NYS3d 114 [2d Dept 2018]; *see also* ***Bello v Transit Authority of New York City,*** 12 AD3d 58, 60, 783 NYS2d 648 [2d Dept 2004]). However, "the emergency doctrine does not apply where the actor encounters a known, foreseeable hazard which he in fact observed enter his path prior to the accident or where he or she fails to be aware of the potential hazards presented by traffic conditions" (***Shin v New York City Tr. Auth.,*** 210 AD3d 717, 718, 178 NYS3d 100 [2d Dept 2022][internal quotations and citations omitted]).

The Court finds that the sun glare that confronted defendant prior to the accident does not constitute a qualifying emergency for this typical rear-end collision, as it was foreseeable that defendant may be subjected to sun glare at about noon on a "bright and sunny day" in the month of June (*see* ***Lifson v City of Syracuse,*** 17 NY3d 492, 934 NYS2d 38 [2011]; ***E.B. v Gonzalez,*** 208 AD3d 618, 174 NYS3d 387 [2d Dept 2022][foreseeability of sun glare renders emergency doctrine inapplicable]; ***Morales-***

by defendant. Defendant testified that on the date of the accident, he was operating a flatbed truck during the course of his employment for defendant Fowler's and was in the process of transporting eight pallets of goods on the back of the truck when he rear-ended plaintiff's motorcycle. Defendant testified that prior to the accident, he was traveling on Route 114 at about 35 miles per hour, that there was slower than average traffic, and that he was following behind plaintiff's motorcycle for about five or six miles prior to hitting it in the rear. Defendant testified that vehicles ahead of plaintiff's motorcycle had stopped on Route 114, as a vehicle was waiting to make a left turn onto Swamp Road, which caused plaintiff's motorcycle and the vehicles ahead of him to come to a stop. Defendant testified that he was traveling at approximately 30 miles per hour and was about 20 to 25 feet from plaintiff's motorcycle when he applied his brakes. Defendant further testified that it was "bright and sunny" on that day, and that shortly before the accident, a street sweeper on the shoulder of the opposite side of Route 114 had just turned from Swamp Road and that for one or two seconds, a sun glare came off from the street sweeper's windshield and hit the left side of defendant, temporarily blinding defendant's vision. Defendant further testified that the accident with plaintiff's motorcycle occurred in a shady area on Route 114. Defendant testified that he was not wearing sunglasses and the sun visor on the driver's side of the truck was up. Defendant further testified that he had a conversation with the police officers who arrived at the scene regarding how the accident occurred and he confirmed the accuracy of the statement attributed to him in the police accident report.

It is well settled that a party moving for summary judgment must make a prima facie showing of entitlement to judgment as matter of law, offering sufficient evidence in admissible form to demonstrate the absence of any material issues of fact (*see* ***Alvarez v Prospect Hospital***, 68NY2d 320, 508 NYS2d 923 [1989]; ***Zuckerman v City of New York***, 49 NY2d 557, 427 NYS2d 595 [1980]). The failure to make such a prima facie showing requires the denial of the motion regardless of the sufficiency of the opposing papers (***Winegrad v New York University Medical Center***, 64 NY2d 851, 487 NYS2d 316 [1985]). Upon the movant establishing a prima facie showing of entitlement to summary judgment, the burden then shifts to the opponent to offer evidence in admissible form sufficient to establish a material issue of fact requiring a trial of the action (***Alvarez v Prospect Hospital***, 68NY2d 320, 508 NYS2d 923 [1989]; ***Zuckerman v City of New York***, 49 NY2d 557, 427 NYS2d 595 [1980]). In deciding the motion, the Court must view all evidence in the light most favorable to the nonmoving party (*see* ***Ortiz v. Varsity Holdings, LLC***, 18 NY3d 335, 339, 937 NYS2d 157 [2011]).

When the driver of a vehicle approaches another vehicle from the rear, he is bound to maintain a reasonably safe distance and rate of speed over his vehicle under the prevailing conditions and to exercise reasonable care to avoid colliding with the other vehicle (Vehicle and Traffic Law §1129 [a]; ***Gil v Manhattan Beer Distributors, LLC,*** 207 AD3d 525, 169 NYS3d 822 [2d Dept 2022]; ***Niyazov v Hunter EMS, Inc.***,154 AD3d 954, 63 NYS3d 457 [2d Dept 2017]; ***Tumminello v City of New York***, 148 AD3d 1084, 49 NYS3d 739 [2d Dept 2017]; ***Brothers v Bartling***, 130 AD3d 554, 13 NYS3d 202 [2d Dept 2015]; ***Gutierrez v Trillium USA, LLC***, 111 AD3d 669, 974 NYS2d 563 [2d Dept 2013]). The occurrence of a rear-end collision with a stopped or stopping vehicle creates a prima facie case of negligence on the part of the operator of the rear vehicle and imposes a duty on that operator to come forward with a non-negligent explanation for the collision (*see* ***Gil v Manhattan Beer Distributors, LLC,*** *supra*; ***McLaughlin v Lunn***, 137 AD3d 757, 26 NYS3d 338 [2d Dept 2016]; ***Cheow v Cheng Lin Jin***, 121 AD3d 1058, 995 NYS2d 186 [2d Dept 2014]; ***Perez v Roberts***, 91 AD3d 620, 936 NYS2d 259 [2d Dept 2012]; ***Volpe v Limoncelli***, 74 AD3d 795, 902 NYS2d 152 [2d Dept 2010]; ***Ramirez v Konstanzer***, 61 AD3d 837, 878 NYS2d 381 [2d Dept 2009]). The assertion that the lead car suddenly stopped is insufficient, by itself, to rebut the presumption of negligence by the rear vehicle (*see* ***Gil v Manhattan Beer Distributors, LLC,*** *supra*; ***Waide v Ari Fleet, LT,*** 143 AD3d 975, 39 NYS3d 512 [2d Dept 2016]; ***Brothers v Bartling,*** *supra*; ***LeGrand v Silberstein,*** 123 AD3d 773, 999 NYS2d 96 [2d Dept 2014];

Rodriguez v MTA Bus Co., 203 AD3d 914, 161 NYS3d 817 [2d Dept 2022][same]; ***Rodriguez v Beal,*** 191 AD3d 617, 139 NYS3d 534 [1st Dept 2021][sun glare was not a qualifying emergency or non-negligent explanation for accident]; ***Barry v Pepsi-Cola Bottling Co. of N.Y., Inc.,*** 130 AD3d 500, 11 NYS3d 857 [1st Dept 2015][same]; ***Thorsen v Sunbelt Rentals, Inc.,*** 79 Misc3d 1218, 190 NYS3d 922 [Sup Ct Kings County 2023][same]; *see also* ***Capuozzo v Miller,*** 188 AD3d 1137, 136 NYS3d 416 [2d Dept 2020][emergency doctrine does not apply to typical rear-end accidents]; ***Ordonez v Lee,*** 177 AD3d 756, 110 NYS3d 339 [2d Dept 2019][same]; *cf.* ***Martin v PTM Mgt. Corp.,*** 214 AD3d 782, 185 NYS3d 247 [2d Dept 2023]).

Tellingly, there is no mention at all of defendant being temporarily blinded by "sun glare" in his statement in the police accident report. Based upon the admissible evidence before the Court, the subject accident was not caused by a "sun glare" emergency but solely as a result of defendant's failure to maintain a reasonably safe speed and a reasonably safe distance between his truck and the motorcycle in front of him (***Capuozzo v Miller,*** *supra*; ***Ordonez v Lee,*** *supra*; ***Shehab v Powers,*** 150 AD3d 918, 920, 54 NYS3d 104 [2d Dept 2017]). Therefore, plaintiff is entitled to summary judgment on liability (*see* ***Yawagyentsang v Safeway Constr. Enters., LLC,*** 225 AD3d 827, 207 NYS3d 608 [2d Dept 2024]; ***Elfe v Roman,*** 219 AD3d 1304, 195 NYS3d 768 [2d Dept 2023]; ***Mahmud v Ouyang,*** 208 AD3d 861, 174 NYS3d 721 [2d Dept 2022]; ***Comas-Bourne v City of New York,*** 146 AD3d 855, 45 NYS3d 182 [2d Dept 2017]).

Accordingly, plaintiff's motion for summary judgment on liability is granted.

The foregoing constitutes the decision and Order of the Court.

Dated: September 11, 2024

HON. CHRISTOPHER MODELEWSKI, J.S.C.

____ FINAL DISPOSITION __X__ NON-FINAL DISPOSITION