Tarrats v Kurian
2024 NY Slip Op 34954(U)
October 3, 2024
Supreme Court, Bronx County
Docket Number: Index No. 23427/2020E
Judge: John A. Howard-Algarin
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NEW YORK SUPREME COURT - COUNTY OF BRONX

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF THE BRONX
---x
REINALDO TARRATS JR.,

Plaintiff,

-against-

STEPHIN KURIAN, IBI ARMORED SERVICES, INC. and IANA LEASING INC.,

Defendants.
---x

Index No. 23427/2020E
Motion Sequence No. 1
Motion Date: July 2, 2022

DECISION/ ORDER
Present:
Hon. John A. Howard-Algarin
Justice Supreme Court

Recitation, as required by CPLR § 2219(a), of the papers considered in the review of this motion for summary judgment:

Papers	NYSCEF Doc. No(s).
Notice of Motion, Affirmation in Support, Statement of Material Facts, Exhibits Thereto	**15-26**
Affirmation(s) in Opposition	**41-43**
Reply Affirmation	**44**

In this motor vehicle negligence action, defendants, Stephin Kurian ("Kurian"), IBI Armored Services, Inc. ("IBI") and Iana Leasing Inc. ("Iana Leasing") (collectively, "Defendants"), seek an Order, pursuant to CPLR § 3212, dismissing the complaint of plaintiff, Reinaldo Tarrats Jr.'s, ("Plaintiff"), on the ground that they bear no liability for the subject accident. Plaintiff opposes the motion asserting that there are triable issues of fact as to how the underlying accident occurred warranting the denial of defendants' motion. For the reasons stated below, defendants' motion is denied.

Plaintiff's cause of action arises from personal injuries he allegedly sustained on April 10, 2019, when an armored truck owned by Iana Leasing and operated by Kurian came in contact with his vehicle while on the public roadway of Watson Avenue near its intersection with Beach Avenue in Bronx County, New York (NYSCEF Doc No 18). In support of their motion, defendants submit the deposition transcripts of plaintiff and Kurian (NYSCEF Doc Nos 22 and 23, respectively) and a certified copy of the relevant police accident report (NYSCEF Doc No 21).

It is undisputed from the submissions that Watson Avenue, in the area of its intersection with Beach Avenue, is a two-way street with a single lane of travel in each direction. It is

also undisputed that, prior to the incident, both parties' vehicles were stopped at a red light with plaintiff's vehicle behind defendants' armored vehicle. The parties also agree that after the light changed to green, they began to move their respective vehicles forward across the intersection. It is here that their accounts diverge.

In support of the motion, co-defendant driver, Kurian, testified that, prior to the accident and before the light changed, he observed a tractor-trailer double-parked just beyond the intersection to his right, and believed that he had enough room to pass the tractor-trailer without crossing the double yellow line to his left. He added that he did not observe plaintiff's vehicle prior to the collision until it was in front of his bumper, at the moment plaintiff tried to maneuver back across the double yellow lines into Kurian's lane of travel. He added that it was at that moment that the contact between the front of his moving armored truck and the rear of plaintiff's vehicle occurred.

Relying on deposition testimony to oppose the motion, plaintiff acknowledged that he was stopped behind defendants' armored truck at the red light governing traffic at the subject intersection. He asserted, however, that defendants' truck was stopped directly behind a flat-bed tractor-trailer waiting for the same light, ostensibly making plaintiff's vehicle the third in line waiting for the light to change. Significantly, when asked if he could observe the tractor trailer that he believed was in front of the armored vehicle directly in front of him, he testified, "[n]o sir, I couldn't see him up ahead" (NYSCEF Doc No. 22 at 19-20). And while plaintiff initially testified that the tractor-trailer began to move after the light turned green, he later admitted that he never observed the tractor-trailer move and "assumed" it had moved because defendants' vehicle in front of him started moving (*Id.* at 20).

Concerning the accident, plaintiff testified that "when they started moving I layed back to see what was in the other direction and when nothing was coming, I put my signal on, and I shot out . . . to the next lane to pass them" (*Id.* at 21:13-16). Plaintiff reasoned that he could pass defendants' vehicle and the tractor trailer because it would take the tractor-trailer several gears to get up to speed (*Id.* at 21:17-23). He acknowledged during his questioning that he was driving in the lane of oncoming of traffic immediately prior to and at the time of incident (*Id.* at 22:3-6), and that the collision occurred as he came along the left side of defendants' vehicle (*Id.* at 22:16-19; 26:12-16). He stated that just prior to the collision, he did not observe whether defendants' vehicle moved in his direction (*Id.* at 31:20-24; 33:10-15) because he was looking at the tractor-trailer, which he was about to pass (*Id.* at 32:2-4).

The certified police report includes a diagram depicting the post-incident position of the vehicles with a large vehicle angled out and on top of the double yellow markings but entirely within the right travel lane (presumably defendants' armored vehicle) in contact with the passenger side of another smaller vehicle (presumably plaintiff's vehicle) straddling the double yellow line yet almost entirely in the lane of oncoming traffic (*id.*).

Generally, negligence cases do not lend themselves to resolution by motion for summary judgment unless the facts clearly demonstrate the negligence of one party without any culpable conduct by the other (*Barnes v Lee*, 158 AD2d 414 [1st Dept 1990]). Furthermore, summary judgment should not be granted when issues of credibility are presented by conflicting testimony (*see Communications & Entertainment Corp v Hibbard Brown & Co, Inc*, 202 AD2d 191 [1st Dept 1994]), or where there is any doubt as to the existence of a material and triable issue of fact (*see Glick & Dolleck, Inc v Tri-Pac Export Corp*, 22 NY2d 439 [1968]).

Pertinent here, crossing a double yellow line into the opposing lane of traffic, in violation of VTL § 1126[a], constitutes negligence as a matter of law, unless justified by an emergency situation not of the driver's own making (*see Foster v Sanchez*, 17 AD3d 312, 313 [2nd Dept 2005]). In the instant case, it is undisputed that plaintiff crossed the double-yellow line to pass defendants' vehicle, an act that constitutes negligence *per se* (*Id.* at 313). The inquiry, however, cannot end there, as the court must consider whether the moving defendants bear any liability herein precluding summary judgment (*Barnes v Lee*, 158 AD2d 414).

As noted above, plaintiff relates that the subject accident occurred when Kurian unexpectedly and without warning started to drive across the double-yellow lines and brought the armored truck in contact with his vehicle. Such an act, if true, would also constitute negligence *per se* by the moving defendants, absent some justification or exception to the general rule. By way of justification, VTL § 1120 sets forth exceptions to the general rule that New York State drivers must drive upon the right side of the roadway permitting a driver to drive on the left side "[w]hen an obstruction exists making it necessary" to do so (VTL § 1120 [a][3]). It is the view of this court that whether a driver's act of driving on the opposite side of the road is "necessary" should be considered on a case by case basis (*see e.g., Hodnett v Westchester County Department of Public Works and Transportation,* 181 AD3d 655 [2nd Dept 2020][declining to excuse a bus driver's travel across double yellow lines under the circumstances present at the time of incident]). A question of fact emerges in this regard.

Were a jury to find credible plaintiff's account of the incident, to wit, that immediately prior to the contact between the vehicles Kurian also attempted to drive across the roadway's double-yellow lines without legal justification, then liability may also be found against defendants herein precluding summary judgment (*Id.*). Alternatively, were a jury to find that Kurian was in the process of crossing the roadway's double yellow lines to drive around a double parked tractor trailer when the accident occurred, as Kurian relays the facts, then there might be a legal basis to excuse defendants' otherwise negligent act changing the outcome of the case (*see* VTL § 1120[a][3]).

In short, a jury is the proper body to charge with the task of sifting through the alternative factual scenarios present here, as those might tend either to exculpate defendants or provide fodder upon which to analyze issues of comparative negligence between the parties (*see Rose v Da Ecib USA*, 259 AD2d 258, 259 [1st Dept 1999]["[t]he motion court's proper role is merely issue finding, not issue determination"]; *Small v NYCTA*, 225 AD2d 471, 472 [1st Dept 1996]["it was for the jury to resolve the issues of credibility"]).

Accordingly, it is hereby

ORDERED that defendants, Stephin Kurian, IBI Armored Services, Inc. and Iana Leasing Inc.'s, motion for an Order, pursuant to CPLR § 3212, dismissing plaintiff, Reinaldo Tarrats Jr.'s, complaint on the ground that they bear no liability for the accident at issue is **DENIED**; and it is further;

ORDERED that plaintiff shall serve a copy of this Order with Notice of entry within 30 days of entry of this order.

The foregoing constitutes the Decision and Order of the Court.

Dated: October 3, 2024

HON. JOHN A HOWARD-ALGARIN
J.S.C.