Fuentez v City of New York

2024 NY Slip Op 35038(U)

August 21, 2024

Supreme Court, Queens County

Docket Number: Index No. 709749/20

Judge: Kevin J. Kerrigan

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE **KEVIN J. KERRIGAN** Part 10
Justice

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Elsie Fuentez and Eduardo Vasquez,

Plaintiff,

- against -

City of New York, New York City Department of Sanitation and John or Jane Doe,

Defendants.

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Index Number: 709749/20

Motion Date: 8/19/24

Motion Seq. No.: 1&2

The following papers numbered E25-E37, E53-E56, & E62-E63 and E38-E52, E58-E60, & E64-E65 read on this motion by Plaintiff, Eduardo Vasquez, for summary judgment and striking Defendants' affirmative defenses and read on this cross-motion by Defendants for an order permitting them to amend their answer nunc pro tunc, and for summary judgment.

	Seq 1 Papers Numbered
Notice of Motion-Affirmation-Exhibits	E25-37
Affirmation in Opposition-Exhibits	E53-56
Reply	E62-63

	Seq 2 Papers Numbered
Notice of Motion-Affirmation-Exhibits	E38-52
Affirmation in Opposition-Exhibits	E58-60
Reply	E64-65

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

Motion by Plaintiff, Eduardo Vasquez, for summary judgment and striking Defendants' affirmative defenses is denied. Cross-motion

by Defendants for an order permitting them to amend their answer nunc pro tunc, and for summary judgment is granted solely to the extent that the branch of the Defendants' motion to amend their answer to assert the "emergency doctrine" as an affirmative defense is granted. The branch of Defendants' motion for summary judgment is denied.

At the outset, the action must be dismissed as against the New York City Department of Sanitation ("DOS"). DOS is an agency of the City of New York (see NY City Charter Ch. 31). The New York City Charter specifically provides that "all actions and proceedings for recovery of penalties for violation of any law shall be brought in the name of the City of New York and not in that of any agency, except where provided by law" (see NY City Charter §396). Accordingly, the DOS is an improper party and the action must be dismissed as against it.

Plaintiff allegedly sustained injuries stemming from a motor vehicle accident which occurred on Jamaica Avenue at or near its intersection with 182nd Street in Queens County on January 29, 2020. Vasquez alleges he was a passenger in a vehicle operated by Fuentez when the pair were struck in the rear by a DOS sanitation truck owned by the City of New York and operated by David Arginuzoni.

Plaintiffs testified at their depositions that they were stopped in the left lane on Jamaica Avenue waiting for a vehicle in front of them to make a left turn when they were rear ended by Defendants' sanitation truck.

Arginuzoni testified at his deposition that on the date of accident he was operating a DOS garbage truck. He was en-route to dump organic refuse at the collection facility. Initially, Arginuzoni was traversing in the left lane on Jamaica Avenue. He observed that a vehicle two vehicles ahead of his was making a left hand turn. As a result, he slowed down and began to change lanes into the right lane. While his vehicle was about halfway into the right lane, a vehicle came from behind him, switched into the right lane, and sped up. As a result, Arginuzoni began to turn back into the left lane. Within or approximately one second later, he made contact with the rear of Plaintiffs' vehicle.

In order to obtain summary judgment, movant must make a prima facie showing that it is entitled to said relief, by tendering sufficient proof to eliminate any material issues of fact (see Winegrad v. New York Univ. Med. Ctr., 64 N.Y.2d 851 [1985]; Zuckerman v. City of New York, 49 N.Y.2d 557 [1980]).

It is well established that a driver approaching another

vehicle from the rear has a duty to maintain a reasonably safe rate of speed and control over his or her vehicle and to exercise reasonable care to avoid colliding with the other vehicle (see Chepel v Meyers, 306 A.D.2d 235 [2d Dept. 2003]). Moreover, a driver has a duty to maintain a safe distance from the vehicle ahead (see Filippazzo v Santiago, 277 A.D.2d 419 [2d Dept. 2000]).

"A rear-end collision is sufficient to create a prima facie case of liability and imposes a duty of explanation with respect to the operator of the offending vehicle" (see Macauley v Elrac, Inc., 6 A.D.3d 584, 585 [2d Dept. 2004]). This general principle is most often expressed in cases where the lead vehicle was stopped or was in the process of slowing down to stop, and the courts re-phrase this general principle in terms of said specific fact pattern by stating that a rear-end collision with a stopped or stopping vehicle establishes a prima facie case of liability with respect to the driver of the rearmost vehicle, absent a non-negligent explanation for the collision (see Quinones v. Grace Indus., LIC, 219 A.D.3d 765 [2d Dept. 2023]; Harding v. Royal Waste Servs., Inc., 208 A.D.3d 762 [2d Dept. 2022]; Chepel v Meyers, 306 A.D.2d 235 [2d Dept. 2003]; Mohan v Puthumana, 302 A.D.2d 437 [2d Dept. 2003]). A non-negligent explanation may also include "sudden or unavoidable circumstances" (see McLaughlin v Lunn, 137 A.D.3d 757, 757 [2d Dept. 2016]).

Here, it appears to be undisputed that Plaintiffs vehicle was rear-ended by Defendants' sanitation truck. Accordingly, Plaintiffs have met their prima facie burden. However, in opposition, Defendants raise a triable issue of fact. Defendants have raised a question of fact as to whether Arginuzoni was confronted with an emergency situation (see infra). Arginuzoni's testimony that he was cut off by a vehicle behind him while he was switching lanes may represent a non-negligent explanation for rear-ending Plaintiffs' vehicle, raising a question of fact and warranting denial of the underlying motion by Plaintiff for summary judgment.

The Court turns to the Defendants' cross-motion for summary judgment. In support of the cross-motion, Defendants argue that they should be entitled to amend their answer to include the so-called "emergency doctrine" as an affirmative defense. Assuming the motion to amend is granted, Defendants aver they are entitled to summary judgment pursuant to the emergency doctrine because Arginuzoni was confronted with an emergency situation.

Pursuant to CPLR §3025(b), leave to amend the pleadings "shall be freely given..." In the absence of a showing of prejudice, leave to amend the answer to plead the emergency doctrine as an affirmative defense should be granted (see Lanpont v. Savvas Cab

Corp., Inc., 244 A.D.2d 208 [1st Dept 1997]). Plaintiff has not demonstrated that the amendment would result in prejudice (see also Vargas v. Town of Huntington, 206 A.D.3d 1034 [2d Dept. 2022]). Indeed, Defendants have established vis-a-vis a copy of their response to the Preliminary Conference Order that the records provided to Plaintiffs in 2022 demonstrate that Arginuzoni was cut off immediately prior to the collision. Additionally, Arginuzoni testified to the same at his deposition. The timing of the application is irrelevant here, since a motion to amend pursuant to CPLR 3025(b) may be made at any time, including after note of issue is filed, and even on the eve of trial (see Rosse-Glickman v. Beth Isr. Med. Center-Kings Highway Div., 309 A.D.2d 846 [2d Dept. 2003]). Accordingly, the branch of the motion by Defendants to amend their answer pursuant to CPLR §3025(b) to include the "emergency doctrine" as a defense is granted, nunc pro tunc.

Generally, whether an emergency situation existed and whether a driver acted reasonably under the circumstances are questions of fact for a jury to decide (see Aloi v County of Tompkins, 52 A.D.3d 1092 [3d Dept. 2008]; Bello v Transit Auth. of New York City, 12 A.D.3d 58 [2d Dept. 2004]). However, under appropriate circumstances, those issues may be determined by the court as a matter of law (see Ardila v Cox, 88 A.D.3d 829 [2d Dept. 2011]).

"The emergency doctrine recognizes that when an actor is faced with a sudden and unexpected circumstance not of his or her own making, which leaves little or no time for thought, deliberation, or consideration, or causes the actor to be reasonably so disturbed that the actor must make a speedy decision without weighing alternative courses of conduct, the actor may not be held negligent if the actions taken are reasonable and prudent in the emergency context, even if it later appears that the actor made a wrong decision" (Pawlukiewicz v Boisson, 275 A.D.2d 446, 446-447 [2d Dept. 2000]). The standard for determining whether a defendant was negligent for his or her actions taken in the course of an emergency is that of whether his actions were those of a reasonable person under the circumstances (see Ferrer v Harris, 55 N.Y.2d 285 [1982]).

Plaintiffs' Counsel argues that Arginuzoni contributed to the emergency situation and therefore may not benefit from its application, cites to case law regarding the unsafe lane changes, and makes generalizations regarding the DOS truck's inability to make certain movements within certain time frames. Initially, there is no evidence on this record that Arginuzoni failed to properly use his signal when attempting the lane change (see Pearson v. Northstar Limousine, Inc., 123 A.D.3d 991 [2d Dept. 2014]). The Court similarly rejects Counsel's assertions regarding the DOS

truck's inability to make certain movements within certain time frames absent any expert testimony.

The Court does, however, find a question of fact regarding whether Arginuzoni contributed to the emergency situation. The Court emphasizes that the potential applicability of the emergency doctrine is sufficient to raise a question of fact with respect to Plaintiff's motion for summary judgment. However, there remains a question of fact as to whether its applicability absolves Defendants' from liability such that Defendants' are entitled to summary judgment.

Despite Plaintiffs' contentions, this case is similar to, but not directly in line with Mead. Arginuzoni testified that prior to his attempt to change lanes, he slowed his vehicle and looked to make sure the coast was clear. In contrast, the defendant in Mead accelerated approximately 30 feet to switch lanes, was unable to, and crashed into the Plaintiff's vehicle (see Mead v. Marino, 205 A.D.2d 669 [2d Dept. 1994]). While Mead is not entirely on point with this matter, there remains a question of whether Arginuzoni's attempt to change lanes contributed to the emergency by failing to leave sufficient room between his vehicle and Plaintiffs' vehicle. Indeed, it is well-settled that "the emergency doctrine is not typically available to the rear driver in a rear-end collision who is responsible for maintaining a safe distance" (see Jacobellis v. New York State Thruway Auth., 51 A.D.3d 976 [2d Dept. 2008]); Vanderhall v. MTA Bus Co., 160 A.D.3d 542 [1st Dept. 2018]; Johnson v. Phillips, 261 A.D.2d 269 [1st Dept. 1999]). Because summary judgment is such a drastic remedy which should never be granted where there is any doubt as to the existence of a triable issue of fact, the cross-motion must be denied.

Accordingly, the motion by Plaintiff for summary judgment is denied. The cross-motion by Defendants is granted solely to the extent that Defendants are permitted to amend their answer to include the affirmative defense of the emergency doctrine, nunc pro tunc. The branch of the cross-motion by Defendants for summary judgment is denied.

Serve a copy of this order with notice of entry upon all parties without undue delay.

Dated: August 21, 2024

KEVIN J. KERRIGAN, J.S.C.