

Vigeant v Perugini
2024 NY Slip Op 35248(U)
May 23, 2024
Supreme Court, Westchester County
Docket Number: Index No. 66532/2023
Judge: Joan B. Lefkowitz
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SUPREME COURT: STATE OF NEW YORK
IAS PART WESTCHESTER COUNTY
PRESENT: HON. JOAN B. LEFKOWITZ, J.S.C.

To commence the statutory time period for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

-----X
GARY VIGEANT,

Plaintiff,

-against-

ANTHONY L. PERUGINI, UNICORN
CONSTRUCTION ENTERPRISES, INC. and
ACTION STEEL, LLC,

Defendants.
-----X

DECISION & ORDER

Index No: 66532/2023

Motion Sequence No. 1

The following electronically filed papers (NYSCEF Doc Nos. 10-19) were read on the motion by the plaintiff for an order granting partial summary judgment on the issue of defendants' liability and dismissing the affirmative defense asserted by the defendants, Anthony L. Perugini and Unicorn Construction Enterprises, Inc., alleging culpable conduct on the part of the plaintiff.

Motion Sequence No. 1

Notice of Motion-Affirmation in Support-Affidavit in Support-Exhibits (1-3)

Affirmation in Opposition

Reply Affirmation

Upon reading the foregoing papers, the motion is determined as follows:

Plaintiff sues to recover monetary damages for personal injuries allegedly sustained in a motor vehicle accident that occurred on March 7, 2023, on the northbound side of the Hutchinson River Parkway in Mount Vernon, New York. The accident purportedly occurred when the motor vehicle operated by the defendant, Anthony Perugini ("Perugini"), struck the rear of the plaintiff's motor vehicle.

Prior to the completion of discovery, plaintiff moves for, among other things, an order granting partial summary judgment on the issue of defendants' liability. The defendants, Perugini and Unicorn Construction Enterprises, Inc. ("Unicorn"), oppose the motion.

“A plaintiff in a negligence action moving for summary judgment on the issue of liability must establish, prima facie, that the defendant breached a duty owed to the plaintiff and that the defendant’s negligence was a proximate cause of the alleged injuries. To be entitled to partial summary judgment a plaintiff does not bear the burden of establishing the absence of his or her own comparative fault” (*Sapienza v Harrison*, 191 AD3d 1028, 1029 [2d Dept 2021] [internal quotation marks, citations and ellipses omitted]).

“A driver of a vehicle approaching another vehicle from behind is required to maintain a reasonably safe distance and rate of speed under the prevailing conditions to avoid colliding with the other vehicle” (*Ortiz v Hub Truck Rental Corp.*, 82 AD3d 725, 726 [2d Dept 2011] [internal quotation marks omitted]; see Vehicle and Traffic Law § 1129 [a]; see also *Buchanan v Keller*, 169 AD3d 989, 991 [2d Dept 2019]; *Taing v Drewery*, 100 AD3d 740, 741 [2d Dept 2012]). “A rear-end collision with a stopped or stopping vehicle establishes a prima facie case of negligence on the part of the operator of the rear vehicle, thereby requiring that operator to rebut the inference of negligence by providing a nonnegligent explanation for the collision” (*Buchanan*, 169 AD3d at 991). “Drivers have a duty to see what should be seen and to exercise reasonable care under the circumstances to avoid an accident” (*Cajas-Romero v Ward*, 106 AD3d 850, 851 [2d Dept 2013]; see *Balducci v Velasquez*, 92 AD3d 626, 628 [2d Dept 2012]).

Partial Summary Judgment on Liability

As to defendant Perugini, plaintiff’s motion is granted. Plaintiff demonstrated his prima facie entitlement to judgment as a matter of law on the issue of liability against defendant Perugini through submission of his affidavit which demonstrated that his vehicle was struck from behind by the vehicle operated by Perugini, and that Perugini’s negligence proximately caused the plaintiff’s injuries (see *Sapienza*, 191 AD3d at 1029-1030; *Taing*, 100 AD3d at 741). Accordingly, the burden of going forward shifted to defendant Perugini to raise a triable issue of fact (see *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]).

In opposition, Perugini failed to raise a triable issue of fact (see CPLR 3212 [b]). “The defendant[] failed to submit an affidavit from the defendant driver describing h[is] own version of the events surrounding the subject accident so as to rebut the plaintiff’s version” (*Pierre v Demoura*, 148 AD3d 736, 737 [2d Dept 2017]). Moreover, defendant Perugini’s contention that plaintiff’s motion should be denied since depositions have not yet been held is without merit because Perugini “failed to demonstrate that discovery might lead to relevant evidence or that the facts essential to justify opposition to the motion were exclusively within the knowledge and control of the [plaintiff] movant” (*Le Grand v Silberstein*, 123 AD3d 773, 775 [2d Dept 2014] [internal quotation marks and citation omitted]). Moreover, “[t]he mere hope or speculation that evidence sufficient to defeat a motion for summary judgment may be uncovered during the discovery process is

insufficient to deny the motion” (*Leak v Hybrid Cars, Ltd.*, 132 AD3d 958, 959 [2d Dept 2015] [internal quotation marks and citation omitted]).

As to the remaining defendants (*i.e.*, 1. Unicorn and 2. Action Steel, LLC [“Action”]), plaintiff failed to demonstrate his *prima facie* entitlement to judgment as a matter of law on the issue of said defendants’ liability. Plaintiff’s affidavit proffered in support of the motion fails to explain the role these two defendants had with respect to the happening of the subject accident and the manner in which they were negligent. Accordingly, this portion of the plaintiff’s motion is denied without regard to the sufficiency of the opposing papers (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]).

Summary Judgment Dismissing the Affirmative Defense Alleging Culpable Conduct by Plaintiff

“[T]he issue of a plaintiff’s comparative negligence may be decided in the context of a summary judgment motion where[,] [as here][,] the plaintiff moves for summary judgment dismissing a defendant’s affirmative defense alleging comparative negligence and culpable conduct on the part of the plaintiff” (*Sapienza*, 191 AD3d at 1029; *see Poon v Nisanov*, 162 AD3d 804, 808 [2d Dept 2018]). Here, through his affidavit, plaintiff established his *prima facie* entitlement to judgment as a matter of law dismissing Perugini and Unicorn’s affirmative defense alleging culpable conduct on the part of plaintiff by demonstrating that plaintiff was not at fault in the happening of the accident and that the defendant-motor vehicle operator’s negligence was the sole proximate cause of the accident (*see Sapienza*, 191 AD3d at 1030). Accordingly, the burden of going forward shifted to defendants Perugini and Unicorn to raise a triable issue of fact (*see Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]).

In opposition, Perugini and Unicorn failed to raise a triable issue of fact (*see* CPLR 3212 [b]). Accordingly, Perugini and Unicorn’s first affirmative defense alleging culpable conduct on the part of plaintiff is dismissed.

All other arguments raised on the motion and evidence submitted by the parties in connection therewith have been considered by the Court, notwithstanding the specific absence of reference thereto. Based on the foregoing, it is hereby:

ORDERED that the motion is granted to the extent that: (1) plaintiff is awarded partial summary judgment on the issue of liability as against defendant Perugini; and (2) defendants Perugini and Unicorn’s first affirmative defense alleging culpable conduct on the part of plaintiff is dismissed; and it is further

ORDERED that the parties shall appear for a Preliminary Conference on June 17, 2024, at 3:00 p.m. via Microsoft Teams. Appearances are required unless the parties submit

a Preliminary Conference Stipulation by June 13, 2024, which is available at:
https://www.nycourts.gov/LegacyPDFS/courts/9jd/civilCaseMgmt/12_6_PC.pdf.¹

ENTER,

Dated: White Plains, New York
May 23, 2024


HON. JOAN B. LEFKOWITZ, J.S.C.

To:

Counsel of record via NYSCEF

¹ If the parties would like an early settlement conference with the Court, they may request one by emailing CPT-ADRPartWestchester@nycourts.gov and completing the settlement conference form which is available at: https://www.nycourts.gov/LegacyPDFS/courts/9jd/civilCaseMgmt/CPT_ADR_Form.pdf.