

Slater v Mallett
2024 NY Slip Op 35412(U)
May 20, 2024
Supreme Court, Bronx County
Docket Number: Index No. 23418/2019E
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

Index No. 23418/2019E

Motion Calendar No.

Motion Date: November 6,
2023

-----x
JEROME SLATER and SHEERAN FIELDS,

Plaintiff,

-against-

DENZEL LEE MALLET, TRANSCOM LEASING
GROUP and DLM TRUCKING CO.,

Defendants.

-----x
LISA FIELDS,

Plaintiff,

-against-

TRANSCOM LEASING GROUP, DLM TRUCKING
CO., and DENZEL LEE MALLET,

Defendants.

-----x
DLM TRUCKING CO. and DENZEL LEE MALLET,

Third-Party Plaintiff,

-against-

SHEERAN FIELDS and JEROME SLATER,

Third-Party Defendants.

-----x

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 to dismiss the plaintiff's complaint:

<u>Papers</u>	<u>NYSCEF Doc. No(s).</u>
Notice of Motion, Affirmation in Support, Statement of Material Facts, Exhibits Thereto	88-98
Affirmation(s) in Opposition, Counter-Statement of Material Facts, Exhibits Thereto	99-104
Reply Affirmation	105

In this motor-vehicle negligence action, plaintiff Sherran Fields ("Plaintiff"), seeks partial summary judgment on the question of the liability of the defendants, Denzel Lee Mallett d/b/a DLM Trucking Co. ("Mallett") and DLM Trucking Co. ("DLM Trucking", collectively "Defendants"), for a motor vehicle accident that occurred in Albany, New York. Defendants oppose the motion on three grounds asserting that: (1) the "emergency doctrine" applies; (2) the operator of plaintiff's vehicle was comparatively negligent; and (3) plaintiff failed to wear her seatbelt at the time of the accident. For the reasons set forth below, plaintiff's motion is granted, in part, and denied, in part.

Plaintiff's cause of action is for alleged personal injuries sustained on November 25, 2017, at or near southbound exit ramp 24 on Highway I-87 in Albany, when her vehicle came into contact with a vehicle owned and operated, respectively, by defendants, DLM Trucking and Mallett. Upon deposition, plaintiff testified that her vehicle was stopped on the shoulder of the highway with hazard lights on when the DLM Trucking vehicle, driven by Mallett, struck its rear passenger side. Plaintiff added that her brother, co-plaintiff Jerome Slater ("Slater"), was in the driver's seat and plaintiff was in the front passenger seat of her vehicle when the accident occurred. Plaintiff's sister, Lisa Fields,¹ was identified as a rear seated passenger in the vehicle along with Nathan Marshal. Plaintiff testified that she was facing backward talking to Lisa Fields at the moment the incident occurred, and she claimed to have witnessed the impact.

Mallett testified that he was in the process of entering the southbound I-87 at the same time that a tandem tractor-trailer (or double 18-wheeler), traveling to his right in the same direction began to merge left into his lane of travel. Mallett, who claimed to have been driving a box truck at the time, stated that the tandem tractor trailer's movement prompted him to take evasive action to avoid contact between his truck and the tandem's rear trailer. Mallett purportedly steered his truck to the left of the ramp toward plaintiff's

¹ Lisa Fields is the co-plaintiff in the action consolidated with the instant matter.

vehicle, which was stopped just left of the solid white line between the ramp's moving traffic lane and its shoulder, pointed in the same direction. Mallett acknowledged that his truck came into contact with plaintiff's vehicle claiming that his highest rate of travel prior to the incident was 20 miles per hour.

On a motion for summary judgment, the moving party must present sufficient evidence in admissible form to show the absence of any material issue of fact and the right to entitlement to judgment as a matter of law (*Alvarez v Prospect Hospital*, 68 NY2d 320, 326 [1986]; *Winegrad v New York University Medical Center*, 64 NY2d 851 [1985]). If the moving party has established sufficient proof to warrant summary judgment, the burden shifts to the party opposing the motion to produce evidentiary proof in admissible form sufficient to establish the existence of material facts which require a trial (*Zuckerman v City of New York*, 49 NY2d 557 [1980]). A mere conclusory assertion devoid of evidentiary facts is insufficient to defeat a well-supported summary judgment motion as is reliance upon surmise, conjecture, or speculation (*Grullon v City of New York*, 297 AD2d 261 [1st Dept 2002]). If there are no material, triable issues of fact, summary judgment must be granted (*Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395 [1957]). Issue finding, not issue determination, is the key to summary judgment (*Rose v Da Ecib USA*, 259 AD2d 258 [1st Dept 1999]).

Under the circumstances present here, summary judgment on the question of liability must be denied. Significantly, the applicability of the emergency doctrine generally presents a question of fact for the jury (*Nelson v Bestway Coash Express*, 26 AD3d 488 [1st Dept 2007]). The record before the Court presents no occasion to depart from that precept. Indeed, in light of Mallett's assertions that the contact between his box truck and the plaintiff's vehicle was an unavoidable result of his having to evade the second trailer of the tractor trailer tandem that merged in front of him, the veracity of such a claim falls squarely within the province of the jury (*see Markowitz v Lewis*, 40 AD3d 371, 372 [1st Dept 2007])[reversing decision granting partial summary judgment on liability upon issues of fact as to applicability of emergency doctrine]; *Abreu Rabassa v Caldas*, 306 AD2d 137 [1st Dept 2003][affirming denial of summary judgment under the emergency doctrine to consider whether defendant's actions in moving his vehicle into the left lane were reasonable]). Hence, plaintiff's demand for partial summary judgment must be denied.

Plaintiff has also moved to dismiss defendants' affirmative defenses asserting comparative negligence [First Affirmative Defense] and failure to wear seatbelts [Fifth Affirmative Defense]. A party may move for judgment dismissing one or more defenses,

on the ground that the defense has no merit (CPLR § 3211[b]). In considering a motion to dismiss an affirmative defense, the “court must liberally construe the pleadings in favor of the party asserting the defense and give that party the benefit of every reasonable inference” (*Strapoli v Agrelopo, LLC*, 136 AD3d 791, 792 [2nd Dept 2016], citing, *Warwick v Cruz*, 270 AD2d 255 [2nd Dept 2000]). If there is any doubt as to the availability of a defense, it should not be dismissed (*Strapoli, supra*, at 792). Conversely, a defense that consists only of “conclusions of law without supporting facts” is subject to dismissal (*Id.*, citing, *Fireman’s Fund Ins Co v Farrell*, 57 AD3d 721, 723 [2nd Dept 2008]).

Applying the aforementioned legal precedent here, defendants’ First Affirmative Defense asserting comparative negligence must be dismissed. Affording defendants the benefit of every favorable inference, there is no basis upon which to find plaintiffs comparatively liable for the November 25, 2017, accident. To be sure, it is undisputed that plaintiff and his companions were stationary on the shoulder of the roadway when the accident occurred. Understood this way, notwithstanding that the issue of proximate cause is generally for the jury to determine, “liability may not be imposed upon a party who merely furnishes the condition or occasion for the occurrence of [an] event but is not one of its causes” (see *Iqbal v Thai*, 83 AD3d 897, 898 [2nd Dept 2011])[plaintiff granted summary judgment on liability notwithstanding being on the shoulder of the road in violation of VTL § 1202[a][1][j]]. Here, whether or not brought about by an emergent circumstance, this Court finds that the presence of plaintiff’s stationary vehicle on the side of the road merely furnished the condition or occasion for the occurrence complained of, but was not one of its causes (*Id.*).

Conversely, the contradictory testimony between plaintiff and Mallett concerning whether plaintiff was either seat-belted inside or standing outside of her stationary vehicle immediately prior to the accident precludes dismissal of defendants’ Fifth Affirmative Defense for failure to wear a seatbelt. Insofar as plaintiff may have been present in her vehicle at the time of the accident, the defense may be available to defendants (*Strapoli, supra*, at 792; see also VTL § 1229-c).

Accordingly, it is hereby:

ORDERED that plaintiff, Sheeran Field’s, motion for summary judgment as to the liability of defendants, DLM Trucking Co. and Denzel Lee Mallett, is **DENIED**; it is further,

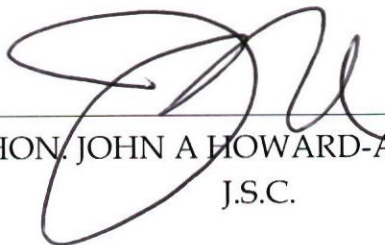
ORDERED that plaintiff, Sheeran Field's, motion to dismiss defendants, DLM Trucking Co. and Denzel Lee Mallett's First Affirmative Defense asserting comparative negligence is **GRANTED**; it is further

ORDERED that plaintiff, Sheeran Field's, motion to dismiss defendants, DLM Trucking Co. and Denzel Lee Mallett's Fifth Affirmative Defense for failure to wear a seatbelt is **DENIED**, and it is further

ORDERED that plaintiff, Sheeran Field's, shall serve a copy of this Order with Notice of Entry within thirty (30) days of entry of this Order.

The foregoing constitutes the Decision and Order of the Court.

Dated: May 20, 2024



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