

Dougnon v Port Auth. of N.Y. & N.J.

2018 NY Slip Op 31068(U)

April 24, 2018

Supreme Court, Bronx County

Docket Number: 24254/14E

Judge: Robert T. Johnson

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF THE BRONX

-----X
SAMUEL DOUGNON,

Plaintiff,

Index No. 24254/14E

- against -

DECISION/ ORDER

THE PORT AUTHORITY OF NEW YORK AND
NEW JERSEY, PORT AUTHORITY POLICE
DEPARTMENT AND DAVID LIM,

Defendants.

-----X

The following papers, numbered 1-4 were considered on the motion for partial summary judgment:

PAPERS

NUMBERED

Notice of Motion and annexed Exhibits and Affidavits.....	1
Answering Affidavits and Exhibits.....	2
Reply Affirmation.....	3
Letter by Plaintiff's counsel dated April 17, 2018.....	4

Upon the foregoing papers, it is ordered that the motion for partial summary judgment is granted.

Upon, receipt of the correspondence by plaintiff's counsel dated April 17, 2018, the court hereby sua sponte recalls and vacates the decision and order dated April 6, 2018 and substitutes this decision therefor to correct an error in paragraph 6, the last sentence which reads "Therefore, this Court finds that defendants made a prima facie showing the plaintiff was negligent as a matter of law by establishing that the accident occurred when the defendant drove his vehicle across a double yellow line in violation of Vehicle and Traffic Law §1126(a) . . ." Paragraph 6, the last sentence shall now read "Therefore, this Court finds that plaintiff made a prima facie showing that defendants were negligent as a matter of law by establishing that the accident occurred when defendant Lim drove his vehicle across a double yellow line in violation of Vehicle and Traffic

Law §1126(a) . . . ”

Upon the foregoing papers, plaintiff, Samuel Dougnon, seeks summary judgment in his favor on the issue of liability against defendants, The Port Authority of New York and New Jersey, Port Authority Police Department, and David Lim (hereinafter collectively referred to as defendants). An affirmation in opposition was filed by defendants.

In support of his motion, plaintiff submits the pleadings, the verified bill of particulars, a copy of the police accident report, plaintiff’s EBT transcript, and the EBT transcript of defendant David Lim. This action arises from a two-vehicle accident that occurred on or about February 17, 2014, on the Runway Drive, 100 feet west of Guard Post #1 in LaGuardia Airport, in the County of Queens, State of New York. Plaintiff, alleges that at the time of the collision, he was the operator of a 2011 Air Fueler motor vehicle that was struck by a vehicle owned by defendant Port Authority of New York and New Jersey and operated by defendant David Lim in his usual course of employment. Plaintiff alleges that he suffered serious personal injury when defendants’ vehicle crossed over two solid yellow lines and into plaintiff’s lane of travel and struck the front of plaintiff’s vehicle. Plaintiff, in his EBT testimony, claims that prior to the impact his vehicle headlights were on and he was traveling at 10-15 miles per hour. Plaintiff denies that he was eating, talking on his cell phone, or otherwise distracted while driving. He states that when he saw defendant’s police SUV, he began to slow, anticipating that the officer may want to check his identification. As defendants’ vehicle approached, plaintiff alleges that it began to pick up speed and that just before impact, plaintiff saw defendant Lim had his head bent down, his eyes were closed, and his hands were not on the steering wheel. Plaintiff further alleges that there was nothing he could have done to avoid the accident, such as honking the horn or swerving, because

he was driving a heavy truck and he only had a second before impact.

Plaintiff submits defendant Lim's EBT testimony as evidence. Defendant Lim testified that he began work that day at 5:30 a.m. and was scheduled end at 2:00 p.m. At the time of the accident, approximately 6:00 p.m., defendant Lim stated that he was working four-hours overtime. Defendant Lim stated that he did not see plaintiff's vehicle prior to the accident, did not know if he was awake, and had no recollection of where he was looking for five-seconds prior to the collision. Defendant Lim was not able to describe the collision, stating the he did not recall the impact. He further stated that he only knew he was in a collision when someone asked him if he was okay.

In opposition, defendants submit the affidavit of Port Authority Police Officer Edmund Hum, who was the responding officer to the accident, and a purported photo of the steering wheel of plaintiff's vehicle. Defendants allege that the photograph shows that the horn on plaintiff's vehicle was missing or disabled. Additionally, defendants refer to plaintiff's testimony that he did not know where the horn was located in the vehicle he was operating. Defendants allege that summary judgment must be denied because there are questions of fact as to plaintiff's contributory negligence by operating a motor vehicle without an operational horn in violation of the Vehicle and Traffic Law.

DISCUSSION

Summary judgment is a drastic remedy that deprives a litigant of his or her day in court. Therefore, the party opposing a motion for summary judgment is entitled to all favorable inferences that can be drawn from the evidence submitted and the papers will be scrutinized carefully in a light most favorable to non-moving party (*Assaf v. Ropog Cab Corp.*, 153 A.D.2d 520 [1st Dept.1989]). The proponent of a summary judgment motion must make a prima facie

showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issue of fact (*see Alvarez v Prospect Hospital*, 68 NY2d 320, 324 [1986]; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851 [1985]). Once the movant meets his initial burden, the burden shifts to the opponent, who must then produce sufficient evidence, in admissible form, to establish the existence of a triable issue of fact (*Zuckerman v. City of New York*, 49 NY2d 557 [1980]).

In the case at bar, plaintiff establishes a prima facie case of negligence. Vehicle and Traffic Law § 1126(a) states:

(a) When official markings are in place indicating those portions of any highway where overtaking and passing or driving to the left of such markings would be especially hazardous, no driver of a vehicle proceeding along such highway shall at any time drive on the left side of such markings.

Plaintiff's EBT testimony, which is not disputed with any admissible evidence, is that just prior to impact, defendant Lim's vehicle crossed the solid yellow line and into plaintiff's lane of travel before striking his vehicle. Defendant Lim's testimony does not dispute plaintiff's version of the causation of the accident. Rather, defendant Lim testified at his EBT that he does not remember the collision, nor does he remember if he was asleep just prior to the accident. Therefore, this Court finds that plaintiff made a prima facie showing that the defendants were negligent as a matter of law by establishing that the accident occurred when defendant Lim drove his vehicle across a double yellow line in violation of Vehicle and Traffic Law § 1126 (a) (see Vehicle and Traffic Law § 1126[a]; *Alamo v. McDaniel*, 44 AD3d 149 [1st Dept 2007]).

The Court finds that defendants' assertion of plaintiff's comparative fault by allegedly

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NYSCEF DOC. NO. 30

RECEIVED NYSCEF: 05/08/2018

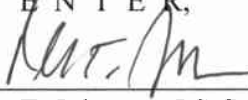
driving a vehicle with an inoperable horn to be without sufficient evidentiary support.¹ Since plaintiff was in his proper lane, he was entitled to anticipate that defendant would obey the traffic laws which required him to remain in his own lane of travel (see, *Berner v Koegel*, 31 A.D.3d 591 [2nd Dept. 2006]). A "driver is not required to anticipate that an automobile going in the opposite direction will cross over into oncoming traffic" (*Eichenwald v. Chaudhry*, 17 A.D.3d 403, [2nd Dept. 2005]). *In arguendo*, had plaintiff's horn been non-operational as defendants suggest, plaintiff testified that the accident happened so quickly for him to react. Defendant submits no admissible evidence refuting plaintiff's testimony. Defendants' claim that plaintiff could have reacted prior to the collision is unsupported by the evidence and is purely speculative in nature. Defendants have not offered sufficient evidence to rebut plaintiff's prima facie showing of entitlement to summary judgment.

Therefore, it is hereby

ORDERED that plaintiff's motion for summary judgment on the issue of liability is granted in its entirety.

This constitutes the decision and order of the Court.

Dated: April 24, 2018

ENTER,

Robert T. Johnson, J.S.C.

¹ It should be noted that the Court of Appeals has recently held that a plaintiff does not have to establish prima facie case of defendant's liability as well as the absence of his own comparative negligence to be entitled to partial summary judgment (see *Rodriguez v. City of New York*, 2018 NY Slip Op 02287, [Ct App 2018]).