Allen v Garon
2019 NY Slip Op 34677(U)
December 19, 2019
Supreme Court, Westchester County
Docket Number: Index No. 50305/2019
Judge: Sam D. Walker
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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.

SUPREME COURT OF THE STATE OF NEW YORK
WESTCHESTER COUNTY
P R E S E N T: HON. SAM D. WALKER, J.S.C.

--x

DARRIN ALLEN,

Plaintiff,

-against-

CRAIG S. GARON,

Defendant.

--x

DECISION & ORDER
Index No.50305/2019
Seq. 1

The following papers were read on a motion for summary judgment pursuant to CPLR 3212, on the issue of liability:

Notice of Motion/Affirmation/Exhibits A-D 1-6

Upon the foregoing papers it is ordered that the motion is GRANTED.

FACTUAL AND PROCEDURAL BACKGROUND

The plaintiff, Darrin Allen, commenced this action to recover damages for alleged serious injuries she sustained in a motor vehicle accident that occurred on September 25, 2018, when the vehicle, in which he was a passenger , operated by non-party, Will Robinson, was struck in the rear, by a vehicle owned and operated by the defendant, Craig S. Garon.

The plaintiff now files the instant motion seeking summary judgment pursuant to CPLR 3212 on the issue of liability against the defendant. The plaintiff alleges that the vehicle in which he was a passenger was stopped at a red light on Tanglewylde Avenue,

at or near the intersection of White Plains Road, in Bronxville, New York..

In support of her motion, the plaintiff relies upon his attorney's affirmation, his affidavit, a copy of the police report (uncertified), and copies of the pleadings. The defendant, by his attorney, opposes the motion, arguing that it is premature, fails to meet the initial burden and is without merit. The attorney also argues that there is a question of fact with a discrepancy between the plaintiff's affidavit, which states that vehicle he was in was on Tanglewylde Avenue and the defendant's affidavit, which states he was on White Plains Road. The attorney also states that the plaintiff's affidavit has the incorrect caption and does not list the defendant in the case.

The defendant submitted an affidavit stating that on the day of the accident, there were torrential downpours of rain and an accumulation of rain on the roadway; he was traveling approximately 3-5 miles per hour as he was approaching the traffic light with four cars in front of his vehicle; and he applied the breaks 40-50 feet from the back of the car in front of his vehicle, which was the vehicle in which the plaintiff was a passenger, his foot went to the floor and the brakes did not engage.

Discussion

"[T]he 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 demonstrate the absence of any material issues of fact" (*see Alvarez v Prospect Hosp*., 68 NY2d 320, 324 [1986]). Only when such a showing has been made must the opposing party set forth evidentiary proof establishing the existence of a material issue of fact, *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]).

"A rear-end collision with a stopped or stopping vehicle creates a prima facie case

of negligence with respect to the operator of the moving vehicle, and imposes a duty on that operator to rebut the inference of negligence by providing a non[-]negligent explanation for the collision" (*see Sokolowska v Song*, 123 AD3d 1004 [2d Dept 2014]); *see also Agramonte v City of New York*, 288 AD2d 75, 76 [2001]; *Johnson v Phillips*, 261 AD2d 269, 271 [1999]; *Danza v Longieliere*, 256 AD2d 434, 435 [1998], lv dismissed 93 NY2d 957 [1999]).

"A nonnegligent explanation may include evidence of a mechanical failure, a sudden, unexplained stop of the vehicle ahead, an unavoidable skidding on wet pavement, or any other reasonable cause" (*see Binkowitz v Kolb*, 135 AD3d 884 [2d Dept 2016]). "In instances where the operator of the moving vehicle alleges that the rear-end collision was caused by brake failure, the operator must present evidence demonstrating that the brake problem was unanticipated, and that reasonable care had been exercised to keep the brakes in good working order" (*see Holllis v Kellog*, 306 AD2d 244 [2d Dept 2003]).

Here, the plaintiff established a prima facie case of negligence by his affidavit, that the defendant's vehicle struck the rear of the vehicle in which he was a passenger, while that vehicle was stopped at a red light. The defendant did not deny hitting the vehicle in which the plaintiff was a passenger and in fact admitted such in his affidavit.

Further, although, the defendant asserts that the collision was due to brake failure, he failed to submit admissible evidence to rebut the inference of negligence. The defendant did not submit any evidence to show that he exercised reasonable care to keep the brakes in good working order. Furthermore, the need to conduct discovery does not warrant denial of the motion, since the plaintiff and the defendant, who submitted affidavits,

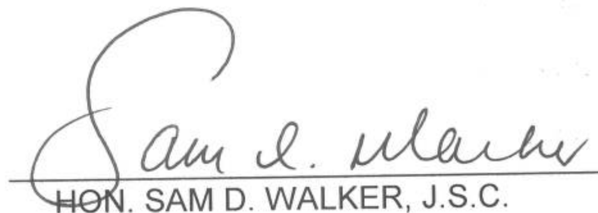
both have personal knowledge of the relevant facts of the accident (*see Niyazov v Bradford*, 13 AD3d 501 [2d Dept 2004]). The defendant failed to demonstrate that discovery would lead to relevant evidence (*Rodriguez vFarrell*, 115 AD3d 929, 931 [2d Dept 2014]). The fact that the plaintiff states that he was on Tanglewylde Avenue and the defendant states that he was on White Plains Road, does not create an issue of fact because the defendant does not deny that the accident occurred or how it occurred.

In addition, "[t]he right of an innocent passenger to an award of summary judgment on the issue of liability against one driver is not barred or restricted by potential issues of comparative fault as between that driver and the driver of another vehicle involved in the accident" (*Id.* @ 930).

Therefore, based on all the foregoing, the motion is GRANTED. The parties are directed to appear before the Settlement Conference Part on January 28, 2020 at 9:15 a.m. in courtroom 1600.

The foregoing shall constitute the Decision and Order of the Court.

Dated: White Plains, New York
December 19, 2019



HON. SAM D. WALKER, J.S.C.