White v Grimmig
2020 NY Slip Op 30167(U)
January 23, 2020
Supreme Court, New York County
Docket Number: 160922/2016
Judge: Adam Silvera

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ADAM SILVERA **PART** IAS MOTION 22

Justice

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HASHIM WHITE,

Plaintiff,

- v -

EUGENE GRIMMIG, JOHN BROWN,

Defendant.

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INDEX NO. 160922/2016

MOTION DATE 08/30/2019

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

JOHN BROWN

Plaintiff,

-against-

JESSE CERAMI

Defendant.

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Third-Party
Index No. 595053/2017

The following e-filed documents, listed by NYSCEF document number (Motion 002) 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63

were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER.

Upon the foregoing documents, it is ORDERED that third-party defendant Jesse Cerami's motion for summary judgment, pursuant to CPLR 3212, is granted on the issue of liability in favor of said third-party defendant. The motion contends that on February 26, 2014, third-party defendant's vehicle was struck in the rear by a vehicle operated by defendant/third-party plaintiff John E. Brown.

"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 issues of fact from the case" (*Winegrad v New York University Medical Center*, 64 NY2d 851, 853 [1985]). Once such entitlement has been demonstrated by the moving party, the

burden shifts to the party opposing the motion to "demonstrate by admissible evidence the existence of a factual issue requiring a trial of the action or tender an acceptable excuse for his failure … to do [so]" (*Zuckerman v City of New York*, 49 NY2d 557, 560 [1980]). "A rear-end collision with a stopped vehicle, or a vehicle slowing down, establishes a prima facie case of negligence on the part of the operator of the rear-ending vehicle, which may be rebutted if that driver can provide a non-negligent explanation for the accident" (*Baez v MM Truck and Body Repair, Inc.*, 151 AD3d 473, 476 [1st Dep't 2017]).

Pursuant to Vehicle and Traffic Law § 1129(a) "[t]he driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon and the condition of the highway." Drivers have "a duty to be aware of traffic conditions including vehicle stoppages" (*Johnson v Phillips*, 261 AD2d 269, 271 [1st Dept 1999]). Drivers must maintain a safe distance between their vehicle and the vehicle in front of them (*Datillo v Best Transp. Inc.*, 79 AD3d 432 [1st Dept 2010]).

In support of his motion, third-party defendant Cerami submits his own deposition, the deposition of defendant/third-party plaintiff Brown, the deposition of plaintiff Nael Abukwaik, and the deposition of plaintiff Hashim White (Mot, Exh F-I). Cerami testified that he was transporting passenger plaintiffs Abukwaik and White and proceeding slowly with caution through smoky conditions into the right lane with his hazards on (Mot, Exh F at 17 and 31). Plaintiff White testified that the Cerami vehicle was struck in the rear after plaintiff suggested to Cerami that he get into the right lane (Mot, Exh I at 50, 18-22). Thus, third-party defendant has made out a prima facie case of negligence, and the burden shifts to defendant/third-party plaintiff to raise a triable issue of fact or provide a non-negligent explanation as to how the accident occurred (*See Winegrad v New York University Medical Center*, 64 NY2d 851, 853 [1985]; *see*

also Zuckerman v City of New York, 49 NY2d 557, 560 (1980); *Pane*, 144 AD3d 567; *Al-Nashash*, 115 AD3d 534).

Defendant/third-party plaintiff's opposition claim that defendant Brown has provided a non-negligent explanation for the accident. Defendant claims that due to the smoke present at the time of the accident, defendant's view was completely blocked which constituted an emergency situation. The Court does not find the existence of the bus and road conditions to constitute a non-negligent explanation for the accident.

Under the emergency doctrine a triable issue of fact may exist as to whether the conduct of a defendant may be excused due to an emergency situation (*Caristo v Sanzone*, 96 NY2d 172, 174 [2001] quoting *Rivera v New York City Tr. Auth.*, 77 NY2d 322, 327 [1991] [finding that "the common-law emergency doctrine which 'recognizes that when an actor is faced with a sudden and unexpected circumstance 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 negligent if the actions taken are reasonable and prudent in the emergency context,' provided the actor has not created the emergency"]).

Here, defendant's assertion that smoke present on the road at the time of the accident constituted an emergency situation is unavailing. Defendant Brown explicitly testified that he saw "two little red lights" before he struck Cerami's vehicle (Mot, Exh G at 23-28). Defendant admitted that he saw the tail lights of the vehicle in front of him when he was traveling in a hazardous condition. Defendant should have known that given the smoky condition of the road, that the vehicle in front of his may suddenly stop or slow down. Defendant should have maintained a reasonable distance between his vehicle and the "two little red lights" in front of

him. Given defendant's admission that he saw the brake lights of the vehicle in front of his vehicle, the Court finds defendant's explanation that smoke created an emergency situation to be insufficient to defeat the present motion for summary judgment. Thus, defendant has failed to raise an issue of fact or provide a non-negligent explanation for the accident at issue. Third-party defendant Cerami's motion for summary judgment on the issue of liability as against defendant is granted.

Accordingly, it is

ORDERED that the motion of Jesse Cerami on the issue of liability against John Brown, for an order that third-party defendant Jesse Cerami bears no liability for the alleged occurrence is granted; and it is further

ORDERED that the complaint is dismissed in its entirety against third-party defendant Jesse Cerami, with costs and disbursement to said defendant as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of said third-party defendant;

ORDERED that the action is severed and continued against the remaining defendant; and it is further

ORDERED that the caption be amended to reflect the dismissal and that all future papers filed with the court bear the amended caption read as follows:

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HASIM WHITE,
Plaintiffs,
-against- Index No. 160922/2016

EUGENE P. GRIMMING and JOHN BROWN
Defendant
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and it is further;

ORDERED that within 30 days of entry, counsel for third-party defendant Jesse Cerami shall serve a copy of this decision/order upon all parties with notice of entry.

This constitutes the Decision/Order of the Court.

1/23/2020
DATE

ADAM SILVERA, J.S.C.

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION	
	X	GRANTED		DENIED		GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE