

Smedes v Rydex Frgt. Sys., Inc.

2020 NY Slip Op 35370(U)

December 18, 2020

Supreme Court, Dutchess County

Docket Number: Index No. 2020-52702

Judge: Peter M. Forman

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

CONNOR T. SMEDES,

Plaintiff,

- against -

DECISION AND ORDER

Index No.: 2020-52702

RYDEX FREIGHT SYSTEMS, INC., NEWPORT
LEASING, LIMITED, and JIM GEORGE,

Defendants.

FORMAN, J., Acting Supreme Court Justice

The following papers were read and considered in deciding the plaintiff's motion:

NYSCEF Docket Numbers 13 - 27

This is a personal injury action arising out of a motor vehicle collision that occurred on March 4, 2020, at approximately 8:00 p.m., while the plaintiff was operating his vehicle in a southbound lane of the Taconic State Parkway in the Town of Pleasant Valley, County of Dutchess, State of New York. The verified complaint alleges that defendant Jim George negligently operated a motor vehicle owned by defendant Newport Leasing, Limited ("Newport Leasing") and leased by defendant Rydex Freight Systems, Inc. ("Rydex") in that he drove said vehicle northbound in the southbound lanes of the Taconic State Parkway, causing it to collide with the vehicle operated by the plaintiff. The plaintiff alleges that he suffered permanent bodily injury, mental anguish and impairment as a result of the collision.

Following joinder of issue, the plaintiff moved for an order, pursuant to CPLR §3212, for partial summary judgment on the issue of liability and, pursuant to CPLR §3211, for dismissal of

the affirmative defense of culpable conduct. The plaintiff submitted an affidavit in support of his motion for summary judgment. In the affidavit, the plaintiff attests that on March 4, 2020 he:

... was driving southbound on the southbound roadway of the Taconic Parkway, when the defendant's vehicle came at me northbound on the southbound roadway. It happened in the dark, at approximately 8:11 p.m. As I came through a bend in the road, headlights suddenly appeared directly in front of me where there should have been none because the southbound Taconic and the northbound Taconic are two separate, completely divided, paved roadways. It was only an instant from the appearance of the headlights until impact ... I was traveling below the 55-mph speed limit at all times, including the moment the headlights appeared. My eyes were on the road at all times, including the moment the headlights appeared [see Affidavit of Connor Smedes, NYSCEF Docket No. 15, ¶2].

No affidavit from defendant George was submitted in opposition to the motion. The defendants relied on an affirmation of counsel¹ and memorandum of law to argue that: (1) there are triable issues of material fact as to the plaintiff's comparative fault and; (2) the motion should be denied as premature because no discovery has been conducted. For the reasons set forth herein, the plaintiff's motion is granted in part and denied in part.

DISCUSSION

Because summary judgment "deprives the litigant of its day in court it is considered a drastic remedy which should only be employed when there is no doubt as to the absence of triable issues" [*Andre v. Pomeroy*, 35 NY2d 361, 364 (1974)]. "But when there is no genuine issue to be resolved at trial, the case should be summarily decided" [*id.*]. Although negligence cases do not usually lend themselves to summary judgment [*Ugarriza v Schmieder*, 46 NY2d 471, 474 (1979)],

¹ In an affirmation in opposition, counsel for the defendants references an action commenced by Catherine Torrisi against the defendants and Connor Smedes, the plaintiff in this action [*Torrisi v. Rydex Freight Systems, et. al.*, Dutchess County Index Number 2020-5293] (hereinafter "the Torrisi complaint"). Catherine Torrisi was a passenger in plaintiff Connor Smedes' vehicle at the time of the accident in this matter. In the Torrisi complaint (which was verified by counsel and not Ms. Torrisi), Ms. Torrisi alleged that Connor Smedes "... failed to appreciate the danger presented and to take the appropriate evasive action" [see NYSCEF Docket No. 23, ¶12]. The defendants argue in their opposition that this allegation creates a triable issue of fact as to Mr. Smedes' comparative fault.

negligence cases are not immune from summary judgment, and the courts should not harbor an unfounded reluctance to employ the remedy of summary judgment when there are no triable issues of fact [*Andre, supra* at 364].

“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 demonstrate the absence of any material issue of fact” [*Alvarez v Prospect Hospital*, 68 NY2d 320, 324 (1986)]. “Once this showing has been made ... the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action” [*Alvarez, supra*, at 324]. “Mere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient” to establish a triable issue of fact [*Zuckerman v. City of New York*, 49 NY2d 557, 562 (1980)].

A violation of the Vehicle and Traffic Law constitutes negligence as a matter of law [*Simon v. Rent-A-Center East, Inc.*, 180 AD3d 1100 (2d Dept. 2020); *Vainer v. DiSalvo*, 79 AD3d 1023 (2d Dept. 2010)]. Here, the plaintiff’s affidavit established, *prima facie*, that defendant George was negligent in driving on the wrong side of a divided highway and striking the plaintiff’s vehicle [see VTL §1130(1)]. In opposition, the affirmation of counsel and the allegations in the Torrasi complaint failed to raise a triable issue of fact on the issue of liability. “To the extent that the defendants suggest the possibility that the accident might have been avoided, the assertion is completely speculative and is inadequate to withstand summary judgment” [*Socet v. Levy*, 90 AD3d 1030, 1021 (2d Dept. 2011); see also *Barbaruolo v. Difede*, 73 AD3d 957 (2d Dept. 2010)].

Furthermore, contrary to defendant George’s argument, a plaintiff is no longer required to show freedom from comparative fault in order to establish *prima facie* entitlement to judgment as

a matter of law on the issue of liability [*see Rodriguez v. City of New York*, 31 NY3d 312 (2018); *Simon, supra* at 1101]. Finally, defendant George's contention that summary judgment should be denied as premature due to outstanding discovery is without merit. He failed to demonstrate that discovery might lead to relevant evidence or that facts essential to justify opposition to the motion were exclusively within the knowledge and control of the plaintiff [*Pierre v. Demoura*, 148 AD3d 736, 737 (2d Dept. 2017); *Le Grand v. Silberstein*, 123 AD3d 773, 774 (2d Dept. 2014); CPLR 3212(f)]. Here, defendant George failed to satisfy his burden of demonstrating that the plaintiff's motion is premature since "[t]he mere hope or speculation that evidence sufficient to defeat the motion might be uncovered during discovery is an insufficient basis for denying the motion" [*Skura v. Wojtowski*, 165 AD3d 1196, 1200 (2d Dept. 2018) (citations omitted); *Bentick v. Gatchalian*, 147 AD3d 890, 892 (2d Dept. 2017) (citations omitted)].

Accordingly, the plaintiff's motion for summary judgment on liability is granted as against defendant George. The plaintiff has failed, however, to establish his *prima facie* entitlement to judgment as a matter of law against defendants Rydex and Newport Leasing. The plaintiff argues that he is entitled to summary judgment against defendant Rydex on the basis of respondeat superior. However, the plaintiff failed to submit competent evidence to establish that defendant George was employed by Rydex at the time of the accident and that defendant George was acting within the scope of his employment or traveling for purposes necessary or incidental to his employment at the time of the accident [*see Kelly v. Starr*, 181 AD3d 799, 801 (2d Dept. 2020); *Alkhabbaz v. Best*, 176 AD3d 661, 662 (2d Dept. 2019)].

The plaintiff's submissions have also failed to eliminate all triable issues of fact as to defendant Newport Leasing on the issue of liability. Pursuant to VTL §388(1), the owner of a motor vehicle is liable for the negligence of one who operates the vehicle with the owner's express

or implied consent [*Sargeant v. Village Bindery, Inc.*, 296 AD2d 395 (2d Dept. 2002)]. The plaintiff has provided competent evidence that defendant Newport Leasing is the owner of the vehicle that defendant George was driving when he struck the plaintiff [see Certified State Police Accident Report, NYSCEF Docket No. 18]. However, federal law pre-empts VTL §388(1) and exempts commercial lessors of motor vehicles from vicarious liability [see *Piano Exchange v. Weber*, 168 AD3d 1017, 1018 (2d Dept. 2019); 49 USC §30106; see also *Green v. Toyota Motor CreditCorp.*, 605 FSupp2d 430 (EDNY 2009)]. In light of the apparent exemption from liability under federal law, the plaintiff has failed to establish its *prima facie* entitlement to judgment as a matter of law against defendant Newport Leasing.

Because the plaintiff has failed to make the requisite *prima facie* showing as to defendants Rydex and Newport Leasing, his motion for summary judgment on the issue of liability is denied as to those defendants, regardless of the sufficiency of the opposing papers [*Winegrad v. New York University Medical Center*, 64 NY2d 851 (1985)].

Finally, the plaintiff's motion to dismiss the affirmative defense of culpable conduct is granted against all defendants. The plaintiff's affidavit established, *prima facie*, that defendant George was negligent in driving on the wrong side of a divided highway and striking the plaintiff's vehicle, and that the plaintiff was free from fault in the happening of the collision. As discussed *supra*, the defendants failed to raise a triable issue of fact in opposition.

Based upon the foregoing, it is hereby

ORDERED that Plaintiff's motion for partial summary judgment on the issue of liability is granted as against defendant Jim George; and it is further

ORDERED that the plaintiff's motion for partial summary judgment on the issue of liability is denied as against defendants Rydex Freight Systems, Inc. and Newport Leasing, Limited; and it is further

ORDERED that the plaintiff's motion dismissing the defendants' affirmative defense of culpable conduct is granted.

The foregoing constitutes the Decision and Order of the Court.

Dated: December 18, 2020
Poughkeepsie, New York



Hon. Peter M. Forman, AJSC

To: Counsel of Record via NYSCEF