

Redd v Torelli

2019 NY Slip Op 35086(U)

October 3, 2019

Supreme Court, Queens County

Docket Number: Index No. 704287/2019

Judge: Robert J. McDonald

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This opinion is uncorrected and not selected for official publication.

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK
CIVIL TERM - IAS PART 34 - QUEENS COUNTY
25-10 COURT SQUARE, LONG ISLAND CITY, N.Y. 11101

P R E S E N T : HON. ROBERT J. MCDONALD
Justice

- - - - - x

Anthony Redd,
Plaintiff,
- against -

Index No.: 704287/2019
Motion Date: 9/26/18
Motion No.: 36
Motion Seq.: 1

David Torelli and Area Storage and
Transfers Inc.,

Defendants.

- - - - - x

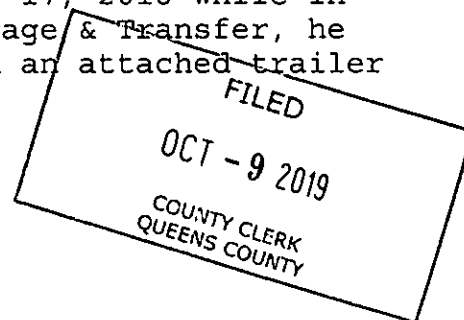
The following electronically filed documents read on this motion
by defendants for an Order granting summary judgment
pursuant to CPLR § 3212 in favor of defendants and dismissing
plaintiff's complaint against moving defendants, Area Storage &
Transfer, Inc. and David Torelli, with prejudice:

Papers
Numbered
Notice of Motion-Affirmation-Exhibits.....EF 13-20
Plaintiff's Aff. in Opposition-Exhibits.....EF 22-27
Reply Affirmations.....EF 29-31

In this negligence action, plaintiff seeks to recover
damages for personal injuries allegedly sustained as a result of
a motor vehicle accident that occurred on October 17, 2018 on
North Conduit Avenue near its intersection with Cross Bay
Boulevard in Queens County, New York.

Plaintiff commenced this action by filing a summons and
verified complaint on March 12, 2019. Defendants joined issue by
serving plaintiffs with the Answer on May 16, 2019. Defendants
now move for summary judgment on the grounds that there are no
triable issues of fact that would prevent the court from entering
summary judgment in favor of defendants.

In support of the motion, defendants submit an affidavit of
David Torelli dated July 22, 2019. On October 17, 2018 while in
in the scope of his employment with Area Storage & Transfer, he
was the operator of a 2000 Volvo tractor with an attached trailer



traveling on North Conduit Avenue in Queens, New York. North Conduit has 3 lanes designated for westbound traffic approaching the Cross Bay Boulevard Exit. As he was traveling westbound on North Conduit Avenue, plaintiff's vehicle was traveling in the right lane. Suddenly and without warning or use of a turn signal, the vehicle operated by plaintiff veered left out of its travel lane directly into his lane of traffic and struck the front of defendant's tractor with the driver's side of his vehicle. Defendant contends that his tractor trailer was completely in the center lane of travel at the time of the incident.

Additionally in support, defendant submits a video of the accident and an affidavit of Tom Whitlock, who is an employee of defendant Area Storage. Mr. Whitlock states that the 2000 Volvo tractor-trailer involved in this accident was equipped with a Smartdrive dashcam which is capable of capturing a total of 20 seconds once a triggering event occurs. Mr. Whitlock states that the video which was submitted as evidence was maintained by Area Storage in the ordinary course of business. The Court has viewed the video.

Defendant also submits a copy of the certified police report (MV-104AN). In the Accident Description portion of the report, the responding officer notes:

AT T/P/O, Vehicle 1 (Plaintiff) states that he was driving straight of North Conduit Avenue 200 feet east before Cross Bay Boulevard when Vehicle 2 (defendant) was trying to change lanes and did not give himself enough distance ending in the front of the truck. Vehicle 2 states he was traveling on the North Conduit when Vehicle 1 struck him.

Based on the submitted evidence, counsel for defendant contends that plaintiff was the sole cause of the accident because he veered into defendant's lane.

In opposition plaintiff submits an affidavit where he states that on the date and location of the accident he was struck in the rear by a tractor-trailer driven by the defendant David Torelli. Plaintiff states that he was not distracted while driving in any way. He was driving in the right lane of traffic when he heard a loud truck behind him. As soon as he heard the tractor-trailer, he was struck in the rear of his vehicle and pushed to the left in front of defendant's vehicle. Plaintiff claims that defendant driver was moving too fast and while trying to pass plaintiff, he ended up hitting his vehicle in the rear. Plaintiff says he did nothing to cause the collision.

Additionally, an affidavit of Monique Webb is submitted. Ms. Webb was a passenger in the vehicle driven by the plaintiff. She also states that the plaintiff entered North Conduit Avenue from the left lane, and he began shifting lanes until he was in the right lane. Once he was in the right lane he never attempted to go back into the middle lane. While plaintiff was in the right lane defendants vehicle came up from behind and hit plaintiff in the rear causing him to be pushed in front of defendants vehicle.

An affidavit of Jennifer Walters is also submitted. She was an eyewitness to the accident in question. She was driving in the middle lane but when she heard defendants vehicle approaching she moved over to the left lane. She claims that defendants vehicle hit the plaintiff from behind and that plaintiff was not attempting to change lanes at the time of the accident.

Lastly, in opposition plaintiff contends that the video of the accident submitted by the defendant is not sufficient to meet their burden to dismiss plaintiffs case. Plaintiff claims that the footage does not continuously run and starts and stops and has footage missing. Due to the inadequacy of the footage, plaintiff argues that the motion should be denied.

The proponent of a summary judgment motion must tender evidentiary proof in admissible form eliminating any material issues of fact from the case. If the proponent succeeds, the burden shifts to the party opposing the motion, who then must show the existence of material issues of fact by producing evidentiary proof in admissible form in support of his or her position (see Zuckerman v City of New York, 49 NY2d 557 [1980]). "A court deciding a motion for summary judgment is required to view the evidence presented in the light most favorable to the party opposing the motion and to draw every reasonable inference from the pleadings and proof submitted by the parties in favor of the opponent to the motion" (Myers v Fir Cab Corp., 64 NY2d 806 [1985]).

"When the driver of an automobile approaches another automobile from the rear, he or she is bound to maintain a reasonably safe rate of speed and control over his or her vehicle, and to exercise reasonable care to avoid colliding with the other vehicle" (Macauley v ELRAC, Inc., 6 AD3d 584 [2d Dept. 2003]). It is well established law that a rear-end collision creates a prima facie case of negligence on the part of the driver of the rearmost vehicle, requiring the operator of that vehicle to proffer an adequate, non-negligent explanation for the accident (see Hearn v Manzolillo, 103 AD3d 689 [2d Dept 2013];

Taing v Drewery, 100 AD3d 740; Kastritsios v Marcello, 84 AD3d 1174 [2d Dept. 2011]; Klopchin v Masri, 45 AD3d 737 [2d Dept. 2007]; Hakakian v McCabe, 38 AD3d 493 [2d Dept. 2007]; Velazquez v Denton Limo, Inc., 7 AD3d 787 [2d Dept. 2004]).

The Court has viewed the video which shows a simultaneous dual view of the front of the tractor-trailer and a view of the driver. It is clear, after multiple viewing of the video of the accident, that defendant driver was in the middle lane of traffic and was not distracted when plaintiff suddenly veered into the middle lane striking defendants vehicle.¹ This was not a rear-end collision.

Thus, defendant satisfied his prima facie burden of establishing entitlement to judgment as a matter of law on the issue of liability (see Volpe v Limoncelli, 74 AD3d 795 [2d Dept. 2010]; Vavoulis v Adler, 43 AD3d 1154 [2d Dept. 2007]).


Having made the requisite prima facie showing of entitlement to summary judgment, the burden then shifted to plaintiff to raise a triable issue of fact (see Goemans v County of Suffolk, 57 AD3d 478 [2d Dept. 2007]).

In opposition, plaintiff provided affidavits, however none of them are able to raise a triable issue of fact over the clear and convincing evidence of the video. Thus, the Court finds that the sole proximate cause of the accident was plaintiff's negligence by swerving into the middle lane of traffic and into defendants vehicle.

Accordingly, for the above stated reasons, it is hereby,

ORDERED, that defendants David Torelli and Area Storage and Transfers Inc. motion for summary judgment is granted and the complaint of plaintiff Anthony Redd against defendants David Torelli and Area Storage and Transfers Inc. is dismissed. The Clerk of the Court shall enter judgment accordingly.

Dated: October 3, 2019.
Long Island City, N.Y.



ROBERT J. McDONALD
J.S.C.

FILED
OCT-9 2019
COUNTY CLERK
QUEENS COUNTY

¹Contrary to plaintiff's opposition, the video submitted to the Court was a clear, continuous, 20 second clip of the accident in question.