Roache v Rigo Limo Auto Group, LLC
2024 NY Slip Op 31156(U)
April 2, 2024
Supreme Court, Kings County
Docket Number: Index No. 527204/2019
Judge: Francois A. Rivera
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At an IAS Term, Part 52 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 2nd day of April 2024

HONORABLE FRANCOIS A. RIVERA

--X

EUSTON ROACHE,

Plaintiffs,

ORDER

Index No.: 527204/2019

-against-

RIGO LIMO AUTO GROUP, LLC, and TAMER HASSAN,

Defendants.

--X

Recitation in accordance with CPLR 2219 (a) of the papers considered on notice of motion filed on October 3, 2023, under motion sequence number two, by plaintiff, Euston Roache for an order pursuant to CPLR 3212 granting the plaintiff summary judgment against the defendants Rigo Limo Auto Group, LLC and Tamer Hassan on the issue of liability, dismissing the defendants' affirmative defenses alleging comparative negligence, contributory negligence, and culpable conduct of the plaintiff, and dismissing the defendants' fourth affirmative defense alleging plaintiff's failure to make use of an available seatbelt, and upon granting summary judgment, setting this action down for a trial on the assessment of damages. The motion is opposed.

-Notice of motion
-Affirmation in support
    Exhibits A-F
-Statement of material facts
-Affirmation in opposition
    Exhibits A-B
-Affirmation in reply

On October 3, 2023, plaintiff filed the instant motion, under motion sequence

number two, for an order pursuant to CPLR § 3212 granting summary judgement in plaintiff's favor on the issue of liability.

After reviewing the motion papers and hearing oral argument the motion is granted for the reasons set forth herein.

The plaintiff annexed plaintiff's affidavit to the moving papers as exhibit E. The affidavit established the following facts. On April 14, 2019, at approximately 10:40 p.m., plaintiff was operating a motor vehicle and traveling in the furthest left lane on North Conduit Avenue at its intersection with 130th Street, in the County of Queens, City, and State of New York. Plaintiff was wearing a seat belt. The headlights of the plaintiff's motor vehicle worked properly and were turned on at the time of the collision. North Conduit Avenue at its' intersection with 130th Steet, in the area where the collision occurred is a one-way road with four travelling lanes separated by white dashed lines. The clearly marked white directional arrows drawn over the traveling lanes designate that the furthest right lane is for vehicles to make a right turn or travel straight, the furthest left lane is for vehicles to make a left turn or travel straight, and for the second from the furthest right lane and for the second from the furthest left lane are for vehicles to travel straight only. The intersection of North Conduit Avenue and 130th Street is controlled by a three (3) phased traffic light. At the time of the collision, plaintiff was traveling straight within his lane, when a motor vehicle owned by defendant, Rigo Limo Auto Group, LLC, and operated by defendant, Tamer Hassan, which was traveling in the second from the furthest right lane on North Conduit Avenue,

with intent to make a left turn on 130th Street, in violation of the clearly marked directional arrow and complete disregard of safety, swerved to the left and across the second from the furthest left lane, then abruptly entered into the plaintiff's lane, failed to ascertain a safe distance between the vehicles and struck the plaintiff's vehicle on the right front fender with its left front fender. At the location where the collision occurred the roadway was straight, well-illuminated and free from obstruction. At the time of the occurrence, the weather was clear, and the roadway was dry. Plaintiff was traveling straight within the lane when plaintiff's vehicle was struck by the defendants' vehicle. Plaintiff attached the Google color photograph annexed in support of the present motion as Exhibit F and averred that the photograph fairly and accurately shows the physical layout of the location of the collision on April 14, 2019.

The defendants submitted an affirmation of their counsel but did not submit an affidavit in opposition. The "affirmation of the attorney who demonstrated no personal knowledge of the [facts] ....is without evidentiary value and thus unavailing" (*Zuckerman v. City of New York*, 49 N.Y.2d 557, 427 N.Y.S.2d 595, 404 N.E.2d 718 [1980].

It is axiomatic that the affirmation of a party's attorney, standing alone, is insufficient where he or she has no personal knowledge of the alleged facts set forth in support of a motion. *Zuckerman v. City of New York, supra; Currie v. Wilhouski*, 93 A.D.3d 816 [2d Dept.2012]; *Warrington v. Ryder Truck Rental, Inc*., 35 A.D.3d 455 [2d Dept.2006]).

Plaintiff's counsel annexed a copy of the Police Accident Report to his moving papers as Exhibit A. Defendants' counsel sought to introduce into evidence a statement made by the defendant-driver to the police officers at the scene of the collision. The statement reads as follows: "Driver of MV2 (Defendant) states that he made a left turn from the second from the furthest right lane when MV1 (Plaintiff) came out of nowhere striking him." Plaintiff argued that the statement is an admission against party's interest, whereby defendant-driver admitted to failing to observe the plaintiff's motor vehicle in the furthest left traveling lane before making an unsafe and unlawful left turn across the three traveling lanes.

Although the Court agreed with the Plaintiff's counsel that the statement is in fact an admission of negligence and clearly was made against the Defendant's interest, however the Court had to consider the admissibility of the Police Accident Report into evidence.

The Police Accident Report is uncertified and as such, in general, cannot be introduced into evidence under hearsay rule. Plaintiff's counsel stated in his moving papers that diligent efforts were made by his office to secure a certified copy of the Police Accident Report from the NYS Department of Motor Vehicles, however NYS Department of Motor Vehicles did not have a record of this report. As part of his Exhibit A, the plaintiff attached a copy of the Accident Report Search Certification of Findings, which stated that there was no police report on file. Plaintiff also attached affidavit of due diligence from his paralegal, Chitranie Surijram. In her affidavit she stated as follows:

"In preparation of this Motion for Summary Judgment on the issue of liability, I performed a good faith search of the Department of Motor Vehicle's database to obtain a certified copy of the Police Report for the subject accident. Unfortunately, I was unable to obtain a certified copy of the report as it was unavailable in the database." Plaintiff has argued that under the above-described circumstances the Police Accident Report should be admitted into evidence under the Best Evidence Rule.

The review of the defense counsel's opposition shows that he not only annexed the Police Accident Report to his opposition papers, but furthermore, in support of his affirmation used the statement in issue made by his client to the police officers. Thus, the defense counsel, submitted to the Court the statement made by his client as true facts. Therefore, the defense counsel, through his own action and admission allowed this Police Accident Report to come into evidence.

The defense counsel also submitted MV-104 report, allegedly signed by his client, which he annexed to his opposition papers as Exhibit B. In his MV-104 report the defendant-driver stated that he was making a left turn, when the Plaintiff's vehicle came from the left and hit the Defendant's vehicle on the left side. This statement clearly does not contradict in any shape or manner the plaintiff's affidavit, as it is undisputed that the plaintiff's vehicle was traveling in the farthest left lane at the time when defendant made his left turn from the second to the furthest right lane and thus, it is rather apparent that the plaintiff's vehicle was on the defendant's left side at the time of the collision. As such, the MV-104 report failed to raise a triable issue of fact to deny granting summary judgment to the plaintiff.

The defendant-driver violated VTL 1128(a) which provides in pertinent part as follows. Whenever any roadway has been divided into two or more clearly marked lanes for traffic the following rules in addition to all others consistent herewith shall apply: (a) A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety.

The plaintiff demonstrated that the defendant-driver, swerved across the second from the furthest left lane, entered the plaintiff's traveling lane, failed to ascertain a safe distance between the vehicles and struck the plaintiff's vehicle on the right front fender with his left front fender. Moreover, there is no evidence that plaintiff was driving his vehicle in violation of any VTL statute, as plaintiff was lawfully traveling straight within the lane at the time of the collision.

The Defendant-driver violated VTL 1160 (d). Required position and method of turning at intersections. The driver of a vehicle intending to turn at an intersection shall do so as follows:

When markers, buttons, signs, or other markings are placed within or adjacent to intersections and thereby require and direct that a different course from that specified in this section be traveled by vehicles turning at an intersection, no driver of a vehicle shall turn a vehicle at an intersection other than as directed and required by such markers, buttons, signs, or other markings.

Plaintiff demonstrated that in this case, the clearly marked white directional arrows drawn over the traveling lanes designate that the furthest right lane is for vehicles

to make a right turn or travel straight, the furthest left lane is for vehicles to make a left turn or travel straight, and for the second from the furthest right lane and for the second from the furthest left lane are for vehicles to travel straight only. Defendant driver who was initially traveling in the straight only lane, clearly violated VTL 1160 (d), when in violation of the clearly marked directional arrow and complete disregard of safety, he made a left turn, swerving across the second from the furthest left lane and then abruptly entering the Plaintiff's traveling lane. The fact that Defendant driver made a left turn from the clearly marked "straight only" lane constituted negligence as a matter of law.

As an operator in a motor vehicle, the plaintiff herein had no duty to avoid an accident with the defendants' vehicle, which was crossing unsafely into the plaintiff's traveling lane. There is simply no factual basis to support the defendants' affirmative defenses alleging comparative negligence, contributory negligence, and/or culpable conduct of the plaintiff. Under such circumstances, dismissal of the defendants' affirmative defenses alleging comparative negligence, contributory negligence, and/or culpable conduct of the plaintiff must be granted in favor of the plaintiff. The defendants were unable to come forth with any evidence, other than pure speculation, as to any culpable conduct attributable to the plaintiff herein. As such, the defendants' affirmative defenses in this regard are dismissed.

Furthermore, plaintiff averred that plaintiff was wearing a seatbelt at the time of the collision. Under such circumstances, dismissal of the defendants' fourth affirmative defense alleging plaintiff's failure to make use of an available seatbelt must be granted in favor of the plaintiff. The defendants herein were unable to come forth with any

evidence other than pure speculation. As such, the defendants' fourth affirmative defense in this regard is dismissed.

Accordingly, plaintiff's motion for summary judgment on the issue of liability is granted. No triable issues of material fact concerning the way the collision occurred exist. Furthermore, the defendants were also unable to submit sufficient evidence in opposition hereto to raise a triable issue of fact as to whether the plaintiff was comparatively negligent or contributed to the occurrence of the collision.

The foregoing constitutes the decision and order of this Court.

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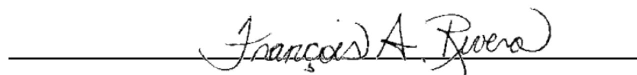

J.S.C.