

Grippi v Ryder Truck Rental, Inc.

2015 NY Slip Op 31637(U)

January 9, 2015

Supreme Court, Queens County

Docket Number: 703222/13

Judge: Valerie Brathwaite Nelson

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Short Form Order

ORIGINAL

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

PRESENT: HONORABLE VALERIE BRATHWAITE NELSON
Justice

IA Part 7

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FRANK GRIPPI,

Index No. 703222/13

Plaintiff,

Motion Date: 3/11/14

-against-

Motion Seq. No.: 1

RYDER TRUCK RENTAL, INC., ET AL.,

Motion Cal. No.: 66

Defendants.

FILED
JAN 14 2015
COUNTY CLERK
QUEENS COUNTY

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The following papers numbered 1 to 16 read on this motion by defendant Ryder Truck Rental Inc. for an order dismissing the complaint on the issue of liability pursuant to CPLR 3212, and cross-motion by defendant Takis Corp. for summary judgment dismissing the complaint on the issue of liability, pursuant to CPLR 3212.

PAPERS
NUMBERED

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Upon the foregoing papers it is ordered that the motion and cross-motion are determined as follows:

This is an action by plaintiff, Frank Grippi, seeking damages for personal injuries allegedly sustained on May 9, 2013 as a result of a two vehicle accident occurring on the northbound Van Wyck Expressway at or near its intersection with 109th Avenue, Queens County, New York. The complaint alleges that a defendant "John Doe" was the operator of one of the vehicles that was involved in the accident and that said vehicle was owned by defendant Ryder Truck Rental Inc., and that a defendant "John Doe" was the operator of the other vehicle that was involved in the accident and that said other vehicle was owned by

defendant Takis Corp.

A court may grant summary judgment where there is no genuine issue of material fact and the moving party is therefore entitled to judgment as a matter of law (Alvarez v Prospect Hosp., 68 NY2d 320 [1986]). The burden on the party moving for summary judgment is to demonstrate the absence of any material issue of fact (Ayote v Gervasio, 81 NY2d 1062 [1993]). If this initial burden has not been met, the motion must be denied without regard to the sufficiency of opposing papers (Alvarez v Prospect Hosp., *supra*). However, once this initial burden has been met, the burden shifts to the party opposing the motion to submit evidentiary proof in admissible form to create material issues of fact requiring a trial (*id.*). Mere conclusions and unsubstantiated allegations or assertions are insufficient (Zuckerman v. City of New York, 49 NY2d 557[1980]).

In support of the motion, defendant Ryder Truck Rental Inc. submits, *inter alia*, a copy of the pleadings, the affidavit of Percy Butler, one of its claim representatives, a lease agreement between itself and Sewing Plate Collection Inc. and a police accident report, demonstrating that on dates relevant herein, Sewing Plate Collection Inc. was the lessee of the vehicle owned by said defendant, a corporation engaged in the business of renting passenger vehicles to the public, and that Michael Herring, who was neither an employee or agent of Ryder's, was operating the vehicle with Sewing Plate Collection Inc.'s permission. Ryder Truck Rental Inc. contends that it cannot be held vicariously liable for the alleged negligent acts of the operator of the vehicle. In this regard, Ryder Truck Rental Inc. claims that 49 U.S.C. §30106, commonly known as the "Graves Amendment," is applicable and bars plaintiff's claim against it. The Graves Amendment abolished vicarious liability of long-term automobile lessors based solely on ownership and is applicable to any action commenced on or after the date of enactment, August 10, 2005.

In this action, the allegations against defendant Ryder Truck Rental Inc., as owner of the vehicle, are premised on vicarious liability. The date of commencement of the within action was August 7, 2013. Therefore, defendant Ryder Truck Rental Inc. established its *prima facie* entitlement to summary judgment in its favor by demonstrating that the Graves Amendment is applicable and bars plaintiff's claim against it (see, Jones v Bill, 34 AD3d 741 [2nd Dept. 2006]).

The burden now shifts to the motion's opponents to produce evidentiary proof in admissible form sufficient to raise a triable issue of fact (Zuckerman v City of New York, 49 NY2d 557, *supra*).

In opposition to the motion, defendant Takis Corp. argues that the Ryder defendant's motion should be denied as premature inasmuch as discovery is incomplete (see Hoxha v City of New York, 265 AD2d 379 [1999]). Before a party can defeat a motion for summary

judgment claiming ignorance of the facts due to the lack of discovery, he must show that he has made reasonable efforts to discover these facts and that the facts sought would give rise to a triable issue (see Gillinder v Hemmes, 298 AD2d 493 [2002]). In his affirmation, counsel for defendant Takis Corp. asserts that discovery is required to determine whether Ryder met certain state insurance requirements for its vehicle or engaged in negligence or criminal wrongdoing such that the “Graves Amendment” is inapplicable. Plaintiff does not oppose the motion, but puts forth that Ryder’s insurance carrier must still provide defense and indemnification for Sewing Plate Collection Inc.

“A party who claims ignorance of critical facts to defeat a motion for summary judgment (see CPLR 3212[f]) must first demonstrate that the ignorance is unavoidable and that reasonable attempts were made to discover the facts which give rise to a triable issue” (Kenworthy v Oyster Bay, 116 AD2d 628 [2d Dept 1986]). Here, the plaintiff and defendant Takis Corp. failed to submit any facts to dispute or impeach the defendant Ryder’s evidence. Furthermore, defendant Takis Corp. does not indicate whether any efforts were made to obtain information from government authorities as to Ryder’s insurance status, or from Sewing Plate Collection Inc. or Michael Herring to discover facts as to counsel’s speculation regarding Ryder’s negligence or criminal wrongdoing.

Accordingly, the motion for summary judgment is granted in favor of defendant Ryder Truck Rental Inc., and the complaint and any and all cross-claims are dismissed as against defendant Ryder Truck Rental Inc. pursuant to CPLR 3212.

In support of the cross-motion for summary judgment, defendant Takis Corp. submits, *inter alia*, the affidavit of Ram Kumar Shresta demonstrating that, at the time of the accident, he was operating the Takis vehicle in the middle of three lanes of heavy traffic and was entirely in this lane when his vehicle was struck in the rear by the Ryder vehicle.

A rear-end collision with a stopped or stopping vehicle establishes a *prima facie* case of negligence against the operator of the moving vehicle (see Rainford v Han, 18 AD3d 638 [2d Dept 2005]; Russ v Investech Secs., 6 AD3d 602 [2d Dept 2004]). To rebut the presumption of negligence requires evidence supporting a non-negligent explanation for the accident (see Taveras v Amir, 24 AD3d 655 [2d Dept 2005]). The Court finds that the evidence that Ryder’s vehicle struck the rear of the Takis vehicle when the Takis vehicle was driving in its lane of heavy traffic is sufficient to make a *prima facie* showing of the Takis defendant’s entitlement to judgment as a matter of law.

The burden now shifts to the motion’s opponents to produce evidentiary proof in admissible form sufficient to raise a triable issue of fact (Zuckerman v City of New York, 49 NY2d 557, *supra*). In opposition to the motion, plaintiff submits his own affidavit. In his

affidavit, plaintiff states that he was a passenger in the Takis vehicle en route to John F. Kennedy Airport. According to plaintiff, the Takis vehicle was driving in the left lane of the Van Wyck Expressway when it attempted to change lanes and was struck in the rear by the Ryder vehicle. In its opposition to the motion, Ryder submits the affidavit of Michael Herring wherein he states that, as he was proceeding in his vehicle in the middle lane of the Van Wyck Expressway, the Takis vehicle came from the lane which was to Mr. Herring's left and cut in front of Mr. Herring, thereby causing the accident. Thus, the Court finds that evidence submitted in opposition raises triable issues of fact as to whether there is a non-negligent explanation for the accident, whether the Takis defendant was negligent in the operation of his vehicle, and whether his alleged negligence caused or contributed to the accident (see Markesinis v Jaquez, 106 A.D.3d 961 [2d Dept 2013]; Scheker v Brown, 85 A.D.3d 1007 [2d Dept 2011]).

Accordingly, the cross-motion by defendant Takis Corp. for summary judgment pursuant to CPLR 3212 on the issue of liability is denied.

Dated: 1/9/15



VALERIE BRATHWAITE NELSON, J.S.C.