

Gardiner v American United Transp., Corp.

2024 NY Slip Op 34064(U)

September 30, 2024

Supreme Court, Kings County

Docket Number: Index No. 516654/2022

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 30th day of September 2024

HONORABLE FRANCOIS A. RIVERA

-----X
SHEVON GARDINER,

Plaintiff,

- against -

AMERICAN UNITED TRANSPORTATION, CORP. and
MOHAMED RASEL SHEIKH,
Defendants.

-----X

DECISION & ORDER

Index No.: 516654/2022

Oral Argument: 9/5/2024

Cal. No.: 23 & 24

Ms. No.: 2 & 3

Recitation in accordance with CPLR 2219 (a) of the papers considered on the notice of motion filed on January 30, 2024, under motion sequence number two, by Shevon Gardiner (hereinafter plaintiff) for an order pursuant to CPLR 3212 granting plaintiff summary judgment as to liability as against the defendants American United Transportation Corp. and Mohamed Rasel Sheikh and striking defendants' affirmative defenses of comparative negligence and/or culpable conduct. The motion is opposed by cross-motion filed under motion sequence number three.

- Notice of motion
- Affirmation in support
 - Exhibits 1-5
- Statement of material facts

Recitation in accordance with CPLR 2219 (a) of the papers considered on the notice of cross-motion filed on February 23, 2024, under motion sequence number three, by defendants American United Transportation Inc. i/s/h/a American United Transportation Corp. (hereinafter AUT) and Rasel Sheikh (hereinafter collectively defendants) for an order pursuant to CPLR 3212 and CPLR 3211 (a) granting summary judgment and dismissal in favor of defendants.

- Notice of cross-motion
- Affirmation in support
Exhibits A-E
- Statement of material facts

BACKGROUND

On June 9, 2022, plaintiff commenced the instant action for damages for personal injury by filing a summons and verified complaint with the Kings County Clerk's office (KCCO). On October 26, 2022, the defendants interposed and filed a joint verified answer with the KCCO. On December 1, 2023, the plaintiff filed a note of issue.

The verified complaint and plaintiff's deposition testimony allege the following salient facts. On May 15, 2021, plaintiff was operating a motor vehicle and traveling on Lenox Road, a one-way street toward East 96th Street. Plaintiff stopped at a stop sign on Lenox Road and then slowly proceeded into the intersection. Prior to reaching the corner of East 96th Street, the plaintiff was traveling at approximately five miles per hour and intended to turn left on 96th Street. The accident occurred at the intersection of East 96th Street when a vehicle owned by defendant American United Transportation Corp. and operated by defendant Mohammed Rasel Sheikh coming from the left of the plaintiff struck the plaintiff's vehicle. As a result of the impact the defendants' vehicle caused plaintiff's vehicle to be pushed. The entire front of the plaintiff's vehicle caved in because of the impact. The front of the other vehicle was damaged. The collision was caused by defendant Sheikh's negligent operation of his vehicle. The collision caused the plaintiff to sustain serious physical injury.

LAW AND APPLICATION

Plaintiff's motion for summary judgment

It is well established that summary judgment may be granted only when it is clear that no triable issue of fact exists (*Alvarez v Prospect Hospital*, 68 NY2d 320 [1986]). The burden is upon the moving party to make a prima facie showing that he or she is entitled to summary judgment as a matter of law by presenting evidence in admissible form demonstrating the absence of material facts (*Giuffrida v Citibank*, 100 NY2d 72 [2003]).

A failure to make that showing requires the denial of the summary judgment motion, regardless of the adequacy of the opposing papers (*Ayotte v Gervasio*, 81 NY2d 1062 [1993]). If a prima facie showing has been made, the burden shifts to the opposing party to produce evidentiary proof sufficient to establish the existence of material issues of fact (*Alvarez*, 68 NY2d at 324).

A plaintiff in a negligence action moving for summary judgment on the issue of liability must establish, prima facie, that the defendant breached a duty owed to the plaintiff and that the defendant's negligence was a proximate cause of the alleged injuries (*Tsyganash v Auto Mall Fleet Mgt., Inc.*, 163 AD3d 1033, 1033-1034 [2d Dept 2018]; see *Rodriguez v City of New York*, 31 NY3d 312 [2018]). To be entitled to partial summary judgment a plaintiff does not bear the ... burden of establishing ... the absence of his or her own comparative fault (*Rodriguez*, 31 NY3d at 324-325).

Pursuant to Vehicle and Traffic Law § 1142(a), a driver entering an intersection controlled by a stop sign must yield the right-of-way to any other vehicle that is already in the intersection or that is approaching so closely as to constitute an immediate hazard (*Policart v Wheels LT*, 221 AD3d 920, 921 [2d Dept 2023], quoting *Shvydkaya v Park Ave. BMW Acura Motor Corp.*, 172 AD3d 1130, 1131 [2d Dept 2019]). As a general matter, a driver who fails to yield the right-of-way after stopping at a stop sign is in violation of Vehicle and Traffic Law § 1142 (a) and is negligent as a matter of law (*id.*, quoting *Shvydkaya v Park Ave. BMW Acura Motor Corp.*, 172 AD3d 1130, 1131). The question of whether the driver stopped at the stop sign is not dispositive where the evidence establishes that he or she failed to yield even if he or she did stop (*Belle-Fleur v Desriviere*, 178 AD3d 993, 995 [2d Dept 2019]).

Plaintiff's motion seeking summary judgment, under motion sequence number two, as to liability as against the defendants and to strike defendants' affirmative defenses of comparative negligence and/or culpable conduct is hereby denied as plaintiff failed to eliminate all material issues of fact as to whether the plaintiff was the sole proximate cause of the accident (*see* Vehicle and Traffic Law § 1142 [a]; *see Israel v Nichols*, 226 AD3d 756 [2d Dept 2024]).

Defendants' motion for summary judgment

Pursuant to the Uniform Civil Term Rules of the Supreme Court, Kings County, a motion for summary judgment must be made no later than 60 days after the filing of the note of issue, unless leave of the court is obtained on good cause shown (*see Goldin v New York and Presbyt. Hosp.*, 112 AD3d 578, 579 [2d Dept 2013], citing Kings County

Supreme Court Uniform Civil Term Rules, Part C, Rule 6). In the instant matter, the note of issue was filed on December 1, 2023, and plaintiff's motion was filed on February 23, 2024, twenty-four days late.

A movant seeking leave to make a late summary judgment motion must demonstrate good cause for the delay (*see* CPLR 3212 [a]; *Ade v City of New York*, 164 AD3d 1198, 1200-01 [2d Dept 2018], citing *Courtview Owners Corp. v Courtview Holding B.V.*, 113 AD3d 722, 723 [2d Dept 2014]). In the absence of a showing of good cause for the delay in filing a motion for summary judgment, the court has no discretion to entertain even a meritorious, non-prejudicial motion for summary judgment (*Bargil Assoc., LLC v Crites*, 173 AD3d 958, 958 [2d Dept 2019], quoting *Bivona v Bob's Discount Furniture of NY, LLC*, 90 AD3d 796 [2d Dept 2011]). Defendants' cross-motion seeking summary judgment, under motion sequence number three, is hereby denied as untimely. The motion was filed late with no good cause shown.

CONCLUSION

The motion by Shevon Gardiner for an order pursuant to CPLR 3212 granting plaintiff summary judgment as to liability as against the defendants American United Transportation Corp. and Mohamed Rasel Sheikh and striking those defendants' affirmative defenses of comparative negligence and/or culpable conduct is denied.

The cross-motion by defendants American United Transportation Inc. i/s/h/a American United Transportation Corp. and Rasel Sheikh for an order pursuant to CPLR 3212 and CPLR 3211 (a) granting summary judgment in their favor on the issue of liability and dismissing the verified complaint is denied.

The foregoing constitutes the decision and order of this Court.

ENTER:

Francois A. Rivera

J.S.C.