Bravo v Vargas

Supreme Court of New York, Appellate Division, Second Department

January 8, 2014, Decided

2012-10948

Reporter
113 A.D.3d 579; 978 N.Y.S.2d 307; 2014 N.Y. App. Div. LEXIS 83; 2014 NY Slip Op 82; 2014 WL 53714

Rubisela Bravo, Appellant, v Eric Mundo Vargas et al., Respondents. (Index No. 2220/10)

Prior History: *Bravo v Vargas*, 113 AD3d 577, 978 NYS2d 313, 2014 N.Y. App. Div. LEXIS 81 (N.Y. App. Div. 2d Dep't, Jan. 8, 2014)

Counsel: [***1] Sullivan Papain Block McGrath & Cannavo, P.C., New York, N.Y. (Gabriel A. Arce-Yee and Brian J. Shoot of counsel), for appellant.

Brand, Glick & Brand, P.C., Garden City, N.Y. (Peter M. Khrinenko of counsel), for respondents.

Eric Mundo Vargas and Enterprise Rent-A-Car Company of Boston, Inc. Lavin, O'Neil, Ricci, Cedrone & DiSipio, New York, N.Y. (Timothy J. McHugh of counsel), for respondent Sunstar Vending, Inc.

Judges: PETER B. SKELOS, J.P., JOHN M. LEVENTHAL, PLUMMER E. LOTT, JEFFREY A. COHEN, JJ. SKELOS, J.P., LEVENTHAL, LOTT and COHEN, JJ., concur.

Opinion

[*579] [**308] In an action to recover damages for personal injuries, the plaintiff appeals, as limited by her brief, from so much of an order of the Supreme Court, Kings County (Rothenberg, J.), dated October 18, 2012, as granted that branch of the motion of the defendants Eric Mundo Vargas and Enterprise Rent-A-Car Company of Boston, Inc., which was for summary judgment dismissing the complaint insofar as asserted against them, and that branch of the cross motion of the defendant Sunstar Vending, Inc., which was for summary judgment dismissing the complaint insofar as asserted against it.

Ordered that the order is modified, on the law, (1) [***2] by deleting the provision thereof granting that branch of the motion of the defendants Eric Mundo Vargas and Enterprise Rent-A-Car [*580] Company of Boston, Inc., which was for summary judgment dismissing the complaint insofar as asserted against the defendant Eric Mundo Vargas, and substituting therefor a provision denying that branch of the motion, and (2) by deleting the provision thereof granting that branch of the cross motion of Sunstar Vending, Inc., which was for summary judgment dismissing the complaint insofar as asserted against it, and substituting [**309] therefor a provision denying that branch of the cross motion; as so modified, the order is affirmed insofar as appealed from, with one bill of costs payable to the plaintiff by the defendant Sunstar Vending, Inc., and the defendant Eric Mundo Vargas.

The plaintiff was a passenger in a rental car owned by the defendant Enterprise Rent-A-Car Company of Boston, Inc. (hereinafter Enterprise), and operated by the defendant Eric Mundo Vargas. The plaintiff allegedly was injured when Vargas crashed into a utility pole on the side of a roadway. The plaintiff commenced this personal injury action against Vargas, Enterprise, and Vargas's employer, [***3] Sunstar Vending Inc. (hereinafter Sunstar), which the plaintiff alleged was vicariously liable for Vargas's conduct. Enterprise and Vargas together moved, inter alia, for summary judgment dismissing the complaint insofar as asserted against them, and Sunstar cross- moved, among other things, for summary judgment dismissing the complaint insofar as asserted against it. The Supreme Court granted the motion and the cross motion. The plaintiff appeals.

Contrary to the plaintiff's contention, the Supreme Court properly granted that branch of the motion of Vargas and Enterprise which was for summary judgment dismissing the complaint insofar as asserted against Enterprise. Under the Graves Amendment (*49 USC § 30106*), the owner of a leased or rented motor vehicle cannot be held liable for personal injuries resulting from the use of such vehicle if the owner (i) is engaged in the trade or business of renting or leasing motor vehicles, and (ii) engaged in no negligence or criminal wrongdoing (*see 49 USC § 30106 [a]*; *Ballatore v HUB Truck Rental Corp., 83 AD3d 978, 979, 922 NYS2d 180 [2011]*).

Here, Vargas and Enterprise established Enterprise's prima facie entitlement to judgment as a matter of law by showing that Enterprise [***4] was engaged in the business of renting vehicles and was not negligent in entrusting the vehicle to Vargas or in maintaining the vehicle's brakes, and that the accident was not caused by brake failure (*see* Ballatore v HUB Truck Rental Corp., 83 AD3 at 980). In opposition to this showing, the plaintiff failed to raise a triable issue of fact (*see* Zuckerman v City of New York, 49 NY2d 557, 562, 404 NE2d 718, 427 NYS2d 595 [1980]).

[*581] However, the Supreme Court erred in awarding summary judgment to Vargas and Sunstar dismissing the complaint insofar as asserted against them.

Under the emergency doctrine, actors "faced with a sudden and unexpected circumstance, not of their own making, that leaves them with little or no time for reflection or reasonably causes them to be so disturbed that they are compelled to make a quick decision without weighing alternative courses of conduct, may not be negligent if their actions are reasonable and prudent in the context of the emergency" *(Tarnavska v Manhattan & Bronx Surface Tr. Operating Auth., 106 AD3d 1079, 1079, 966 NYS2d 171 [2013]* [internal quotation marks omitted]; *see* Pavane v Marte, 109 AD3d 970, 971, 971 NYS2d 562 [2013]; Hendrickson v Philbor Motors, Inc., 101 AD3d 812, 813, 954 NYS2d 898 [2012]). Both the existence of an emergency and the reasonableness [***5] of a party's response to it generally present issues of fact (*see* Pavane v Marte, 109 AD3d at 971; Marks v Robb, 90 AD3d 863, 864, 935 NYS2d 593 [2011]).

Vargas and Sunstar established their prima facie entitlement to judgment as a matter of law by submitting a transcript [**310] of Vargas's deposition testimony and that of a disinterested witness, explaining that Vargas was faced with an emergency situation not of his own making when an oncoming car driving at a high rate of speed suddenly crossed over a double yellow line at a distance too close for Vargas to avoid a head-on collision by braking, and that he reasonably responded to that emergency by swerving to the right (*see* Pavane v Marte, 109 AD3d at 971-972; Parastatidis v Holbrook Rental Ctr., Inc., 95 AD3d 975, 943 NYS2d 625 [2012]; Ferebee v Amaya, 83 AD3d 997, 922 NYS2d 472 [2011]; Mandel v Benn, 67 AD3d 746, 747, 889 NYS2d 81 [2009]; Marsch v Catanzaro, 40 AD3d 941, 941-942, 837 NYS2d 195 [2007]). In opposition, however, the plaintiff raised a triable issue of fact as to the applicability of the emergency doctrine by submitting a copy of the police accident report, which attributed a statement to Vargas that "he lost control of [his] vehicle causing it to strike the pole," and by submitting a transcript of the deposition testimony of the [***6] two police officers who responded to the scene, one of whom prepared the subject accident report. The police officer who prepared the report was acting within the scope of her duty in recording Vargas's statement, and the statement is admissible as a party admission (*see* Jackson v Trust, 103 AD3d 851, 852, 962 NYS2d 267 [2013]; Scott v Kass, 48 AD3d 785, 851 NYS2d 649 [2008]; Guevara v Zaharakis, 303 AD2d 555, 756 NYS2d 465 [2003]; *cf.* Makagon v Toyota Motor Credit Corp., 23 AD3d 443, 444, 808 NYS2d 120 [2005]). Resolving questions of credibility, assessing the accuracy of witnesses, and reconciling conflicting statements are tasks entrusted to the trier of fact (*see* Kahan v Spira, 88 AD3d 964, 965-966, 932 NYS2d 76 [2011]; [*582] Gille v Long Beach City School Dist., 84 AD3d 1022, 1023, 923 NYS2d 649 [2011]; Ruiz v Griffin, 71 AD3d 1112, 1115, 898 NYS2d 590 [2010]). Accordingly, the Supreme Court should have denied that branch of the motion of Vargas and Enterprise which was for summary judgment dismissing the complaint insofar as asserted against Vargas.

In viewing the evidence in the light most favorable to the nonmoving party, and giving the nonmoving party the benefit of all reasonable inferences that can be drawn from the evidence, we conclude that there are triable issues of fact with respect to whether Vargas was employed by Sunstar [***7] and acting within the scope of his employment at the time of the accident (*see* Pearson v Dix McBride, LLC, 63 AD3d 895, 895, 883 NYS2d 53 [2009]; Baker v Briarcliff School Dist., 205 AD2d 652, 653, 613 NYS2d 660 [1994]). The determination of whether an employer-employee relationship exists turns on whether the alleged employer exercises control over the results produced or, more importantly, the means used to achieve the results (*see* Matter of Ted Is Back Corp. [Roberts], 64 NY2d 725, 475 NE2d 113 [1984]). Here, the record reveals a factual dispute as to whether Vargas was operating a vehicle provided to him by Sunstar in order to perform his duties. Accordingly, the Supreme Court should have denied that branch of Sunstar's cross motion which was for summary judgment dismissing the complaint insofar as asserted against it.

The parties' remaining contentions either are without merit or have been rendered academic in light of our determination. Skelos, J.P., Leventhal, Lott and Cohen, JJ., concur.