

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D26333
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_____AD3d_____

Argued - November 9, 2009

REINALDO E. RIVERA, J.P.
HOWARD MILLER
THOMAS A. DICKERSON
SHERI S. ROMAN, JJ.

2008-01562
2008-01563
2010-07128

DECISION & ORDER

Arthur Courtright, plaintiff-respondent, v Orange and Rockland Utilities, Inc., defendant third-party plaintiff-appellant, County of Orange, defendant-respondent, et al., defendant, Lloyd A. Carter, et al., defendants third-party defendants-respondents, et al., third-party defendants.

(Index No. 8744/04)

Wilder & Linneball, LLP, Buffalo, N.Y. (J. Joseph Wilder, Daniel B. Moar, and JooHong Park of counsel), for defendant third-party plaintiff-appellant.

Dickover, Donnelly, Donovan & Biagi, LLP, Goshen, N.Y. (Michael H. Donnelly of counsel), for plaintiff-respondent.

David L. Darwin, County Attorney, Goshen, N.Y. (Laura Wong-Pan of counsel), for defendant-respondent County of Orange.

Burke, Lipton, McCarthy & Gordon, White Plains, N.Y. (Sami P. Nasser and Steven Falvey of counsel), for defendants third-party defendants-respondents.

In an action to recover damages for personal injuries, the defendant third-party plaintiff appeals (1) from an order of the Supreme Court, Orange County (McGuirk, J.), dated January 7, 2008, which denied its motion for summary judgment dismissing the complaint and all

cross claims insofar as asserted against it, (2) from so much of an order of the same court, also dated January 7, 2008, as granted the motion of the defendants third-party defendants for summary judgment dismissing the complaint, all cross claims, and the third-party complaint insofar as asserted against them, and (3), as limited by its brief, from so much of an order of the same court, also dated January 7, 2008, as granted that branch of the motion of the defendant County of Orange which was for summary judgment dismissing the complaint insofar as asserted against it.

ORDERED that the first order is reversed, on the law, and the motion of the defendant third-party plaintiff for summary judgment dismissing the complaint and all cross claims insofar as asserted against it is granted; and it is further,

ORDERED that the appeals from the second and third orders are dismissed; and it is further,

ORDERED that one bill of costs is awarded to the appellant, payable by the defendants third-party defendants.

On October 2, 2003, the plaintiff, Arthur Courtright, was a passenger in a vehicle operated by the defendant Lloyd A. Carter and owned by the defendant Thomas Leichliter (hereinafter the Carter vehicle). The Carter vehicle was involved in an automobile accident with a vehicle operated by the defendant John Katulak. The accident took place at the intersection of County Route 50 and McVeigh Road in Wawayanda. At the time of the accident, Katulak was traveling north on McVeigh Road and was partially through the intersection. The Carter vehicle, which was traveling on County Route 50, struck the rear driver's side panel of Katulak's vehicle. McVeigh Road was usually controlled by a stop sign. However, at the time of the subject accident, the stop sign was missing.

The plaintiff commenced the instant action against Carter, Leichliter, and Orange and Rockland Utilities, Inc. (hereinafter the appellant). Thereafter, the appellant commenced a third-party action against, among others, the County. Carter and Leichliter moved and the appellant separately moved, inter alia, for summary judgment dismissing the complaint insofar as asserted against them. Further, the County moved, among other things, for summary judgment dismissing the third-party complaint insofar as asserted against it. The Supreme Court granted the motions of the County, Carter, and Leichliter, and denied the appellant's motion. The appellant now appeals.

The Supreme Court should have granted the appellant's motion for summary judgment dismissing the complaint and all cross claims insofar as asserted against it. In support of its motion, the appellant made a prima facie showing of its entitlement to judgment as a matter of law (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324). In response, no triable issue of fact was raised (*see Garcia v City of New York*, 53 AD3d 644; *Baker v Punancy*, 37 AD3d 504, 505).

The appeal from so much of the second order as granted those branches of the motion of Carter and Leichliter which were for summary judgment dismissing the complaint and the third-party cross claims insofar as asserted against them and the appeal from the third order must be

dismissed, as the appellant is not aggrieved thereby (*see* CPLR 5511).

The appeal from the remaining portion of the second order must be dismissed as academic in light of our determination that the Supreme Court should have granted the appellant's motion for summary judgment dismissing the complaint and all cross claims insofar as asserted against it.

RIVERA, J.P., MILLER, DICKERSON and ROMAN, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court