

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

497

CA 09-01979

PRESENT: MARTOCHE, J.P., CENTRA, FAHEY, PERADOTTO, AND PINE, JJ.

JOSEPH A. CATANZARO, PLAINTIFF-APPELLANT,

V

MEMORANDUM AND ORDER

TOWN OF LEWISTON AND DOUGLAS E. BURNETT,
DEFENDANTS-RESPONDENTS.

LAW OFFICE OF JOHN J. FROMEN, ESQ., BUFFALO, MAGAVERN MAGAVERN GRIMM
LLP (EDWARD J. MARKARIAN OF COUNSEL), FOR PLAINTIFF-APPELLANT.

WALSH & MORENUS, BUFFALO (KEVIN D. WALSH OF COUNSEL), FOR
DEFENDANTS-RESPONDENTS.

Appeal from an order of the Supreme Court, Niagara County (Richard C. Kloch, Sr., A.J.), entered November 21, 2008 in a personal injury action. The order granted defendants' motion for summary judgment.

It is hereby ORDERED that the order so appealed from is unanimously affirmed without costs.

Memorandum: Plaintiff commenced this action seeking damages for, inter alia, injuries he sustained when a snowplow truck driven by defendant Douglas E. Burnett, an employee of defendant Town of Lewiston, collided with his vehicle. Supreme Court granted defendants' motion for summary judgment dismissing the complaint. We affirm. In support of their motion, defendants submitted the deposition testimony of Burnett and his "wing man," who each testified that the snowplow truck was stopped at an intersection and that plaintiff's vehicle slid out of control toward the intersection. Burnett testified that he took evasive action to avoid the collision but that plaintiff's vehicle hit the front of the snowplow. In opposition to the motion, plaintiff submitted his own deposition testimony in which he provided a completely different version of the accident. Plaintiff testified that the snowplow truck was traveling too fast for the conditions and that its back wheels locked, causing it to slide into the intersection.

We conclude that defendants met their initial burden of establishing that the snowplow truck was "actually engaged in work on a highway" and that they did not act with "reckless disregard for the safety of others" (Vehicle and Traffic Law § 1103 [b]; see *Primeau v Town of Amherst*, 17 AD3d 1003, *affd* 5 NY3d 844; see *Bliss v State of New York*, 95 NY2d 911, 913; see generally *Saarinen v Kerr*, 84 NY2d

494, 501). In opposition to the motion, plaintiff failed to raise a triable question of fact with respect to the issue of reckless disregard (see *Hughes v Chiera*, 4 AD3d 872).

Entered: May 7, 2010

Patricia L. Morgan
Clerk of the Court