

Salerno v Ilardi

2019 NY Slip Op 34047(U)

April 10, 2019

Supreme Court, Suffolk County

Docket Number: 619291/2016E

Judge: William B. Rebolini

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Short Form Order

SUPREME COURT - STATE OF NEW YORK

I.A.S. PART 7 - SUFFOLK COUNTY

PRESENT:

WILLIAM B. REBOLINI
Justice

Sonna Salerno and Anthony Salerno,

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Plaintiffs,

Motion Sequence No.: 002; MG

Motion Date: 6/27/18

Submitted:8/22/18

-against-

Matthew Ilardi, Ellen Thompson,
Sydney Salerno and Lucy Gianesses,

Motion Sequence No.: 003; MG

Motion Date: 6/27/18

Submitted:8/22/18

Defendants.

Attorney for Defendants Matthew
Ilardi and Ellen Thompson:

Motion Sequence No.: 004; MG

Motion Date: 6/27/18

Submitted:8/22/18

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Clerk of the Court

Upon the following papers e-filed and read on these motions for partial summary judgment: Notice of Motion and supporting papers by plaintiff Anthony Salerno dated May 31, 2018 and by plaintiff Sonna Salerno dated August 8, 2018; Notice of Cross-Motion and supporting papers by defendants Sydney Salerno and Lucy Gianesses dated June 21, 2018; it is

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ORDERED that the motion by plaintiff Anthony Salerno, the motion by plaintiff Sonna Salerno, and the cross-motion of defendants Sydney Salerno and Lucy Gianesses are consolidated for the purposes of this determination; and it is further

ORDERED that the unopposed motion by plaintiff Anthony Salerno for an order pursuant to CPLR 3212 (e), granting partial summary judgment in his favor against defendants Matthew Ilardi and Ellen Thompson on the issue of liability, is granted; and it is further

ORDERED that the unopposed motion by plaintiff Sonna Salerno, improperly denominated as a cross-motion, for an order pursuant to CPLR 3212 (e), granting partial summary judgment in her favor against defendants Matthew Ilardi and Ellen Thompson on the issue of liability, is granted; and it is further

ORDERED that the unopposed cross-motion of defendants Sydney Salerno and Lucy Gianesses for an order pursuant to CPLR 3212, granting summary judgment dismissing the complaint of plaintiff Sonna Salerno is denied as academic, inasmuch as the action was discontinued against these defendants by stipulation dated December 3, 2018; and it is further

ORDERED that the unopposed cross-motion of defendants Sydney Salerno and Lucy Gianesses for an order pursuant to CPLR 3212 granting summary judgment dismissing the complaint of plaintiff Anthony Salerno against them is granted; and it is further

ORDERED that the unopposed cross-motion of defendants Sydney Salerno and Lucy Gianesses for an order pursuant to CPLR 3212 granting summary judgment dismissing the cross-claims asserted against them is granted.

This is an action to recover damages for personal injuries allegedly sustained by plaintiffs as a result of a motor vehicle accident which occurred on July 27, 2016 at approximately 3:30 p.m. on the Sagtikos Parkway at or near exit S2, in the Town of Islip, County of Suffolk. The accident allegedly happened when a vehicle owned by defendant Ellen Thompson and driven by defendant Matthew Ilardi collided with the rear of a vehicle in which plaintiffs were passengers. Initially, the court notes that plaintiff Sonna Salerno discontinued her claims against defendants Sydney Salerno and Lucy Gianesses by stipulation dated December 3, 2018.

By separate motions, plaintiffs now move for summary judgment on the issue of liability, arguing that defendant Matthew Ilardi negligently operated the motor vehicle owned by defendant Ellen Thompson, which was the sole proximate cause of the accident. In support of his motion, Anthony Salerno submits his own affidavit, copies of the pleadings, and the transcripts of the parties' deposition testimony.

In his affidavit, Anthony Salerno states that he was a front-seat passenger in a vehicle operated by Sydney Salerno that was traveling northbound on the Sagtikos State Parkway near exit S2. He states that Sydney began slowing the vehicle down due to traffic conditions when it was

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struck in the rear by a vehicle operated by defendant Matthew Ilardi. At his deposition, Anthony testified that Sydney Salerno is his daughter, and that she was driving a vehicle that was owned by his mother, Lucy Gianesses. He testified that the Salerno vehicle was traveling in the left lane of traffic on the Sagtikos State Parkway, and that traffic conditions were moderate, causing stop and go traffic for approximately five miles. He testified that the Salerno vehicle did not exceed 40 mph during that time, and that it was slowing down and stopping for traffic conditions when it was struck in the rear. He also testified that his daughter steered the vehicle to the left shoulder to avoid colliding with the vehicle in front of it.

Sydney Salerno testified that on the afternoon of the date of the accident, she was operating a vehicle owned by her grandmother, Lucy Gianesses, and that her father, Anthony Salerno, her mother, Sonna Salerno, and her younger sister and boyfriend were passengers in the vehicle. She testified that Anthony Salerno was seated in the front passenger seat, that the weather conditions were clear and dry, and that she was traveling northbound on the Sagtikos State Parkway. Sydney testified that she was traveling between 45 to 50 mph until traffic conditions became heavy and she observed brake lights illuminated on the vehicles ahead. She testified that she gradually slowed her vehicle down to 15 mph and then felt an impact from behind that pushed her vehicle forward. She testified that she steered the vehicle to the left to avoid colliding with the vehicle in front of her vehicle.

Sydney further testified that minutes before the collision, she observed the Jeep that struck her vehicle through the rear-view mirror, and that it was traveling at a high rate of speed. She testified that she did not hear the sound of a horn or the sound of screeching tires before the impact, and that she did not have an opportunity to avoid the collision.

Matthew Ilardi testified that he was traveling northbound on the Sagtikos State Parkway, and that he was in the left lane of travel. He testified that he was traveling between 55 and 65 mph, and that he observed a long line of vehicles ahead of his vehicle and noticed that the right lane of travel was empty, so he decided to change lanes. He testified that he activated the turn signal and checked the right-view mirror, and intended to enter the right lane of travel, but the collision occurred. He testified that the front of his vehicle struck the rear of plaintiffs' vehicle, and that after the impact he brought his vehicle to a stop in the right shoulder.

Plaintiff Sonna Salerno also moves for summary judgment on the issue of negligence against defendants Matthew Ilardi and Ellen Thompson. In support of the motion, Sonna submits her own affidavit, the transcript of her deposition testimony, and the transcripts of deposition testimony of Anthony Salerno, Sydney Salerno, and Matthew Ilardi. In her affidavit, Sonna states that she was a rear-seated passenger in a vehicle operated by her daughter, Sydney Salerno, when it was struck in the rear. She states that at the time of impact, the Salerno vehicle was slowing down for traffic congestion. At her deposition, Sonna testified that the Salerno vehicle was traveling northbound on the Sagtikos State Parkway at a rate of 40 mph and that it was slowing down for traffic conditions and traveling at a rate of 15 mph before stopping in traffic and being struck in the rear.

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It is well settled that a party moving for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law, offering sufficient evidence to demonstrate the absence of any material issues of fact (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 508 NYS2d 923 [1986]; *Zuckerman v City of New York*, 49 NY2d 557, 427 NYS2d 595 [1980]). Once such a showing has been made, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 508 NYS2d 923; *Zuckerman v City of New York*, 49 NY2d 557, 427 NYS2d 595).

When the driver of a vehicle approaches another vehicle from the rear, he or she is bound to maintain a reasonably safe rate of speed and control over his or her vehicle, and to exercise reasonable care to avoid colliding with the other vehicle (*Tumminello v City of New York*, 148 AD3d 1084, 49 NYS3d 739 [2d Dept 2017]; *Brothers v Bartling*, 130 AD3d 554, 13 NYS3d 202 [2d Dept 2015]; *Gutierrez v Trillium USA, LLC*, 111 AD3d 669, 974 NYS2d 563 [2d Dept 2013]; *Macauley v ELRAC, Inc.*, 6 AD3d 584, 585, 775 NYS2d 78 [2d Dept 2003]). Such driver is required to maintain a reasonably safe distance and rate of speed under the prevailing conditions to avoid a collision (*Batashvili v Veliz-Palacios*, 2019 NY Slip Op 01733 [2d Dept 2019]; *Niyazov v Hunter EMS, Inc.*, 154 AD3d 954, 63 NYS3d 457 [2d Dept 2017]). A rear-end collision with a stopped or stopping vehicle creates a prima facie case of negligence with respect to the operator of the rear vehicle and imposes a duty on that operator to rebut the inference of negligence by providing a non-negligent explanation for the collision (*Tutrani v County of Suffolk*, 10 NY3d 906, 861 NYS2d 610 [2008]; *Edgerton v City of New York*, 160 AD3d 809, 74 NYS3d 617 [2d Dept 2018]; *Nowak v Benites*, 152 AD3d 613, 60 NYS3d 48 [2d Dept 2017]; *Le Grand v Silberstein*, 123 AD3d 773, 999 NYS2d 96 [2d Dept 2014]). The court notes that plaintiffs are no longer required to show freedom from comparative fault to establish a prima facie case of entitlement to partial summary judgment on the issue of negligence (*see Rodriguez v City of New York*, 31 NY3d 312, 76 NYS3d 898 [2018]; *Edgerton v City of New York*, 160 AD3d 809, 74 NYS3d 617 [2d Dept 2018]).


Here, each plaintiff has submitted sufficient evidence to establish a prima facie case of entitlement to summary judgment on the issue of negligence (*Tsyganash v Auto Mall Fleet Mgt., Inc.*, 163 AD3d 1033, 83 NYS3d 74 [2d Dept 2018]; *Singh v Avis Rent A Car Sys., Inc.*, 119 AD3d 768, 989 NYS2d 363 [2d Dept 2014]; *Markesinis v Jaquez*, 106 AD3d 961, 965 NYS2d 363 [2d Dept 2013]). As defendants Matthew Ilardi and Ellen Thompson have not submitted opposition to the motions and failed to offer any evidence rebutting the inference of negligence created by the rear-end collision, the motions by plaintiffs Anthony Salerno and Sonna Salerno for summary judgment on the issue of liability are granted.

The unopposed cross-motion by defendants Sydney Salerno and Lucy Gianesses for summary judgment dismissing the complaint of Sonna Salerno is denied as academic, inasmuch as plaintiff Sonna Salerno discontinued the action against these cross-moving defendants by stipulation dated December 3, 2018. No opposition to the cross-motion by defendants Sydney Salerno and Lucy Gianesses was submitted by plaintiff Anthony Salerno and for the reasons set forth above, that portion of the cross-motion dismissing the complaint of plaintiff Anthony Salerno against them is

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granted. The unopposed cross-motion for summary judgment dismissing the cross-claims asserted against defendants Sydney Salerno and Lucy Gianesses likewise is granted. As stated above, the record establishes that the vehicle operated by Sydney Salerno and owned by Lucy Gianesses was struck in the rear by a vehicle operated by Matthew Ilardi and owned by Ellen Thompson. As neither of these defendants have submitted opposition to the cross-motion, that branch of the cross-motion for summary judgment dismissing the cross-claims against Sydney Salerno and Lucy Gianesses is granted.

Dated: 4/10/2019


HON. WILLIAM B. REBOLINI, J.S.C.

_____ FINAL DISPOSITION _____ X _____ NON-FINAL DISPOSITION