

Santiago v Udris

2002 NY Slip Op 30032(U)

August 14, 2002

Supreme Court, Suffolk County

Docket Number:

Judge: Peter Fox Cohalan

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Index No.: 13676-00
Ret. Date: 2-28-02
Mot. Seq. #002

SUPREME COURT - STATE OF NEW YORK
IAS PART XXIV, SUFFOLK COUNTY

PRESENT: CALENDAR DATE: May 22, 2002
Hon. PETER FOX COHALAN MNEMONIC: MG

OSCAR SANTIAGO and JEANANN SANTIAGO,	:	PLTF'S/PET'S ATTY:
	:	
Plaintiffs,	:	WALLACE & WALLACE
	:	444 Madison Ave.
	:	New York, NY 10022
-against-	:	DEFT'S/RESP'S ATTY:
ARNIS UDRIS and DE'TAILCARTING CO.,	:	MORENUS CARDOZA CONWAY
INC.,	:	1400 Old Country Rd.
Defendants.	:	Westbury, NY 11590

Upon the following papers numbered 1 to 15 read on this motion for summary judgment

Notice of Motion/Order to Show Cause and supporting papers 1-10,
 Notice of Cross Motion and supporting papers _____; Answering Affidavits and supporting papers 11-13; Replying Affidavits and supporting papers 14-15; Other _____; (and after hearing counsel in support of and opposed to the motion) it is,

ORDERED that this motion by the plaintiffs for summary judgment pursuant to CPLR 53212 on their complaint seeking damages as a result of a collision between two (2) motor vehicles is hereby granted on the issue of liability only in its entirety.

Plaintiffs instituted this lawsuit for alleged personal injuries arising from a motor vehicle accident which occurred on October 15, 1999 at the intersection of Manor Lane and Sunrise Highway (Rte 27) in West Islip, Suffolk County on Long Island, New York. Plaintiff, Oscar Santiago, was traveling northbound on Manor Lane in his 1986 Buick Regal when his motor vehicle was struck by the defendant, Arnis Udris, operating a Mack Front Loading forklift garbage truck owned by Detail Carting Co., Inc. traveling westbound on the service road to Sunrise Highway. It is conceded that the garbage truck went through a red light which controlled the intersection at Manor Lane and the service road to Sunrise Highway. The truck broadsided the plaintiffs' vehicle resulting in injuries to the plaintiff Oscar Santiago's back and spine requiring multiple surgeries to his neck and spine. This lawsuit, thereafter ensued.

Plaintiffs now move for summary judgment pursuant to CPLR 53212 on the issue of liability only claiming no issues of fact are

present to warrant denial of judgment as a matter of law on the issue of liability to the plaintiffs in this collision where defendant Arnis Udris admits to failing to yield and proceeding through a red traffic control signal controlling his entry into the intersection. Defendants oppose the plaintiffs' motion asserting that the plaintiffs may have some culpable conduct for the accident and therefore would preclude summary disposition.

For the reasons outlined below, plaintiffs' motion for summary judgment pursuant to CPLR §3212 on their complaint sounding in negligence arising from this motor vehicle accident is granted in its entirety on the issue of liability only,

Summary judgment is the procedural equivalent of a trial. The function of the court on a motion for summary judgment is issue finding not issue determination. It is a most drastic remedy which should not be granted where there is any doubt as to the existence of a triable issue or where the issue is even arguable. Elzer v. Nassau County, 111 AD2d 212, 489 NYS2d 246 (2nd Dept. 1985); Steven v. Parker, 99 AD2d 649, 472 NYS2d 225 (2nd Dept. 1984); Gaeta v. New York News, Inc., 95 AD2d 325, 466 NYS2d 321 (1st Dept. 1983). As the New York Court of Appeals noted in Sillman v. Twentieth Century Fox, 3 NY2d 395, 404 (1957):

"To grant summary judgment it must clearly appear that no material and triable issue of fact is presented (DiMenna & Sons v. City of New York, 301 NY 118.). This drastic remedy should not be granted where there is any doubt as to the existence of such issues (Braun v. Carey, 280 App. Div. 1019), or where the issue is 'arguable' (Barnett v. Jacobs, 255 NY 520, 522); 'issue finding, rather than issue determination is the key to the procedure' (Esteve v. Avad, 271 App. Div. 725, 727)."

It is the function of the court on a motion for summary judgment to consider all the facts in a light most favorable to the party opposing the motion, Thomas v. Drake, 145 AD2d 687, 535 NYS2d 229 (3rd Dept. 1988) and to determine whether there are any material and triable issues of fact presented. The key is issue finding, not issue determination, and the court should not attempt to determine questions of credibility. S.J. Capelin Assoc., v. Globe, 34 NY2d 338, 357 NYS2d 478 (1974).

While summary judgment is a drastic remedy, depriving as it does a litigant of his day in court [VanNoy v. Corinth Central School, District, 111 AD2d 592, 489 NYS2d 658 (3rd Dept. 1985)], appellate courts have nonetheless cautioned against undue timidity in refusing the remedy. The inquiry must be directed to ascertain whether the defense interposed is genuine or unsubstantiated. A shadowy semblance of an issue is not sufficient. If the issue claimed to exist is not genuine but feigned, summary judgment is properly granted. DiSabato v. Soffee, 9 AD2d 297, 299-300, 193 NYS2d 184, 189 (1st Dept. 1959); Usef of v. Yamali, NYLJ 10/10/80, p.5, col.4 (App. Term 1st Dept. 1980). Thus, although summary judgment is a rare event in negligence actions, a plaintiff is entitled to such relief where the accident occurred, the defendant's conduct fell far below any permissible standard of due care and the plaintiff's conduct was not really involved. O'Callaghan v. Flitter, 112 AD2d 1030, 493 NYS2d 28 (2nd Dept. 1985); Donadio v. Crouse-Irving Memorial Hospital, 75 AD2d 715, 427 NYS2d 8 (4th Dept. 1980); but see, Kutanovski v. DeCicco, 122 AD2d 250, 505 NYS2d 175 (2nd Dept. 1986). Rarity notwithstanding, summary judgment will result when a party cannot raise a factual issue for trial. Sun Yau Ko et al. v. Lincoln Savings Bank, 99 AD2d 943, 473 NYS2d 397 (1st Dept. 1984).

Here, in the instant matter, plaintiff Oscar Santiago's conduct was not really involved when he was struck by the defendant Arnis Udris who was operating a forklift garbage truck and entered the intersection against a red light. Further, the garbage truck was inspected only hours after the accident and its braking system was found to be working. The suggestion by the defendants' counsel that because the accident happened at 5:00 am on a route familiar to plaintiff, this fact somehow raises the specter of culpable conduct on the part of plaintiff is pure speculation, surmise and conjecture. There is no support in the record or under the fact pattern presented to support counsel for the defendants or defendants' claim of a possible factual issue existing for trial that the plaintiff somehow caused, contributed or was partially responsible for the happening of this accident.

A shadowy semblance of an issue, or bald conclusory assertions, expressions of hope or unsubstantiated allegations is insufficient to defeat a motion for summary judgment [V. Savino Oil & Heating Co. Inc. v. Rana Management, 161 AD2d 635, 555 NYS2d 413 (2nd Dept. 1990); Mayer v. McBrunigan Construction Corp., 105 AD2d 774, 481 NYS2d 719 (2nd Dept. 1984) as is an affirmation of an attorney without first hand knowledge which lacks probative force. McDermott v. South Farmingdale Water District, 167 AD2d 517, 562 NYS2d 191 (2nd Dept. 1990). The defendant has failed to raise a factual issue to warrant denial of plaintiff's request for summary disposition in this traffic accident where the defendant Udris ran a red light and struck the plaintiffs'

vehicle broadside in the intersection.

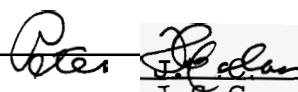
As the Court noted in Andre v. Pomeroy, 36 NY2d 131, 362 NYS2d 131, 133 (1974):

"[1-3] Summary judgment is designed to expedite all civil cases by eliminating from the trial calendar claims which can properly be resolved as a matter of law. Since it deprives the litigant of his day in court it is considered a drastic remedy which should only be employed when there **is** no doubt as to the absence of triable issues (Millerton Aqway Co-OP v. Briarcliff Farms, 17 N.Y.2d 67, 268 N.Y.S.2d 18, 215 N.E.2d 341). But when there is no genuine issue to be resolved at trial, the case should be summarily decided and an unfounded reluctance to employ the remedy will only serve to swell the Trial Calendar and thus deny to other litigants the right to have their claims promptly adjudicated.

Accordingly, the plaintiffs' motion for summary judgment pursuant to CPLR 53212 is hereby granted on the issue of liability only and the matter will be set down at a time to be determined by the parties pursuant to the rules of this Court for certification for trial on the issue of damages only. See, N.Y. Civil Practice, Weinstein, Korn & Miller 53212.15.

The foregoing constitutes the decision of this Court.

Date: AUG 14 2002



J. P. Moran
J.S.C.