

Deredita v Town of Brookhaven

2007 NY Slip Op 30118(U)

March 5, 2007

Supreme Court, Suffolk County

Docket Number: 0002179

Judge: Robert W. Doyle

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attempting to make a turn from Carver Boulevard onto Beaver Dam Road when she collided with a truck operated by the defendant Stephen Devito and owned by the defendant Bonel Contracting. Carver Boulevard is controlled by a stop sign at the intersection while Beaver Dam Road has no traffic control device. The plaintiff had no recollection of the accident while Devito testified that the plaintiff proceeded into the intersection without stopping. The plaintiff alleges that Devito was negligent in causing the accident and that the defendant Town of Brookhaven was negligent in failing to provide an adequate traffic control device and in failing to trim foliage at the intersection. The defendants now move for summary judgment in their favor.

A driver who fails to yield the right of way at a stop sign controlling traffic is in violation of Vehicle and Traffic Law § 1142(a) and is negligent as a matter of law (*see, Laino v Lucchese*, 35 AD3d 672 [2d Dept 2006]; *Lubitz v Village of Scarsdale*, 31 AD3d 618 [2d Dept 2006]; *Nolan v Mizrah*, 12 AD3d 430 [2d Dept 2004]). A driver who has the right of way is entitled to anticipate that the other motorist will obey the traffic law requiring him or her to yield (*see, Laino v Lucchese, supra; Platt v Wolman*, 29 AD3d 663 [2d Dept 2006]; *Rossani v Rana*, 8 AD3d 548 [2d Dept 2004]).

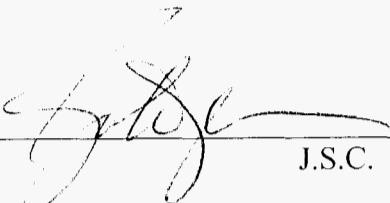
Here, Devito and Bonel made a prima facie showing of their entitlement to summary judgment by demonstrating that the plaintiff failed to yield the right of way at the intersection (*see, Laino v Lucchese, supra; Lubitz v Village of Scarsdale, supra; Friedberg v Citiwide Auto Leasing*, 22 AD3d 522 [2d Dept 2005]; *Bongioli v Hoffman*, 18 AD3d 686 [2d Dept 2005]; *McNamara v Fishkowitz*, 18 AD3d 721 [2d Dept 2005]). In opposition, the plaintiff's assertions that Devito was speeding and failed to take evasive action to avoid the accident were speculative and unsupported by any evidence (*see, Ishak v Guzman*, 12 AD3d 409 [2d Dept 2004]; *McNamara v Fishkowitz, supra*). The plaintiff also contends that Devito and Bonel were negligent because the truck was issued traffic summonses for being overloaded with an expired permit. However, there is no evidence that these alleged violations were a proximate cause of the accident. Accordingly, the motion by Devito and Bonel for summary judgment is granted.

With respect to the Town, it is well settled that a governmental body may be liable for a traffic planning decision only when its study is plainly inadequate or there is no reasonable basis for its plan (*see Affleck v Buckley*, 96 NY2d 553; *Friedman v State of New York*, 67 NY2d 271; *Weiss v Fote*, 7 NY2d 579). Here, the Town submits an affidavit from Lynn Weyant, the Director of Traffic Safety, who asserts that the Town reviewed the intersection at least twice between 1997 and 2000. The Town sent traffic technicians to the site who analyzed data regarding the volume of traffic and number of accidents and concluded that all way traffic control at the intersection was not warranted. Thus, the Town made a prima facie showing of its entitlement to summary judgment. In opposition, the plaintiff failed to submit any evidence demonstrating that the planning decision was made without an adequate study (*see, Affleck v Buckley, supra; Buhr v State of New York*, 295 AD2d 462 [2d Dept 2002]; *McCabe v Town of Brookhaven*, 289 AD2d 541 [2d Dept 2001]). Finally, the plaintiff's contention that the Town

failed to trim foliage at the intersection is insufficient to raise a triable issue of fact as there is no evidence that the foliage was a proximate cause of the accident (*see Martinez v County of Suffolk*, 17 AD3d 643 [2d Dept 2005]; *Sinski v State of New York*, 2 AD3d 517 [2d Dept 2003]).

Accordingly, the motion by the Town for summary judgment is granted and the complaint is dismissed.

Dated: MAR 05 2007



J.S.C.

FINAL DISPOSITION NON-FINAL DISPOSITION