

Miller v Rajotte

2007 NY Slip Op 30873(U)

April 11, 2007

Supreme Court, Suffolk County

Docket Number: 0016193/2004

Judge: Peter Fox Cohalan

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SUPREME COURT - STATE OF NEW YORK
I.A.S. TERM, PART XXIV - SUFFOLK COUNTY

PRESENT:
Hon. PETER FOX COHALAN

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CALENDAR DATE: April 4, 2007
MNEMONIC: MD

MONARAE A. MILLER,

Plaintiff,

-against-

PLTF'S/PET'S ATTORNEY:

Ewall & Ewall
946 Park Ave.
Huntington, NY 11743

PHILIP A. RAJOTTE, JR.,

Defendant.

DEFT'S/RESP ATTORNEY:

Epstein & Grammatico
139 Veterans Memorial Highway
Hauppauge, NY 11788

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Upon the following papers numbered 1 to 20 read on this motion for summary judgment ;
Notice of Motion/Order to Show Cause and supporting papers 1-11 ; Notice of Cross-Motion and
supporting papers _____; Answering Affidavits and supporting papers 12-16 ; Replying Affidavits
and supporting papers 17-20 ; Other _____; and after hearing counsel in support of and opposed
to the motion it is,

ORDERED that this motion by the plaintiff, Monarae A. Miller, for summary
judgment on the issue of liability, pursuant to CPLR §3212, in this motor vehicle accident,
arguing as a matter of law that there is no liability by the plaintiff for this intersection accident
is hereby denied in its entirety.

The plaintiff instituted this action for personal injuries allegedly sustained in a
motor vehicle accident with the motor vehicle of the defendant, Philip A. Rajotte, Jr., which
occurred on December 10, 2002, at approximately 1:00 pm at the intersection of Gunther
Avenue and Adams Avenue in Bay Shore, Suffolk County on Long Island, New York. The
plaintiff was driving a Lexus ES300 traveling on Gunther Avenue westbound when it was
struck by the defendant's vehicle, a GMC pickup truck, traveling on Adams Avenue going
northbound. This intersection is controlled by a stop sign facing the northbound traffic on
Adams Avenue and plaintiff claims that the intersection was clear when her vehicle was struck
on the driver's side by the defendant's vehicle. The defendant claims that he stopped his
vehicle at the stop sign, saw the intersection was clear and then proceeded into the
intersection when the plaintiff's vehicle appeared in the intersection as a blur. The defendant,
while unable to estimate plaintiff's speed, claims the intersection was clear and that his
vehicle proceeded into it and the plaintiff's vehicle then appeared. This lawsuit thereafter
ensued.

The plaintiff now moves for summary judgment on the issue of liability pursuant
to CPLR §3212 arguing that, as a matter of law, the plaintiff is not liable for the happening of

this intersection motor vehicle accident as she had the right of way and defendant had a stop sign against him. The defendant opposes the requested relief claiming that the intersection was clear and no cars were at or near the intersection and the plaintiff's vehicle thereafter appeared in the intersection as a blur .

For the following reasons, the plaintiff's motion for summary judgment on the issue of liability pursuant to CPLR §3212 is hereby denied in its entirety.

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).

Here, in the case at bar, there are numerous factual issues raised by the parties which preclude summary disposition. The plaintiff stated that her vehicle was proceeding westbound on Gunther Avenue and that it had the right of way in the intersection when it was struck by the defendant's vehicle. However, the defendant claims that he stopped his vehicle at the intersection and, upon observing no vehicles, then proceeded into the intersection where his vehicle encountered the plaintiff's vehicle. He did not see the plaintiff's vehicle prior to impact and described her vehicle as a "blur" coming from his right into the intersection, raising a possible factual inference of excess speed. There is inherent in an intersection

accident a question of responsibility and the possible apportionment of fault. A jury might properly infer that the causation of the accident lies with fault on both sides and their respective failures to exercise due discretion and good judgment in the operation of their respective vehicles. Summary judgment is seldom appropriate in negligence actions for this very reason. The defendant by his testimony suggests that the intersection was clear and plaintiff's vehicle was a "blur" when his vehicle entered the intersection and that the plaintiff was proceeding at a high rate of speed and driving inattentively. While the plaintiff argues that the defendant had a stop sign against him and failed to yield the right of way, that does not end the inquiry.

The plaintiff may also be held responsible for failing to see that which should have been seen or should have proceeded in a more cautious manner when entering this intersection in a neighborhood where speed may be an issue. The plaintiff cannot claim to be entitled to ignore entry into an intersection or danger just because she has the right of way. These are all issues which test the credibility of the two parties involved since there were no other witnesses to the accident.

Furthermore, summary judgment is an extremely rare event when dealing with issues in a personal injury negligence action with its potential of possible contributory negligence, since the granting of such relief is possible only in the most clear cut of cases. O'Callaghan v. Flitter, 112 AD2d 1030, 493 NYS2d 28 (2nd Dept. 1985). As the court noted in Johannsdottir v. Dohn, 90 AD2d 842, 456 NYS2d 86 (2nd Dept. 1982), the drastic remedy of summary judgment relief is rarely granted in negligence cases since the very question of whether a party's conduct amounts to negligence is inherently a question for the trier of fact in all but the most egregious of situations. Thus, even in cases where the facts are conceded, there is often a question of whether the plaintiff herself or defendant himself acted reasonably under the circumstances of the accident.

In light of all these issues of fact which appear before the Court and the Court being mindful of the fact that negligence cases do not lend themselves to resolution of these issues as a matter of law, the plaintiff's motion to assess liability for the happening of this intersection accident solely on the defendant's actions must necessarily fail. Summary judgment, being such a drastic remedy so as to deprive a litigant of his day in court, should only be employed when there is no doubt as to the absence of triable issues. VanNoy v. Corinth Central School District, 111 AD2d 592, 489 NYS2d 658 (3rd Dept. 1985).

Accordingly, the plaintiff's motion for summary judgment on the issue of liability only as a matter of law pursuant to CPLR §3212 in this motor vehicle negligence action is denied.

The foregoing constitutes the decision of the Court.

Dated: April 11, 2007



J.S.C.