

Rosenfeld v Tollefsen
2007 NY Slip Op 30878(U)
March 26, 2007
Supreme Court, Suffolk County
Docket Number: 0026554/2005
Judge: Robert W. Doyle
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SUPREME COURT - STATE OF NEW YORK
POST-NOTE MOTION PART - SUFFOLK COUNTY

P R E S E N T :

Hon. ROBERT W. DOYLE
Justice of the Supreme Court

MOTION DATE 1-26-07
ADJ. DATE 1-26-07
Mot. Seq. # 001 - MG; CASEDISP

-----X
GREGORY M. ROSENFELD, SUSAN L. :
ROSENFELD and IRVING S. ROSENFELD, :
 :
 : Plaintiffs, :
 :
 : - against - :
 :
KARL TOLLEFSEN, :
 :
 : Defendant. :
-----X

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Upon the following papers numbered 1 to 13 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 12-13; Replying Affidavits and supporting papers _____; Other _____; (~~and after hearing counsel in support and opposed to the motion~~) it is:

ORDERED that this motion by plaintiffs for summary judgment in their favor on the issue of liability is granted.

This is an action to recover damages for personal injuries allegedly sustained by plaintiffs Susan Rosenfeld and Gregory Rosenfeld when their vehicle collided with a vehicle owned and operated by defendant Karl Tollefsen in the Town of Southold, Suffolk County, New York, on May 15, 2004. The following facts are undisputed. While the plaintiffs' vehicle was traveling westbound on Sound Avenue in Southold, New York, a two-way two-lane roadway with a double yellow line separating eastbound and westbound traffic, the defendant's vehicle traveling eastbound crossed over the yellow line into opposing traffic and collided with the plaintiffs' vehicle. At the time of the accident, plaintiff Irving Rosenfeld was the driver of the plaintiffs' vehicle where plaintiffs Susan and Gregory Rosenfeld were the passengers.

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Plaintiffs move for summary judgment on the issue of liability on the ground that the subject accident was caused solely by the negligence of defendant. In support, plaintiffs submit, *inter alia*, the pleadings and the affidavit of plaintiff Irving Rosenfeld and non-party witness, Bryan Belman.

In his affidavit, plaintiff Irving Rosenfeld states that, while he was traveling westbound on Sound Avenue, the defendant's vehicle "suddenly and without warning, crossed over the double yellow line into [his] lane of traffic. In an attempt to avoid a collision, [he] steered [his] vehicle to the right, across the gravel shoulder and on to the grass." At the time, "defendant did not attempt to sound his horn, swerve or stop." Plaintiff Irving Rosenfeld also states that the defendant's vehicle hit his vehicle on the grassy area to the right of the shoulder.

In his affidavit, Mr. Belman states that he witnessed the subject accident. Mr. Belman observed that, while he was traveling westbound on Sound Avenue behind the plaintiffs' vehicle, the defendant's vehicle traveling eastbound "cross[ed] over the double yellow line into the opposing lane of traffic." He also observed that plaintiff Irving Rosenfeld "attempted to swerve to the right shoulder of the road to avoid the accident but he did not have enough time to avoid the collision." He further states that the defendant's vehicle collided with the plaintiffs' vehicle, "clipping the driver's side rear wheel well, tearing the rear tire and drive train off of the plaintiffs' vehicle," and, as a result of the impact, the plaintiffs' vehicle spun approximately 360 degrees. At the time of the collision, there was no water on the road and no sun glare.

"A driver is not obligated to anticipate that a vehicle traveling in the opposite direction will cross over into oncoming traffic. Such an event constitutes a classic emergency situation, thus implicating the 'emergency doctrine'" (*Gajjar v Shah*, 31 AD3d 377, 817 NYS2d 653 [2006]; *see, Lyons v Rumpler*, 254 AD2d 261, 678 NYS2d 142 [2006]). In cases where the crossover and collision occur almost instantly, the driver in the proper lane cannot be considered negligently responsible for any part of the accident (*see, Williams v Simpson*, 36 AD3d 507, 829 NYS2d 51 [2007]; *Gonzalez v Cit of New York*, 295 AD2d 122, 742 NYS2d 301 [2002]). In the context of an automobile accident tort action, once plaintiffs have established a prima facie case of negligence, it is defendants' obligation to submit evidentiary proof in admissible form raising triable issue of material fact in order to defeat a motion for summary judgment (*see, Perez v Brux Cab Corp.*, 251 AD2d 157, 674 NYS2d 343 [1998]).

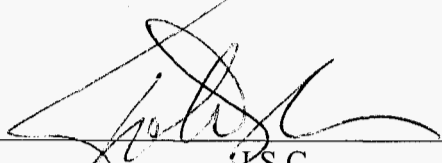
Here, the adduced evidence indicates that the defendant's vehicle suddenly crossed over the double yellow line into the opposing lane of traffic and, almost instantaneously, hit the plaintiffs' vehicle. Plaintiff Irving Rosenfeld's reaction of attempting to swerve his vehicle to the right shoulder in an attempt to avoid a collision was reasonable (*see, Lyons v Rumpler, supra*). The burden then shifted to defendant to raise a triable issue of fact. In opposition, defendant submits only an affirmation of one of his attorneys. It is well settled that an affirmation of counsel with no personal knowledge of the facts is insufficient to defeat summary judgment (*see,*

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9394 LLC v Farris, 10 AD3d 708, 782 NYS2d 281 [2004]). Therefore, there is no triable issue of fact as to defendant's negligence with regard to the subject accident.

Accordingly, plaintiffs' motion for summary judgment on the issue of liability is granted. Upon service of a copy of this order with notice of entry, the Calendar Clerk of this Court is directed to place this action on the Calendar Control Part Calendar for the next available date.

Dated: MAR 26 2007



J.S.C.

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