

Knizeski v Settebres Limousine, Inc.

2007 NY Slip Op 31484(U)

June 5, 2007

Supreme Court, Richmond County

Docket Number: 0013002/2004

Judge: Joseph J. Maltese

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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND**

x DCM PART 3

**RICHARD KNIZESKI, ELIZABETH KNIZESKI,
MICHELLE KNIZESKI-FULOP and DAVID FULOP,**

**Cal. No. 242
Index No: 13002/04**

Plaintiffs,

-against-

**DECISION & ORDER
HON. JOSEPH J. MALTESE**

**SETTEMBRES LIMOUSINE, INC., JOHN M. BELL,
DEBORAH BOHREN, JONATHAN R. BOHREN,
FANNY QUEZADA and CHRISTOPHER A. ARAUJO,**

Defendants.

x

The following papers numbered 1 to 9 were submitted on these motions this 5th day of March, 2007:

Notice of Motion with Exhibits (dated December 14, 2006).....	1
Amended Notice of Cross Motion with Exhibits (dated January 23, 2007).....	2
Affirmation in Opposition with Exhibits (dated February 6, 2007).....	3
Affirmation in Opposition with Exhibits (dated February 8, 2007).....	4
Affirmation in Opposition (dated February 8, 2007).....	5
Affirmation in Reply with Exhibits (dated February 20, 2007).....	6
Affirmation in Reply with Exhibits (dated March 5, 2007).....	7
Amended Affirmation in Opposition (dated March 5, 2007).....	8
Affirmation in Reply (dated March 5, 2007).....	9

Upon the foregoing papers, the motion (No. 3922) by defendants Fanny Quezada and defendant Christopher A. Araujo, and the cross motion (No. 242) by defendants Settebres Limousine, Inc. and John M. Bell are granted, and the complaint and all cross claims as against each are dismissed..

This is an action to recover monetary damages for personal injuries allegedly sustained by plaintiffs in an accident involving three motor vehicles. The accident occurred on October 2, 2004 at

the intersection of Harwood Avenue and North Broadway (Route 9) in Westchester County, New York.

Plaintiffs were passengers in a limousine owned by defendant Settembres Limousine, Inc. and operated by defendant John M. Bell. The limousine was traveling north on North Broadway when it was involved in a collision with a vehicle owned by defendant Deborah Bohren and operated by defendant Jonathan R. Bohren, and a third vehicle owned by defendant Fanny Quezada and operated by defendant Christopher A. Araujo.

The Bohren vehicle had entered the intersection from Harwood Avenue, which is controlled by a stop sign. According to the complaint, as plaintiffs' limousine passed through the intersection it was struck by the Bohren vehicle, precipitating the limousine into the path of the oncoming south-bound Quezada/Araujo vehicle.

In Motion No. 3922, defendants Quezada and Araujo move for summary judgment dismissing the complaint and cross claims as to them on the ground that Araujo was not negligent in the operation of his vehicle and was faced with an emergency situation not of his own making. In opposition to the motion, plaintiffs argue that there are questions of fact concerning the accident . More particularly, plaintiffs maintain that Araujo could have avoided the impact by taking evasive action or reducing speed. Defendants Settembres and Bell also oppose the motion on the ground that there are questions of fact as to whether Araujo actually confronted an emergency situation, and, if so, whether he acted reasonably under the circumstances. The Bohren defendants have submitted no opposition to the motion.

In Motion No. 242, defendants Settembres and Bell cross-move for summary judgment on the grounds that the Settembres vehicle had the right of way and that Bell was not negligent in the

operation of his vehicle. Plaintiffs, the Bohren defendants and the Quezada/Araujo defendants all oppose the cross motion on the ground that there are material issues of fact as to whether Bell operated his vehicle at an excessive rate of speed and/or failed to see what was there to be seen.

A driver who has the right-of-way is entitled to anticipate that the other motorist will obey the traffic law requiring him to yield (*see Platt v. Wolman*, 29 AD3d 663 [2nd Dept 2006]). Here, defendants Settembre and Bell established their prima facie entitlement to judgment as a matter of law by demonstrating that defendant Bohren, who was faced with a stop sign, entered the intersection without yielding the right-of-way. The opposing parties' contention that there is a triable issue of fact as to Bell's negligence because he allegedly failed to see that which by the proper use of his senses he should have seen is mere speculation, which is insufficient to defeat the cross motion (*Klein v. Byalik*, 1 AD3d 399, 400 [2nd Dept 2003]). Further, these parties failed to demonstrate by admissible evidence that Bell was speeding prior to the accident (*see Breslin v. Rudden*, 291 AD2d 471 [2nd Dept 2002], *lv denied* 98 NY2d 605).

Accordingly, the cross motion (No. 242) by defendants Settembres and Bell for summary judgment is granted.

Similarly, defendants Quezada and Araujo are entitled to summary judgment on their motion (No. 3922). A driver is not required to anticipate that an automobile going in the opposite direction will cross over into oncoming traffic. Here, Araujo was faced with an emergency situation when the limousine was driven into his lane of traffic some five feet in front of him (*see Camas v. Castellanos* 260 AD2d 593 [2nd Dept 1999]), *lv denied* 93 NY2d 815; *Greifer v. Schneider* 215 AD2d 354, 356 [2nd Dept 1995]). Under these circumstances, it cannot be said that his actions were unreasonable or a proximate cause of the collision.

Accordingly, it is hereby:

ORDERED that the motion (No. 3922) by defendants Fanny Quezada and defendant Christopher A. Araujo, and the cross motion (No. 242) by defendants Settembres Limousine, Inc. and John M. Bell are granted; and it is further

ORDERED that the complaint and all cross claims as against each are severed and dismissed; and it is further

ORDERED that the Clerk shall enter judgment accordingly.

All parties shall appear for a status conference in DCM Part 3 at 9:30 a.m. on **July 16, 2007**.

ENTER

Dated: June 5, 2007

Justice, Supreme Court