Murtagh v Verizon N.Y., Inc.
2007 NY Slip Op 32859(U)
September 13, 2007
Supreme Court, Kings County
Docket Number: 0017312/2004
Judge: James G. Starkey
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS, CIVIL TERM, PART 6
HON. JAMES G. STARKEY

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JOHN MURTAGH,

Plaintiff, DECISION

-against- INDEX NO.: 17312/2004

VERIZON NEW YORK, INC., SHANE O. PATTERSON,
LEONID BULAKH, NATALIYA BULAKH and
YEVGENIY BULAKH,

Defendant.

---x Dated: September 13, 2007

APPEARANCES OF COUNSEL

For the Plaintiff(s): John Murtagh

ROSENBERG & GLUCK, LLP
1176 Portion Road
Holtsville, New York 11742

For the Defendant(s): Verizon New York, Inc., and Shane O. Patterson

CULLEN and DYKMAN, LLP
177 Montague Street
Brooklyn, New York 11201

For the Defendant(s): Leonid, Natalia, and Yevgeniy Bulakh

LAW OFFICES OF BRYAN M. ROTHENBERG
100 Duffy Avenue, Suite 500
Hicksville, New York 11801

Murtagh v. Verizon, Patterson & Bulakh Index No.: 17312/2004

By notice of motion dated May 15, 2007, defendants Leonid Bulakh, Nataliya Bulakh and Yevgeniy Bulakh (hereinafter "defendants Bulakh") seek summary judgement pursuant to CPLR § 3212 dismissing plaintiff's complaint in its' entirety on the basis of New York State Vehicle and Traffic Law §1142(a)[1] and §1172(a).[2] By notice of cross-motion dated May 30, 2007, plaintiff John Murtagh seeks summary judgment pursuant to CPLR § 3212 on the issues of liability also on the basis of New York State Vehicle and Traffic Law § 1142 and § 1172 as to all named defendants.

The parties appeared in Part 6 of this Court for oral argument on the motion on July 11, 2007 and decision was reserved.

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[1] New York State Vehicle and Traffic Law § 1142(a) reads as follows:

> "Except when directed to proceed by a police officer, every driver of a vehicle approaching a stop sign shall stop as required by section eleven hundred seventy-two and after having stopped shall yield the right of way to any vehicle which has entered the intersection from another highway or which is approaching so closely on said highway as to constitute an immediate hazard during the time when such driver is moving across or within the intersection."

[2] New York State Vehicle and Traffic Law § 1172(a) reads as follows:

> "Except when directed to proceed by a police officer, every driver of a vehicle approaching a stop sign shall stop at a clearly marked stop line, but if none, then shall stop before entering the crosswalk on the near side of the intersection, or in the event there is no crosswalk, at the point nearest the intersecting roadway where the driver has a view of the approaching traffic on the intersecting roadway before entering the intersection and the right to proceed shall be subject to the provisions of section eleven hundred forty-two."

FACTUAL BACKGROUND

Plaintiff John Murtagh was a rear seat passenger in a vehicle owned by defendant Verizon New York, Inc., and operated by defendant Shane O. Patterson (hereinafter "defendants Verizon") on December 10, 2002. Plaintiff was in the course of his employment as a job site engineer with an engineering consulting firm named "Lourds," a concern working under contract with Verizon to assist with equipment installations at various locations. At approximately 12:35 PM., while the Verizon vehicle was leaving one job site location and headed for another, the vehicle owned and operated by defendants Bulakh collided with defendants Verizon vehicle at the intersection of East 9th Street and Avenue T, Brooklyn, New York.

The Verizon vehicle was traveling on East 9th Street – controlled by a stop sign – when the Bulakh vehicle – traveling on Avenue T – collided into the right rear side of the Verizon vehicle, near where plaintiff was seated. As a result of this collision, plaintiff commenced suit against the owners and operators of both vehicles for personal injuries.

LAW AND APPLICATION

Summary judgment is a drastic remedy, and should be granted only when it is clear that no triable issues of fact exist. *Alvarez v. Prospect Hospital*, 68 N.Y.2d 320, 508 N.Y.S.2d 923, 501 N.E.2d 572 (1986). The burden is upon the moving party to make a prima facie showing that the movant is entitled to summary judgment as a matter of law by presenting evidence in admissible form demonstrating the absence of any material facts. *Giuffrida v. Citibank*, 100 N.Y.2d 72, 760 N.Y.S.2d 397, 790 N.E.2d 772 (2003). A failure to make that showing requires the denial of the motion, regardless of the adequacy of the opposing papers. *Ayotte v. Gervasio*, 81 NY 2d 1062, 601 N.Y.S.2d 463, 619 N.E.2d 400 (1993). If a prima facie showing has been

made, the burden shifts to the opposing party to produce evidentiary proof sufficient to establish the existence of material issues of fact. *Alvarez v. Prospect Hospital*, *supra,* at 324.

In support of the motion, defendants Bulakh rely upon plaintiff's deposition testimony establishing that the Verizon vehicle had a stop sign controlling East 9th Street traffic; that neither plaintiff nor defendant Patterson had seen defendants Bulakh's vehicle prior to the impact and that they therefore could not assess its speed. In essence, defendants urge that Verizon failed to see what was there to be seen, namely the Bulakh vehicle with the right of way.

In opposition, plaintiff and co-defendants suggest that moving defendants vehicle was speeding along Avenue T near the intersection. In support of this contention, Verizon offers the affidavit of Clyde Corbett, a co-worker of plaintiff for Lourdes, who was a front seat passenger in the Verizon vehicle at the time. Mr. Corbett asserts that the Bulakh vehicle was "speeding" and "caused the accident." However, Mr. Corbett offers no statement as to the speed limit along Avenue T, nor the approximate rate of speed of the Bulakh vehicle at or near the time of the accident, nor how long or how far he observed the Bulakh vehicle before making his rate of speed assessment. Thus, the allegation that the Bulakh vehicle was "speeding" and "caused the accident" is conclusory and insufficient to raise a triable issue of fact. See *McCain v. LaRosa*, 2007 Slip Op. 05697, 838 N.Y.S.2d 663 (2nd Dept. 2007); *McNamara v. Fishkowitz*, 18 A.D.3d 721, 795 N.Y.S.2d 714 (2nd Dept. 2005).

It is true that plaintiff and Mr. Corbett claim that defendant Patterson complied with the stop sign pursuant to New York State Vehicle and Traffic Law § 1142(a) before proceeding into the intersection. But even if that is so, defendants failed to "yield the right of way" to the Bulakh vehicle in violation of VTL § 1142(a). This failure to "yield the right of way" was the proximate

cause of the accident as a matter of law, as defendants Bulakh were entitled to anticipate that co-defendants' would yield the right of way. See *McCain v. LaRosa*, supra; *McNamara v. Fishkowitz*, supra; *Gergis v. Miccio*, 39 A.D.3d 468, 834 N.Y.S.2d 253 (1st Dept. 2007). Thus, defendants Bulakh are entitled to summary judgment dismissing the complaint, as neither plaintiff nor defendants Verizon have raised a triable issue of fact on this issue.

Since plaintiff was a passenger at the time of the occurrence, he is also entitled to summary judgment on his cross-motion against defendants Verizon and Patterson.

CONCLUSION

In light of the above, defendants Bulakhs' summary judgment motion is granted. Plaintiff's cross-motion for the same relief is granted only as against defendants Verizon and Shane O. Patterson.

This constitutes the decision and order of the court. Defendants Bulakh are directed to settle Order on notice.

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J. S. C.