

Lombardi-Rauchut v Natale

2007 NY Slip Op 33330(U)

October 12, 2007

Supreme Court, Suffolk County

Docket Number: 0024292/2006

Judge: Emily Pines

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Supreme Court - State of New York
I.A.S. Term, Part 23, Suffolk County

Present:

HON. EMILY PINES
 Justice Supreme Court

Original Motion Dates: 07-13-07
 Motion Submit Date: 08-23-2007
 Motion Sequence No.: 001 MOTD; 002
 MG; 003 RRH

<p>_____ X ALBINA LOMBARDI-RAUCHUT, <div style="text-align: center;">Plaintiff,</div> -against- MARIA A. NATALE and SCOTT FICALORA, <div style="text-align: center;">Defendants.</div> _____ X</p>	<p>Schwartzapfel, Truhowsky & Marcus Sachs, PC By: Evangelina Triliouris, Esq. 300 Jericho Quad, Suite 180 Jericho, New York 11753</p> <p>David Sobel, Esq. Sobel & Seidell LLP 811 West Jericho Turnpike Smithtown, New York 11787</p> <p>Richard T. Lau & Associates By: Keith Ford, Esq. PO Box 9040 Jericho, New York 11753-9040</p>
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ORDERED, that the motion (motion sequence no. 001) by Plaintiff ALBINA LOMBARDI-RAUCHUT for Summary Judgment on the issue of liability is granted as against Defendant SCOTT FICALORA only and the request for permission to immediately file a Note of Issue is denied; and it is further

ORDERED, that the cross-motion (motion sequence no. 002) by Defendant MARIA A. NATALE for Summary Judgment dismissing the complaint and all cross-claims asserted against her is granted; and it is further

ORDERED, that the cross-motion (motion sequence no. 003) by Defendant SCOTT FICALORA to compel discovery is referred to the next scheduled Court conference on October 25, 2007 at 9:30 a.m. before the undersigned.

This personal injury action arises out of a three car automobile collision which occurred on November 26, 2005 at or near the intersection of Route 110 and Old Country Road, Huntington, New

York. Plaintiffs commenced the action by filing a Summons and Complaint against all Defendants on or about September 20, 2006 and issue was joined by Defendant FICALORA's service of a Verified Answer on September 27, 2006 and Defendant NATALE's service of a Verified Answer on November 20, 2006.

Plaintiff moves for summary judgment on liability on the ground that Defendants were the sole and proximate cause of the accident in that her vehicle was struck in the rear by Defendant FICALORA's vehicle. Plaintiff submits an affidavit in which she states that she was traveling northbound on Route 110 and was stopped behind another vehicle at the traffic light at Old Country Road when she was struck in the rear by a vehicle that she later learned was driven and owned by Defendant FICALORA. Plaintiff also seeks permission to immediately file a Note of Issue.

Defendant NATALE cross-moves for summary judgment dismissing the complaint and all cross-claims asserted against her. She submits an affidavit wherein she states that on the date of the accident, she was stopped in the northbound lane of Route 110 at the intersection with Old Country Road at the red traffic signal. NATALE states that she had been stopped for approximately 30 seconds when she was struck in the rear by the vehicle operated by Plaintiff. Therefore, Defendant NATALE argues that no liability in the happening of the accident can be attributed to any negligence on her part since she was the lead car stopped at the intersection and was struck from behind by Plaintiff.

Defendant FICALORA submits an opposition to Plaintiff's motion for Summary Judgment on the ground that no discovery has been conducted with respect to Plaintiff's alleged injuries and therefore, the matter should not be set down for an immediate trial on damages. Defendant FICALORA does not oppose the cross-motion by co-defendant NATALE for Summary Judgment dismissing the complaint and cross-claims against her, nor does he specifically oppose the motion by Plaintiff for Summary Judgment on the issue of liability. Defendant FICALORA also cross-moves to compel discovery by Plaintiff on the ground that Plaintiff failed to appear for an examination before trial or independent medical examination and further failed to respond to Combined Demands which demanded authorizations for records regarding a prior automobile accident involving Plaintiff.

In response, Plaintiff does not oppose the motion for summary judgment by Defendant NATALE dismissing the complaint and all cross-claims asserted against her. Regarding the issues of discovery raised by Defendant FICALORA, Plaintiff claims that she has been ready, willing and able to appear for an examination before trial, but that Defendant has repeatedly adjourned the depositions. Further, Plaintiff's counsel states that Plaintiff has not appeared for an independent medical examination because Defendant has not provided notice of any such examination being scheduled. Finally, Plaintiff's counsel claims that all the outstanding authorizations have been provided to Defendant's counsel.

In reply, Defendant FICALORA requests that he be permitted to conduct the examination before trial and independent medical examination of Plaintiff.

Summary judgment is the proper disposition of a matter when it is established that the movant is entitled to judgment as a matter of law by demonstrating the lack of any material issues of fact regarding liability for determination by a jury. **Christian v. Audi of America, Inc.**, 233 A.D.2d 289, 649 N.Y.S.2d 466 (2d Dept. 1996). Thus, a motion for Summary Judgment will be granted when the facts clearly indicate that one party is without fault or culpable conduct. **Hoffman v. Anolik**, 250 A.D.2d 733, 672 N.Y.S.2d 785 (2d Dept. 1998). In order to defeat a motion for Summary Judgment, the opponent must introduce evidentiary proof in admissible form to support the allegation of a question of material fact to warrant proceeding to a trial. **Christian, supra**.

With regard to rear-end chain reaction collisions, it is well settled that "a rear-end collision with a stationary vehicle creates a *prima facie* case of liability against the operator of the moving vehicle unless he or she can come forward with an adequate, non-negligent explanation for the collision." **Aloia v. Stoffel**, 273 A.D.2d 420, 711 N.Y.S.2d 737 (2d Dept. 2000). **See also, Jaffe v. Miller**, 295 A.D.2d 404, 743 N.Y.S.2d 294 (2d Dept. 2002); **Cerda v. Parsley**, 273 A.D.2d 339, 709 N.Y.S.2d 585 (2d Dept. 2000); **Miller v. Irwin**, 243 A.D.2d 546, 663 N.Y.S.2d 110 (2d Dept. 1997).

In the case at bar, the evidence establishes as a matter of law that Defendant FICALORA was responsible for the happening of

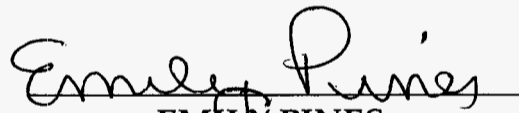
the accident. The uncontroverted submissions reflect that Plaintiff's vehicle was stopped at a red light at the intersection of Route 110 and Old Country Road, when it was impacted in the rear by the FICALORA vehicle, pushing it forward into the vehicle in front of it, the NATALE vehicle. Defendant FICALORA has not come forward with any evidence or testimony to rebut this evidence and did not even submit an affidavit in opposition to the motion for Summary Judgment on the issue of liability. Therefore, Plaintiff is entitled to judgment as a matter of law on the issue of liability for the happening of the accident as against Defendant FICALORA. Likewise, Defendant NATALE is entitled to Summary Judgment dismissing the complaint and all cross-claims asserted against her, as it is not disputed that she was not at fault in the happening of the accident.

Turning to the issue of discovery, the submissions reflect that Plaintiff has now, although somewhat belatedly, provided all authorizations to Defendant FICALORA's counsel. However, Plaintiff must still submit to an examination before trial and independent medical examination. Plaintiff's request for permission to immediately file a note of issue is therefore denied and counsel are directed to appear at the compliance conference on October 25, 2007 at 9:30 a.m. for the purpose of entering into a scheduling Order for the outstanding discovery. No adjournments will be granted.

Based upon the foregoing, Plaintiffs' motion for Summary Judgment is granted on the issue of liability as against Defendant FICALORA. The complaint and all cross-claims against Defendant NATALE are dismissed.

The foregoing constitutes the **DECISION** and **ORDER** of the Court.

Dated: October 12, 2007
Riverhead, New York


EMILY PINES
J. S. C.