

Oliva v Lawson

2007 NY Slip Op 33846(U)

November 15, 2007

Supreme Court, Suffolk County

Docket Number: 0006838/2006

Judge: Robert W. Doyle

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SUPREME COURT - STATE OF NEW YORK
POST-NOTE MOTION PART - SUFFOLK COUNTY

PRESENT:

Hon. ROBERT W. DOYLE
Justice of the Supreme Court

MOTION DATE 8-30-07 (001)
8-24-07 (002)

ADJ. DATE 10-11-07

Mot. Seq. # 001 - MG
002 - MG

-----X
ANN OLIVA. :
: :
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: :
Plaintiff, :
: :
: :
- against - :
: :
: :
DANICIA S. LAWSON, MATTHEW S. :
MURRAY and ANTOINETTE ZEOLI, :
: :
: :
Defendants. :
-----X

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Upon the following papers numbered 1 to 40 read on this motion and cross motions for summary judgment; Notice of Motion/ Order to Show Cause and supporting papers 1-12; Notice of Cross Motion and supporting papers 13-21; Answering Affidavits and supporting papers 22-27; 28-30; 31-32; Replying Affidavits and supporting papers 33-34; 35-36; 37-38; 39-40 Other ; (~~and after hearing counsel in support and opposed to the motion~~) it is

ORDERED that this motion (001) by defendant, Matthew S. Murray, pursuant to CPLR 3212 for summary judgment dismissing plaintiff's complaint, is granted and the complaint and cross claims asserted against him are dismissed; and it is further

ORDERED that this motion (002) by defendant, Danicia S. Lawson, pursuant to CPLR 3212 for summary judgment dismissing plaintiff's complaint, is granted and the complaint and cross claims asserted against her are dismissed.

This is an action for damages arising out of a three vehicle collision which occurred on July 31, 2004, on Ronkonkoma Avenue at or near its intersection with the service road of the Long Island Expressway (Route 495), County of Suffolk, State of New York. Plaintiff claims to have sustained personal injuries as a result of this collision.

In motions (001) and (002), defendants Matthew S. Murray and Danicia S. Lawson seek summary judgment, each asserting they bear no liability for the happening of the accident. Plaintiff opposes both motions.

The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case. To grant summary judgment it must clearly appear that no material and triable issue of fact is presented (*Sillman v Twentieth Century-Fox Film Corporation*, 3 NY2d 395, 165 NYS2d 498 [1957]). The movant has the initial burden of proving entitlement to summary judgment (*Winegrad v N.Y.U. Medical Center*, 64 NY2d 851, 487 NYS2d 316 [1985]). Failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers (*Winegrad v N.Y.U. Medical Center, supra*). Once such proof has been offered, the burden then shifts to the opposing party, who, in order to defeat the motion for summary judgment, must proffer evidence in admissible form...and must "show facts sufficient to require a trial of any issue of fact" (CPLR 3212[b]; *Zuckerman v City of New York*, 49 NY2d 557, 427 NYS2d 595 [1980]). The opposing party must present facts sufficient to require a trial of any issue of fact by producing evidentiary proof in admissible form (*Joseph P. Day Realty Corp. v Aeroxon Prods.*, 148 AD2d 499, 538 NYS2d 843 [2nd Dept 1979]) and must assemble, lay bare and reveal his proof in order to establish that the matters set forth in his pleadings are real and capable of being established (*Castro v Liberty Bus Co.*, 79 AD2d 1014, 435 NYS2d 340 [2nd Dept 1981]). Summary judgment shall only be granted when there are no issues of material fact and the evidence requires the court to direct a judgment in favor of the movant as a matter of law (*Friends of Animals v Associated Fur Mfrs.*, 46 NY2d 1065, 416 NYS2d 790 [1979]).

In support of motion (001), defendant Murray has submitted a copy of the summons and complaint; a copy of each defendant's answer; copies of the transcripts of the examinations before trial of Matthew S. Murray, Danicia Lawson, Arthur Meyer and Antoinette Zeoli.

In support of motion (002), defendant Lawson has submitted a copy of the summons and complaint; a copy of defendant's answer; and copies of the transcripts of the examinations before trial of Antoinette Zeoli, Matthew Murray, Danicia Murray, and Arthur Meyer.

Defendant Antoinette Zeoli opposes motions (001) and (002), as does plaintiff, Ann Oliva who has also submitted copies of the transcripts of the examinations before trial of Antoinette Zeoli, Matthew Meyer, Danicia Lawson and Arthur Meyer.

Arthur Meyer, a non-party witness, testified at his examination before trial that he was a witness to the motor vehicle accident which occurred towards the evening on July 31, 2004 on Ronkonkoma Avenue near the eastbound service road of the Long Island Expressway. He stated it was light out, the weather was clear, the road was dry, straight and level, and traffic was less than moderate. He was driving about forty-five to fifty miles per hour in the left northbound lane on Ronkonkoma Avenue, a four

lane road with two travel lanes in each direction. As he approached the intersection of Ronkonkoma Avenue and the eastbound service road of the expressway, there was a traffic light which was green for northbound traffic. He observed a Camry traveling in the left northbound lane on Ronkonkoma Avenue, a Jetta traveling northbound on Ronkonkoma Avenue in the right lane a little further north than the Camry, and a stopped Celica traveling southbound in the turning lane on Ronkonkoma Avenue. He further testified that all of a sudden the Celica made a left hand turn and crashed into the Jetta and then proceeded into the woods. The Camry spun out, although he did not see exactly how the Camry was involved. He stopped his car and went over to the Camry and saw a young man who was driving alone in the car. In the Celica was an unconscious elderly lady in the front passenger seat with a younger lady in her forties who was the driver. A girl was in the Jetta.

Matthew Murray testified he was the driver of a green Toyota Camry on July 31, 2004 traveling in the left northbound lane of Ronkonkoma Avenue about thirty five to forty miles per hour. Traffic conditions were light. As he approached the intersection where the accident occurred, he saw the traffic light from a couple hundred yards away. The traffic light was green for northbound traffic and remained green. When he was about one hundred yards from the intersection, he saw a car stopped in the left southbound turning lane of Ronkonkoma Avenue. As he was entering the intersection, that car then made a left hand turn in front of him. He slammed on his brakes. They collided in the middle of the intersection with the front of his vehicle striking the passenger side of the turning vehicle. The turning vehicle then rolled forward over the curb and rested on a fence by the corner of the south service road and Ronkonkoma Avenue on the east side to his right. He testified he did not know the rate of speed of his vehicle at the time of impact. He did not know of any impact between his vehicle and the vehicle traveling to his right. He did not observe any impact between the turning vehicle and the vehicle traveling to his right. He did not know if the turning vehicle had its directional signal on.

Dancia Lawson testified that on July 31, 2004 she was operating a Volkswagen Jetta traveling in the right northbound lane on Ronkonkoma Avenue, approaching an intersection with a green traffic signal. A green Camry was traveling to her left and slightly ahead in the left lane immediately prior to the accident. As she approached the intersection, she thought the green Camry was appearing to cut her off by coming into the right lane, but she saw a red Celica out of the corner of her eye in the right lane about two seconds before the accident took place. Then her airbags deployed. Her vehicle had just passed the traffic light when she saw the red Celica. She did not know which vehicle her vehicle came into contact with and thought there was just one impact. There was no contact with her vehicle before she saw the Celica. The Camry was partially in the left lane and partially in the right lane when she thought there was contact between the Camry and the Celica. Her vehicle came to a stop after the intersection off the shoulder on the right side facing east. The Celica was a few feet away from her vehicle facing eastbound and was also over the curb. The Camry was facing southbound in the middle of the intersection. The damage to her vehicle was to the front of her car, the hood was smashed in and the bottom of the fender on the passenger side was torn off. The entire passenger side of her car was slightly off track so the doors could not be opened. She testified that the passenger door of the Celica had the door cut out and there was some damage to the front of the Celica from hitting the fence and the curb. She also testified the light did not turn red before the accident occurred.

Antoinette Zeoli testified that Ann Oliva is her mother and was a passenger in her vehicle when the accident occurred. Ms. Zeoli did not remember the name of the road where the accident occurred,

whether the roadway was flat or hilly, how many travel lanes were on the road, what direction she was traveling, or the highest rate of speed she was traveling on the roadway. She did not know if there was a divider on the roadway or painted lines or pavement markings separating traffic. She said it was a sunny day in July, but did not know the traffic conditions. She was intending to travel eastbound on the Long Island Expressway when the accident occurred at an intersection when she was going to make a left hand turn. She testified there was a light at the intersection, but did not know if it was a three-phase light or arrow, and thought there was a turning lane at the intersection. She stated she had been standing for a few seconds because the light was red. She stated the traffic light turned green for her direction, so she started accelerating and turning her wheel in the direction for the LIE. She does not remember what happened after that and woke up seeing her car in a ditch. She did not know the speed she was traveling when she was making the turn. She looked in the direction that she was turning and did not see any vehicles approaching from the other direction. There was nothing that blocked her vision of vehicles traveling in the opposite direction.

Vehicle and Traffic Law §1141(a) provides, “[T]he driver of a vehicle intending to turn to the left within an intersection or into an alley, private road, or driveway shall yield the right of way to any vehicle approaching from the opposite direction which is within the intersection or so close as to constitute an immediate hazard.”

Defendant Zeoli testified that when the traffic light turned green, she accelerated to make the left turn at the intersection with the intent to travel eastbound on the Long Island Expressway. She did not see any cars coming from the opposite direction and there was nothing to obstruct her vision with regard to oncoming traffic. She does not remember anything after that. Since Zeoli testified that she saw no vehicle approaching, she has invoked the common-law rule that a motorist must see what there is to see (see, *Weigand v United Traction Col*, 221 NY 39; 1PJI 2:77) and unless their appearance in this case was truly talismanic, what there was to see were the Camry and the Jetta which were both traveling northbound on Ronkonkoma Avenue (*Kiernan v Edwards*, 97 AD2d 750, 468 NYS2d 381 [2d Dept 1983]).

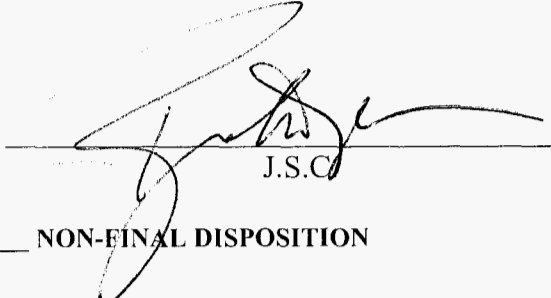
It is undisputed that defendant Zeoli was making a left turn across Ronkonkoma Avenue, and did not see either the Lawson or Murray cars heading in the opposite direction before she executed her left hand turn. Therefore, as a matter of law, as required by Vehicle and Traffic Law §1141(a), defendant Zeoli did not yield the right of way to co-defendants’ vehicles which were approaching the intersection from the opposite direction on a green light. The Camry operated by defendant Murray, and the Jetta operated by defendant Lawson, were so close to the intersection as to constitute an immediate hazard, as evidenced by their testimony which is undisputed by plaintiff Oliva or co-defendant Zeoli. Therefore, both co-defendants, Murray and Lawson, have demonstrated prima facie entitlement to an order granting summary judgment. Neither defendant Zeoli nor plaintiff Oliva have come forward with admissible evidence to raise a triable issue of fact to preclude summary judgment. Defendant Zeoli and plaintiff Oliva did not dispute that co-defendants Murray and Lawson had a green light. They have not disputed where the co-defendants’ vehicles were in relation to the intersection when defendant Zeoli was executing her turn. Matthew Murray testified when he was about one hundred yards from the intersection, he saw a car stopped in the left southbound turning lane of Ronkonkoma Avenue, and as he was entering the intersection, that car then made a left hand turn in front of him. Danicia Lawson testified that she saw a red Celica out of the corner of her eye in the right lane about two seconds before the accident took place.

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Defendant Zeoli admitted she did not see their vehicles prior to the accident. No affidavit or a transcript from an examination before trial has been submitted by plaintiff in opposing this motion to raise a triable issue of fact as well. Counsel for plaintiff and defendant Zeoli have merely asserted conclusory, speculative arguments which are unsupported by evidentiary proof.

Accordingly, motions (001) and (002) by defendants Murray and Lawson for summary judgment on the issue of liability is granted as a matter of law and the complaint and cross claims are hereby dismissed as asserted against them.

Dated: NOV 15 2007



J.S.C.

 FINAL DISPOSITION X NON-FINAL DISPOSITION