

Beierle v Perreca

2008 NY Slip Op 31364(U)

April 30, 2008

Supreme Court, Suffolk County

Docket Number: 0011964/2006

Judge: Emily Pines

Republished from New York State Unified Court
System's E-Courts Service.
Search E-Courts (<http://www.nycourts.gov/ecourts>) for
any additional information on this case.

This opinion is uncorrected and not selected for official
publication.

COPY

Short Form Order

Index Number: 11964-2006

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

*Present:***HON. EMILY PINES**

Justice Supreme Court

Original Motion Date: 02-25-2008
 Motion Submit Date: 03-24-2008
 Motion Sequence No.: 002 MOTD

STEVEN Z. BEIERLE, <p style="text-align: center;">-against-</p> JAMES N. PERRECA, <hr style="width: 100%;"/>	X	ROSENBERG & GLUCK, LLP Andrew Bokar, Esq. 1176 Portion Road Holtsville, New York 11742 ABAMONT & ASSOCIATES Thomas Youllar, Esq. 200 Garden City Plaza, Suite 400 PO Box 9250 Garden City, New York 11530-9250
Plaintiff,		Defendant .

ORDERED, that the motion (motion sequence number 002) by plaintiff for leave to renew the prior motion for partial summary judgment on the issue of liability is granted; and it is further

ORDERED, that upon renewal, the Court grants partial summary judgment on the issue of liability.

This action arises out of a motor vehicle accident that occurred on March 28, 2006 at the intersection of Route 25A and Hunter Avenue, Miller Place, New York. Plaintiff alleges to have sustained serious injuries as a result of the accident which he claims was the fault of defendant. The submissions reflect that at the time of the accident, defendant was traveling east bound on Route 25A and was in the process of turning left (north) on Hunter Avenue, when he was struck by plaintiff's vehicle that was traveling west bound on Route 25A. Plaintiff alleges that defendant failed to yield the right of way to plaintiff's vehicle when he was making the left turn directly in front of plaintiff's vehicle when it was hazardous to do so.

By Order (PINES, J.) dated July 26, 2007, this Court denied plaintiff's motion for summary judgment as premature, in light of the fact that depositions of the parties had not yet been conducted. The Court granted plaintiff permission to renew the motion upon the conclusion of the depositions. Plaintiff now seeks to renew the motion for partial summary judgment on the issue of liability and

annexes a copy of the deposition transcripts of both parties.

Plaintiff testified at his examination before trial that he was traveling westbound on Route 25A in the right lane and that approximately five seconds before the accident he had checked the speedometer which read 40 miles per hour. He testified that he first saw defendant's vehicle from approximately 90 feet away, when it was stopped in the center turning lane at the intersection of Hunter Avenue. Plaintiff stated that when he was approximately 30 feet away from the defendant's vehicle, it began to turn left down Hunter Avenue causing him to slam on his breaks, attempt to swerve his vehicle and sound his horn. He testified that his vehicle skidded and then impacted defendant's vehicle. Plaintiff testified that at the time of impact with defendant's vehicle, he was traveling approximately 30 to 35 miles per hour. He stated that the impact occurred between the left and right westbound lanes of Route 25A and that defendant's vehicle was moving slower than his vehicle at the time of the accident.

Defendant also appeared at an examination before trial. Defendant testified that he was traveling eastbound on Route 25A and had proceeded into the left turning lane to turn onto Hunter Avenue when the accident occurred. Defendant stated that he did not bring his vehicle to a stop in the left turning lane because there was no oncoming traffic, and he was "rolling up to the intersection" at about 15 miles per hour. He stated that he did not have to stop because the roadway was clear and he did not see any vehicles traveling westbound on Route 25A. Defendant testified that he had accelerated to approximately 20 to 25 miles per hour while he was in the process of turning and only realized an accident occurred when plaintiff's vehicle hit his vehicle. He stated he did not hear screeching tires or a horn sound prior to the impact and that the majority of his vehicle was on Hunter Avenue at the time of impact. Defendant testified that the front of his vehicle was on Hunter Avenue and maybe the back end was still on 25A. He stated that his vehicle was facing straight northbound at the time of the impact. Defendant testified he had a clear view of 25A facing westbound for approximately 50 yards and that the impact was to the right front door and right front fender. Defendant testified that he never saw plaintiff's vehicle prior to the impact.

To obtain summary judgment, the moving party must make a prima facie showing of entitlement to judgment as a matter of law, offering sufficient evidence to demonstrate the absence of any material issues of fact. *Goldberger v. Brick & Ballerstein, Inc.*, 217 A.D.2d 682, 629 N.Y.S.2d 813 (2d Dept. 1995) (internal citations omitted). The burden then shifts to the party opposing the motion to come forward with proof in admissible form demonstrating there are genuine

issues of material fact which preclude the granting of summary judgment. *Zayas v. Half Hollow Hills Cent. School Dist.*, 226 A.D.2d 713, 641 N.Y.S.2d 701 (2d Dept. 1996). The party opposing the motion must lay bare his proof and avoid mere conclusory allegations. *Morgan v. New York Telephone*, 220 A.D.2d 728, 633 N.Y.S.2d 319 (2d Dept. 1995); *Federal Deposit Insurance Corp., v. Jacobs*, 185 A.D.2d 913, 587 N.Y.S.2d 978 (2d Dept. 1992).

Vehicle and Traffic Law §1141 states in relevant part that:

The driver of a vehicle intending to turn to the left within an intersection... 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.

In the instant case, plaintiff has met his prima facie burden by establishing that the defendant violated Vehicle and Traffic Law §1141 when he made a left turn directly into the path of plaintiff's vehicle as it was traveling westbound on Route 25A. *See, Berner v. Koegel*, A.D.3d 591, 819 N.Y.S.2d 89 (2d Dept. 2006). Plaintiff was entitled to anticipate that defendant would obey the traffic laws which required him to yield. *Aristizabal v. Aristizabal*, 37 A.D.3d 503, 829 N.Y.S.2d 701 (2d Dept. 2007). In opposition to the motion, defendant has failed to raise a triable issue of fact regarding plaintiff's comparative negligence. *Carabella v. Saad*, 29 A.D.2d 618, 815 N.Y.S.2d 199 (2d Dept. 2006); *Moreback v. Mesquita*, 17 A.D.3d 420, 793 N.Y.S.2d 148 (2d Dept. 2005). Rather, defendant admitted that he never saw plaintiff's vehicle prior to making his left turn across Route 25A. Moreover, although defendant annexes a statement from a purported eyewitness, John Prentice such statement contains a notarial stamp, but no jurat or other indication that an oath or affirmation was administered "in a form calculated to awaken the conscience and impress the mind of the person taking it in accordance with his religious or ethical beliefs." *See, CPLR §2309*. Thus, such statement is not in proper admissible form in opposition to the motion for summary judgment. However, even if the Court were to consider the statement, the same result would obtain inasmuch as Prentice merely states that he believed speed was a factor because of the severe impact that occurred. Such assertion amounts to nothing more than speculation by Prentice.¹ Additionally, Prentice states that the accident occurred in the right lane of the westbound lane of Route 25A and that the traffic flow was busy, which contradicts defendant's testimony that there was no oncoming traffic. Finally, the photographs of the vehicles, demonstrating that the damage to defendant's vehicle was on the

¹*See, Grossman v. Spector*, 48 A.D.3d 750, 853 N.Y.S.2d 154 (2d Dept. 2008).

front end on the driver's side, also contradicts his testimony that his vehicle was on Hunter Avenue when the accident occurred.

Based on all of the foregoing, the motion for leave to renew this Court's Order dated July 26, 2007 is granted. Upon renewal, the motion for partial summary judgment on the issue of liability is granted.

This constitutes the **DECISION** and **ORDER** of the Court.

Dated: April 30, 2008
Riverhead, New York



EMILY PINES
J. S. C.