

Reinertsen v Medina

2008 NY Slip Op 31765(U)

June 16, 2008

Supreme Court, Nassau County

Docket Number: 9920-06/

Judge: William R. LaMarca

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SHORT FORM ORDER

**SUPREME COURT - STATE OF NEW YORK
COUNTY OF NASSAU - PART 17**

**Present: HON. WILLIAM R. LaMARCA
Justice**

**RANDY R. REINERTSEN and JOANNE
REINERSTEN,**

**Motion Sequence #2, #3
Submitted March 14, 2008**

Plaintiffs,

-against-

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RAFAEL A. MEDINA and SHAUN L. JONES,

Defendants.

The following papers were read on these motions:

Plaintiffs' Notice of Motion.....1
JONES Notice of Cross-Motion and in Opposition.....2
MEDINA Affirmation in Opposition to Plaintiff's Motion.....3
MEDINA Affirmation in Opposition to JONES' Cross-Motion.....4
Plaintiffs' Reply Affirmation and in Opposition to JONES Cross-Motion.....5
JONES Reply Affirmation.....6

Requested Relief

Plaintiffs, RANDY R. REINERTSEN and JOANNE REINERTSEN, move for an order, pursuant to CPLR §3212, granting them summary judgment on the issue of liability and directing an immediate and expedited assessment of damages before a jury. Defendant, SHAUN L. JONES, opposes the motion and cross-moves for an order, pursuant to CPLR §3212, granting summary judgment dismissing the complaint and all

cross-claims against him. Defendant, RAFAEL A. MEDINA, opposes plaintiffs' motion and the request for a trial preference as well as JONES' cross-motion. The motion and cross-motion are determined as follows:

Background

Plaintiffs brought this action for injuries allegedly sustained by RANDY R. REINERTSEN (hereinafter referred to as "plaintiff"), in an automobile collision. Co-plaintiff, JOANNE REINERTSEN, has interposed a derivative cause of action. It is alleged that plaintiffs' vehicle was struck by the MEDINA vehicle at approximately 8:30 A.M. on July 25, 2003 at or near the intersection of Hempstead Turnpike and California Avenue, Uniondale, New York. Plaintiff testified at his deposition that his vehicle was completely stopped at the red traffic signal, and was pointed northbound on California Avenue waiting to cross Hempstead Turnpike. The deposition testimony reflects that the MEDINA vehicle was traveling westbound on Hempstead Turnpike, in the left hand turn lane preparing to turn left onto California Avenue, and was the third vehicle in line in said lane. It appears that, when the left turn signal light turned green and the first car in the lane did not respond, MEDINA moved around the stopped vehicles and attempted to make the left-hand turn onto California Avenue southbound from a thru traffic lane. MEDINA testified that, as he made the left turn through the intersection, the left turn light was amber and he had nearly completed the turn onto California Avenue when he was hit by the JONES' vehicle which was traveling eastbound in a thru-traffic lane on Hempstead Turnpike. MEDINA testified that, as he passed through the intersection of Hempstead Turnpike and California Avenue, the JONES vehicle, traveling approximately 50 miles per hour, struck his vehicle causing it to overturn and strike the plaintiffs' vehicle, still stopped at the red traffic signal facing

northbound on California Avenue.

Plaintiff contends that both MEDINA and JONES were the cause of the collision and of the injuries that he allegedly sustained. It is plaintiffs' position that this accident was solely defendants fault– that MEDINA made a left turn from a non-turning lane and that JONES was “speeding”. Counsel for the plaintiffs contends that they are entitled to summary judgment on the issue of liability, as a matter of law, because neither defendant can provide a non-negligent excuse for their respective conduct and no negligence on the part of the plaintiff can be shown.

JONES asserts that MEDINA made an illegal left hand turn and that JONES did not have an opportunity to avoid the collision. MEDINA contends that the JONES vehicle was speeding and “ran” a red light, which is denied by JONES. He testified at his deposition that he was traveling 35-40 mph at the time of the collision and the traffic control device facing him was green. It is not refuted that plaintiff, when struck by the MEDINA vehicle, was sitting at the intersection of Hempstead Turnpike and California Avenue, waiting for the traffic signal to change from red to green so he could proceed northbound. Plaintiff was at the proverbial wrong place at the wrong time when MEDINA's vehicle, after being knocked over by the JONES vehicle, slid into the plaintiffs' vehicle waiting at the light. The Court concludes that liability rests with MEDINA and/or JONES.

At his deposition, MEDINA testified that the left turn traffic signal/arrow was yellow when he started to make his left hand turn from the left most thru lane on Hempstead Turnpike. He stated that the eastbound traffic on Hempstead Turnpike had stopped. The testimony reflects that MEDINA exited the left turning lane by moving to his right, around the stopped cars, and drove in the most left thru traffic lane from where he commenced his

left turn and that the traffic control signal turned amber or yellow as he entered the intersection. He stated that he thought the light had turned red for the eastbound traffic when he made the left turn since he saw two (2) cars stopped on Hempstead Turnpike. It appears that MEDINA believed it was safe for him to proceed into the intersection to make his left turn onto California Avenue, southbound.

JONES testified that he was going straight when a vehicle (later identified as MEDINA's) "came out of nowhere". He stated that he first saw MEDINA's vehicle a split second before the accident and that the last time he saw the traffic control signal, a split second before the collision, it was green for his vehicle. Questions of fact exist as to whether the collision between the JONES and MEDINA vehicles occurred just beneath the traffic signal or whether MEDINA had completed his turn at the time of the collision, whether the eastbound lane was green at the time of the accident or whether the JONES "ran" a red light.

Under circumstances such as these, the JONES' vehicle might be found to have the right of way wherein JONES could be entitled to anticipate that MEDINA's vehicle, the left turning vehicle, would obey the traffic laws which required that MEDINA yield to the JONES' vehicle (see, *Jacino v Sugerman*, 10 AD3d 593, 781 NYS2d 663 [2nd Dept. 2004]; *Lucksinger v M.T. Unloading Services*, 280 AD2d 741, 726 NYS2d 272 [3rd Dept. 2001]). In order to prevail, JONES must demonstrate that MEDINA violated Vehicle and Traffic Law (VTL) § 1141, by making a left turn directly into the path of the vehicle driven by JONES, and that MEDINA was negligent in failing to see what should have been seen and by crossing into JONES' lane of traffic when it was hazardous to do so (*Russo v Scibetti*, 298 AD2d 514, 748 NYS2d 871 [2nd Dept. 2002]). However, if MEDINA's testimony is given

credibility, the traffic signal on the eastbound traffic lanes of Hempstead Turnpike had turned red and all eastbound traffic had to stop, including JONES' vehicle, and it was, therefore, "safe" and not hazardous to cross southbound on California Avenue.

It is well settled that a driver of a motor vehicle must exercise reasonable care notwithstanding the invitation to proceed by the green light (*Siegel v Sweeney*, 266 AD3d 200, 697 NYS2d 317 [2nd Dept. 1999]). A driver who lawfully enters an intersection may still be found partially at fault for an accident if he or she fails to use reasonable care to avoid a collision with another vehicle in the intersection (*Costalas v City of New York*, 143 AD2d 573, 532 NYS2d 868 [1st Dept. 1988]; (*Siegel v Sweeney*, *supra*). A question remains as to whether the respective defendants saw the other vehicle approaching for they were bound to see what, by the proper use of his senses, they should have seen (*Almonte v Tobias*, 36 AD3d 636, 829 NYS2d 153 [2nd Dept. 2007]).

The standards for summary judgment are well settled. A court may grant summary judgment where there is no genuine issue of a material fact, and the moving party is, therefore, entitled to judgment as a matter of law (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 508 NYS2d 923, 501 NE2d 72 [C.A. 1986]). Thus, when faced with a summary judgment motion, a court's task is not to weigh the evidence or to make the ultimate determination as to the truth of the matter; its task is to determine whether or not there exists a genuine issue for trial (*Miller v Journal-News*, 211 AD2d 626, 620 NYS2d 500 [2nd Dept. 1995]). Thus, the burden on the moving party for summary judgment is to demonstrate a *prima facie* entitlement to judgment as a matter of law by tendering sufficient evidence to demonstrate the absence of any material issue of fact (*Ayotte v Gervasio*, 81 NY2d 1062,

601 NYS2d 463, 619 NE2d 400 [C.A. 1993]). The credibility of the witnesses, the reconciliation of conflicting statements, the determination as to which should be accepted and which should be rejected, the truthfulness and accuracy of the testimony, whether contradictory or not, are issues for the trier of fact (*Lelekakis v Kamamis*, 41 AD3d 662, 839 NYS2d 773 [2nd Dept. 2007]).

After a careful reading of the submissions herein, the Court finds that plaintiffs have met their burden on the issue of liability, however, the various conflicting fact scenarios make it impossible to make a summary determination in JONES' favor on the cross-motion. Based on the foregoing, it is therefore

ORDERED, that plaintiffs' motion for summary judgment on the issue of liability against defendants is granted. However, as the plaintiffs have not submitted proof of "serious injury", the Court grants judgment as to fault only, which does not include any finding that the plaintiffs have satisfied the "threshold" serious injury requirements. *Shafareko v Fu Cheng*, 772 NYS2d 862, NY App.Div. Lexis 2687 (2nd Dept. 2003); *Reid v Brown*, 308 AD2d 331, 764 NYS2d 260 (1st Dept. 2003); and it is further

ORDERED, that defendant, JONES' cross-motion for summary judgment is denied.

All further requested relief not specifically granted is denied.

This constitutes the decision and order of the Court.

Dated: June 16, 2008

ENTERED
JUN 19 2008
NASSAU COUNTY WILLIAM R. LaMARCA, J.S.C.
COUNTY CLERK'S OFFICE

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