

Mattesich v Moore

2009 NY Slip Op 31325(U)

June 12, 2009

Supreme Court, Suffolk County

Docket Number: 00867/2007

Judge: John J.J. Jones

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SHORT FORM ORDER

INDEX NO.: 00867/2007
SUBMIT DATE: 4/1/2009
MTN. SEQ.#: 002

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 10 SUFFOLK COUNTY

Present:

HON. JOHN J.J. JONES, JR.
Justice

MOTION DATE: 3/3/2009
MOTION NO.: MG

-----X
MARYANN MATTESICH and NICHOLAS MATTESICH,
:
Plaintiffs,
:
-against-
:
MILES A. MOORE,
:
Defendant.

ACTION 1
Index No.: 0016979/2006

-----X
ELECTRIC INSURANCE COMPANY s/h/o NICHOLAS
MATTESICH,
:
Plaintiff,
:
-against-
:
A. MILES MOORE,
:
Defendant.

ACTION 2
Index No.: 00867/2007

testified at her deposition that on January 25, 2006 at “a little before 4:30” pm she was driving east on the Long Island Expressway in the left lane in her 2002 Trail Blazer. Traffic was slowing down, and Ashdown was traveling at about 45 mph when she glanced into her rear-view mirror and “saw a big black truck coming really fast” which was “in between the left lane and the center lane riding on the white line. . .” It was also her testimony that the front of the truck hit the back corner of the passenger side of her vehicle “hard.” In addition she testified that she “got hit and then spun and then hit again” in a matter of seconds, that she did not see what the second contact was with, “but when everything had stopped, there was just that black truck sitting alongside mine” in the HOV lane. The black truck was driven by a male. She did not see another vehicle involved in the accident, but she did observe a third vehicle in the grass past the right lane.

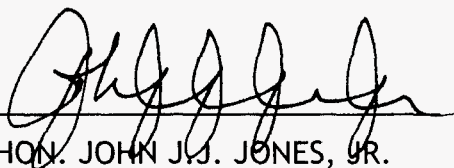
Defendant A. Miles Moore testified at his deposition that on the day of the accident he was driving a 2003 Cadillac Escalade in the left lane of the Expressway. While he was given information indicating that his vehicle came into contact with two other vehicles, he recalled only one contact. He admitted, however, that he was involved in a motor vehicle accident with a vehicle driven by Mary Ann Mattessich. He could not recall his approximate rate of speed or whether he applied his brakes when the accident occurred, and it was his testimony that he could not recall the last 30 seconds prior to contact. Moore also testified that after the accident his vehicle came to rest in the HOV lane to the left, next to a third vehicle. The day following the accident, Moore inspected his vehicle and saw damage to the right front passenger’s side.

Mary Ann Mattessich testified that she left work on the day of the accident and was driving a Trail Blazer. While she recalled driving in the left lane of the Expressway, she could not remember the accident. A sworn statement taken by the police from a non-party, Mike Arzano Jr., explained, “Black Escalade . . . driving east bound on 495 hit into a light metallic [sic] tan SUV that was slowed for traffic. Driver of Escalade never hit his brakes.”

A rear-end collision with a stopped or stopping vehicle creates a *prima facie* case of liability with respect to the operator of the moving vehicle and imposes a duty on that operator to rebut the inference of negligence to provide a non-negligent explanation for the collision (*Katz v Masada II Car & Limo Serv., Inc.*, 43 AD3d 876, 841 NYS2d [2d Dept 2007], citing *Rainford v Sung S. Han*, 18 AD3d 638, 639, 795 NYS2d 645). Moreover, it is well-settled that drivers must maintain safe distances between their cars and cars in front of them (Vehicle and Traffic Law § 1129 [a]) and this rule imposes on them a duty to be aware of traffic conditions, to see what should be seen and to exercise reasonable care under the circumstances to avoid an accident (*see Johnson v Phillips*, 261 AD2d 269, 271, 690 NYS2d 545 [1st Dept 1999]). The evidence before this Court establishes plaintiff’s claims sufficiently to warrant a court’s directing judgment in its favor as a matter of law and defendant has failed to produce evidentiary proof in admissible form sufficient to require a trial of material

questions of fact, as defendant's speculative assertions are insufficient to defeat summary judgment (see *Gilbert Frank Corp. v Federal Insurance Co.*, 70 NY2d 966, 525 NYS2d 793, 520 NE2d 512 [1988], citing *Zuckerman v City of New York*, 49 NY2d 557, 427 NYS2d 595, 404 NE2d 718 [1980]; *Friends of Animals v. Associated Fur Mfrs.*, 46 NY2d 1065, 416 NYS2d 790, 390 NE2d 298 [1979]). Accordingly, summary judgment in favor of plaintiff on the issue of liability is warranted.

DATED: 12 June 2009



 HON. JOHN J.J. JONES, SR.
 J.S.C.

CHECK ONE: FINAL DISPOSITION

NON-FINAL DISPOSITION

TO:

BRAND, GLICK & BRAND, PC

By: Erik B. Lutwin, Esq.

Susanne Portali, Esq.

Attys. for Plaintiff in Action 2

Electric Insurance Company

-and-

Attys. for Defendant in Action 3

Nicholas Mattesich

600 Old Country Road, Suite 440

Garden City, NY 11530

MONTFORT, HEALY, McGUIRE & SALLEY

By: Susan H. Dempsey, Esq.

Attys. for Defendant in Actions 1, 2 and 3

Miles Moore

1140 Franklin Avenue

P.O. Box 7677

Garden City, NY 11530-7677

STEPHAN PERSOFF, ESQ.

Atty. for Plaintiffs in Action 1

Maryann Mattesich and Nicholas Mattesich

One Old Country Road, Suite 360

Carle Place, NY 11514

CARL S. YOUNG & ASSOCIATES

Attys. for Plaintiff in Action 3

Allstate Insurance Company a/s/o Cheryl Ashdown

350 Fifth Avenue, Suite 6304

New York, NY 10118