

Crisci v Valentino

2010 NY Slip Op 33472(U)

December 8, 2010

Supreme Court, Nassau County

Docket Number: 15997/09

Judge: Denise L. Sher

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SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK

PRESENT: HON. DENISE L. SHER
Acting Supreme Court Justice

DOMENICO CRISCI and ROSA CRISCI,

Plaintiffs,

- against -

MARK C. VALENTINO, ROBERT P. PUERTA and
CAROL A. PUERTA,

Defendants.

TRIAL/IAS PART 32
NASSAU COUNTY

Index No.:15997/09
Motion Seq. No.: 01
Motion Dates: 10/08/10

The following papers have been read on this motion:

	<u>Papers Numbered</u>
<u>Notice of Motion for Summary Judgment, Affirmation and Exhibits</u>	
<u>and Memorandum of Law</u>	<u>1</u>
<u>Affirmation in Opposition</u>	<u>2</u>
<u>Reply Affirmation</u>	<u>3</u>

Upon the foregoing papers, it is ordered that the motion is decided as follows:

Defendants Robert P. Puerta and Carol A. Puerta (collectively the "Puertas") move this Court for an order, pursuant to CPLR § 3212 (b), granting summary judgment in their favor and dismissing plaintiffs' complaint against them on the basis that the defendants did not breach any duty owed to the plaintiffs. Plaintiffs Domenico Crisci and Rosa Crisci (collectively the "Criscis") oppose the motion. Defendant Mark C. Valentino ("Valentino") did not submit any papers with respect to said motion.

This action arises from a motor vehicle accident which occurred on April 28, 2009, at

approximately 6:20 a.m. on the westbound Southern State Parkway between Exit 28N and Exit 28S, near the Wantagh Avenue South Exit, Nassau County, New York. The accident involved three vehicles, one owned and operated by plaintiff Domenico Crisci, the second owned and operated by defendant Valentino and the third vehicle owned by defendant Carol A. Puerta Hakimi and operated by defendant Robert P. Puerta. Plaintiffs commenced the action by the filing and service of a Summons and Verified Complaint on or about August 11, 2009. Issue was joined by defendants Puertas on or about September 8, 2009.

Briefly, it is defendants Puertas' contention that the deposition testimony of the parties establishes that defendant Robert P. Puerta was not negligent for the happening of this accident and that he acted reasonably under the circumstances when faced with the emergency situation of plaintiffs' vehicle careening on only its driver's wheels into his lane of traffic. Defendants Puertas submit that defendant Robert P. Puerta was traveling in his lane of traffic, slowing for vehicles coming to a stop in front of him, when he was struck in the rear and then struck by plaintiffs' vehicle. Defendants Puertas argue that plaintiffs' vehicle was out of control when it struck defendants Puertas' vehicle and this impact could not have been the result of any negligence on behalf of defendant Robert P. Puerta. In fact, defendant Robert P. Puerta moved his vehicle to the left to avoid plaintiffs' vehicle as evidenced by the pictures taken of the post-accident scene. All of the parties testified to an impact between defendant Valentino's vehicle and plaintiffs' vehicle before there was an impact between plaintiffs' vehicle and defendants Puertas' vehicle. Defendants Puerta submit that New York State case law does not impose any liability of the driver of a motor vehicle when the substantial cause of the accident resulted from the negligence of another and the driver is faced with an emergency situation and acted

reasonably under the circumstances.

Plaintiffs oppose defendants Puertas' motion by stating that they failed to meet their *prima facie* showing of entitlement to summary judgment, but even assuming they had met their *prima facie* showing of entitlement to summary judgment, existing triable issues of fact require that this motion be denied. Plaintiffs additionally argue that the emergency doctrine as defined by New York State common law does not apply to the instant action. In support of this argument, plaintiffs state "Mr. Puerta testified that he was traveling the approximate speed limit, 55 mph, when he heard an accident occur behind him. Issues of fact exist as to whether Mr. Puerta could have taken evasive action or reduced his speed not only after hearing the accident behind him, but also after he was struck by the Valentine (*sic*) vehicle." Plaintiffs submit that "it is the duty of a jury to determine whether the actor's actions were 'reasonable and prudent under [the] circumstances.' There are issues in the subject case for a jury to determine including, but not limited to, whether Mr. Puerta was traveling at a reasonable rate of speed, why he was not able to stop his vehicle in the 60-70 feet he traveled after his initial impact, whether his evasive maneuvers were reasonable under the circumstances, and how he was initially stuck in the left lane if Mr. Valentine (*sic*) testified he was in the middle land and Mr. Puerta observed the Valentine (*sic*) vehicle still in the middle of the lane after the accident." Plaintiffs also contend that the defendants have not met their burden with regard to the distance the vehicle traveled from the time the "emergency arose" until the time of the accident. Plaintiffs state that there is an issue of fact as to whether defendant Robert P. Puerta should have been able to control his vehicle for the 60-70 feet he traveled after realizing that an accident occurred behind him. Plaintiffs additionally state that there is also issues as to whether defendants Puertas' vehicle

moved far enough to the left to avoid the accident and whether defendants Puertas' vehicle should have been able to stop in the 60-70 feet it traveled after the contact to the rear which would have avoided the contact with plaintiffs' vehicle. Plaintiffs further contend that there is a triable issue of fact as to the version and sequence of the accident.

In reply to plaintiffs' opposition, defendants Puertas claim that said opposition fail to raise a triable issue of fact. "The plaintiff's (*sic*) opposition papers merely speculate that a question of fact exists because the plaintiff, Domenico Crisci, testified that he was in the center lane at the time of the second impact....However, the plaintiff also testified that he observed the defendant, Robert Puerta's vehicle a split second before his vehicle flipped, and then once his vehicle flipped, he could no longer see anything....The plaintiff, Domenico Crisci, testified that his vehicle landed in the left lane....The photographs in Defendant's (*sic*) Exhibit F, show the vehicles in their original accident positions, which clearly shows that the collision between the Puerta vehicle and the Crisci vehicle happened in the left lane. The deposition testimony of the parties establishes that the Crisci vehicle flipped before impact with the Puerta vehicle, and the plaintiff's testimony that he could not see anything after his vehicle flipped fails to raise a question of fact as to the location or speed of the Puerta vehicle before impact...." Defendants Puertas argue that none of the parties' deposition testimonies have imputed any negligence to defendant Robert P. Puerta and none of the parties have raised a question of fact as to whether defendant Robert P. Puerta was able to control his vehicle after it was rear-ended. Defendants Puertas submit that plaintiffs have failed to offer a meritorious argument as to why the emergency doctrine should not apply in this case.

It is well settled that the proponent of a motion for summary judgment must make a *prima facie* showing of entitlement to judgment as a matter of law by providing sufficient

evidence to demonstrate the absence of material issues of fact. See *Sillman v. Twentieth Century-Fox Film Corp.*, 3 N.Y.2d 395, 165 N.Y.S.2d 498 (1957); *Alvarez v. Prospect Hospital*, 68 N.Y.2d 320, 508 N.Y.S.2d 923 (1986); *Zuckerman v. City of New York*, 49 N.Y.2d 557, 427 N.Y.S.2d 595 (1980); *Bhatti v. Roche*, 140 A.D.2d 660, 528 N.Y.S.2d 1020 (2d Dept. 1988). To obtain summary judgment, the moving party must establish its claim or defense by tendering sufficient evidentiary proof, in admissible form, sufficient to warrant the court, as a matter of law, to direct judgment in the movant's favor. See *Friends of Animals, Inc. v. Associated Fur Mfrs., Inc.*, 46 N.Y.2d 1065, 416 N.Y.S.2d 790 (1979). Such evidence may include deposition transcripts, as well as other proof annexed to an attorney's affirmation. See CPLR § 3212 (b); *Olan v. Farrell Lines Inc.*, 64 N.Y.2d 1092, 489 N.Y.S.2d 884 (1985).

If a sufficient *prima facie* showing is demonstrated, the burden then shifts to the non-moving party to come forward with competent evidence to demonstrate the existence of a material issue of fact, the existence of which necessarily precludes the granting of summary judgment and necessitates a trial. See *Zuckerman v. City of New York*, 49 N.Y.2d 557, 427 N.Y.S.2d 595 (1980), *supra*. When considering a motion for summary judgment, the function of the court is not to resolve issues but rather to determine if any such material issues of fact exist. See *Sillman v. Twentieth Century-Fox Film Corp.*, 3 N.Y.2d 395, 165 N.Y.S.2d 498 (1957), *supra*. Mere conclusions or unsubstantiated allegations are insufficient to raise a triable issue. See *Gilbert Frank Corp. v. Federal Ins. Co.*, 70 N.Y.2d 966, 525 N.Y.S.2d 793 (1988).

Further, to grant summary judgment, it must clearly appear that no material triable issue of fact is presented. The burden on the court in deciding this type of motion is not to resolve issues of fact or determine matters of credibility, but merely to determine whether such issues exist. See *Barr v. Albany County*, 50 N.Y.2d 247, 428 N.Y.S.2d 665 (1980); *Daliendo v.*

Johnson, 147 A.D.2d 312, 543 N.Y.S.2d 987 (2d Dept. 1989). It is the existence of an issue, not its relative strength that is the critical and controlling consideration. *See Barrett v. Jacobs*, 255 N.Y. 520 (1931); *Cross v. Cross*, 112 A.D.2d 62, 491 N.Y.S.2d 353 (1st Dept. 1985). The evidence should be construed in a light most favorable to the party moved against. *See Weiss v. Garfield*, 21 A.D.2d 156, 249 N.Y.S.2d 458 (3d Dept. 1964).

The “emergency doctrine” holds that when an actor is faced with a sudden and unexpected circumstance which leaves little or no time for thought, deliberation or consideration, or causes the actor to be reasonably so disturbed that the actor must make a speedy decision without weighing alternative courses of conduct, the actor may not be negligent if the actions taken are reasonable and prudent in the emergency context. *See Alamo v. McDaniel*, 44 A.D.3d 149, 841 N.Y.S.2d 477 (1st Dept. 2007). A driver is not obligated to anticipate that a vehicle traveling in the opposite direction will cross over into oncoming traffic; such an event constitutes a classic emergency situation, thus implicating the “emergency doctrine.” *Minor v. C & J Energy Savers, Inc.*, 65 A.D.3d 532, 883 N.Y.S.2d 587 (2d Dept. 2009); *Gajjar v. Shah*, 31 A.D.3d 377, 817 N.Y.S.2d 653 (2d Dept. 2006); *Snemyr v. W.A. Morales-Aparicio*, 47 A.D.3d 702, 850 N.Y.S.2d 489 (2d Dept. 2008); *Eichenwald v. Chaudhry*, 17 A.D.3d 403, 794 N.Y.S.2d 391 (2d Dept. 2005).

Defendant Robert P. Puerta was faced with a sudden and unexpected circumstance that left him with virtually no time for reflection as to how to avoid a collision. *See Alamo v. McDaniel, supra; Levine v. Li-Heng Chang*, 56 A.D.3d 530, 867 N.Y.S.2d 513 (2d Dept. 2008); *Palma v. Garcia*, 52 A.D.3d 795, 861 N.Y.S.2d 113 (2d Dept. 2008). Therefore, as defendant Robert P. Puerta was faced with an emergency situation, not of his own making, the Court finds that the emergency doctrine applies and relieves defendant Puerta from liability for the injuries

allegedly sustained by plaintiff Domenico Crisci.

Defendants Puertas, in their motion, have demonstrated *prima facie* entitlement to summary judgment on the issue of liability. Therefore, the burden shifts to the opposing parties to demonstrate an issue of fact which precludes summary judgment. *See Zuckerman v. City of New York*, 49 N.Y.2d 557, 427 N.Y.S.2d 595 (1980).

After applying the law to the facts in this case, and even construing the evidence in a light most favorable to the plaintiffs, the Court finds that plaintiffs failed to meet their burden to demonstrate a material issue of fact which precludes summary judgment.

Therefore, based upon the foregoing, defendants Puertas' motion for an order, pursuant to CPLR § 3212 (b), granting summary judgment in their favor and dismissing plaintiffs' complaint against them is hereby granted.

This constitutes the decision and order of this Court.

ENTER:



DENISE L. SHER

A.J.S.C.

ENTERED

DEC 10 2010

**NASSAU COUNTY
COUNTY CLERK'S OFFICE**

Dated: Mineola, New York
December 8, 2010