

Ritzul v Consumer Prod. Servs.
2012 NY Slip Op 30553(U)
March 6, 2012
Supreme Court, Queens County
Docket Number: 26881/2009
Judge: Robert J. McDonald
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SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK
 CIVIL TERM - IAS PART 34 - QUEENS COUNTY
 25-10 COURT SQUARE, LONG ISLAND CITY, N.Y. 11101

P R E S E N T : HON. ROBERT J. MCDONALD
Justice

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BRYAN RITZUL and BLAGA RITZUL, Index No.: 26881/2009

Plaintiffs, Motion Date: 12/15/11

- against - Motion No.: 29

CONSUMER PRODUCT SERVICES, WOJCIECH Motion Seq.: 1
 KRECIEWSKI and CHRISTINE VERSAILLES,

Defendants.

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The following papers numbered 1 to 20 were read on this motion by defendant CHRISTINE VERSAILLES, for an order pursuant to CPLR 3212 granting summary judgment in favor of defendant CHRISTINE VERSAILLES and dismissing the plaintiff's complaint and any cross-claims filed against her and the cross-motion of plaintiff for an order granting partial summary judgment against defendants CONSUMER PRODUCT SERVICES and WOJCIECH KRECIEWSKI and setting the matter down for an assessment of damages:

Papers Numbered

Defendant Versailles' Notice of Motion-Affidavits.....1 - 6
 Consumer Products/Kreciewski Affirmation in Opposition..7- 10
 Plaintiff's Cross-Motion.....11 - 14
 Defendant Versailles' Affirmation in Reply.....14 - 16
 Consumer Products/Kreciewski Affirmation in Reply.....17 - 20

This is a personal injury action in which plaintiff, Bryan Ritzul, seeks to recover damages for injuries he sustained as a result of a three-car motor vehicle accident that occurred on August 29, 2008, on the eastbound lanes of the Long Island Expressway, approximately 50 feet east of Powells Lane, Old Westbury, New York.

Ms. Versailles alleges that the accident occurred when co-defendant Kreciewski lost control of his truck while driving in the middle lane of the LIE causing his vehicle to cross two lanes of traffic and to strike the Versailles vehicle in the left lane and the plaintiff's vehicle in the HOV lane. Ms. Versailles asserts that as she was driving lawfully in the left lane when her vehicle was struck by the jackknifed truck, she bears no liability for the happening of the accident and, as such, the complaint and all cross-claims asserted against her should be dismissed.

Plaintiff commenced an action against the drivers and owners of both vehicles by filing a summons and complaint on October 7, 2009. Issue was joined by service of defendant Versailles' verified answer with cross-claim dated November 20, 2009 and by Consumer Products' verified answer with cross-claim dated December 11, 2009.

Stuart Kurland, Esq., counsel for defendant Versailles, now moves for an order pursuant to CPLR 3212(b) granting summary judgment in favor of Ms. Versailles and dismissing the plaintiff's complaint and all cross-claims against her on the ground that she is not liable for damages to plaintiff as the evidence shows that her actions at the time of the accident were neither negligent nor a proximate cause of the accident. In support of the motion for summary judgment, counsel submits his own affidavit, a copy of the pleadings, and a copy of the transcript of the examinations before trial of defendants Wojciech Kreciewski and Christina Versailles and plaintiff, Bryan Ritzul.

Plaintiff, Bryan Ritzul, age 65, testified at his examination before trial, held on November 11, 2010, that he is employed as a chauffeur. At the time of the accident, he was driving a passenger in a Lincoln Sedan on the eastbound side of the Long Island Expressway between exits 39 and 40. He was operating his vehicle in the HOV lane at a speed of 55 miles per hour when an 18-wheel tractor-trailer owned by Consumer Product Services and operated by Wojciech Kreciewski crossed over three lanes of the Long Island Expressway and struck his vehicle. He testified that when he first saw the truck, it was driving in the middle of the three lanes at a rate of 60- 65 miles per hour. He saw the tractor-trailer's tires begin to smoke indicating that the operator had applied the brakes. He then observed the entire truck move into the left lane and then the rear freight portion of the truck on the driver's side swerved into the HOV lane striking his vehicle. He stated that the impact caused the left side of his vehicle to strike the cement median to his left. His vehicle was then struck on the right side by an SUV driven by defendant, Versailles causing his car to come to rest against the median. The tractor-trailer came to rest in the HOV lane in front of his vehicle with its rear portion in the left

lane. He stated that he was told by an officer at the scene that the truck driver fell asleep at the wheel. With respect to the SUV operated by Ms. Versailles, he stated that he did not see the SUV prior to the accident. He left the scene in an ambulance.

Defendant Christina Versailles was deposed on May 13, 2011. She testified that on the date of the accident she was driving an Xterra SUV on the Long Island Expressway proceeding to Central Islip from her home in Roslyn. She was driving in the middle lane at a rate of 50 miles per hour when she first saw the co-defendant's tractor-trailer which was driving in front of her in the middle lane. She observed the tractor trailer start to swerve and she moved into the left lane. At that point she saw the rear portion of the codefendant's tractor-trailer cross into the left lane and she felt it make contact with the right side of her vehicle. She stated that at the time of contact the truck was in both left and middle lanes. The tractor-trailer struck her vehicle and pushed it into the HOV lane where she hit the cement divider. She states that to her knowledge she did not make contact with any other vehicles and she specifically stated that she does not believe that her vehicle ever came into contact with the limousine. Ms. Versailles also testified that she did not observe the contact between plaintiff's limousine and the tractor-trailer.

The driver of the tractor-trailer, defendant Wojciech Kreciewski, testified at his examination before trial on March 8, 2011, that he has been employed as a truck driver for Consumer Product Services since 2007. On the date of the accident he was driving a tractor-trailer owned by defendant Consumer Product Services (CPS). The morning of the accident he had delivered merchandise in Danbury Connecticut and was proceeding eastbound on the Long Island Expressway on his way back to CPS in Deer Park, New York. He stated that when he passed exit 39 he was proceeding at a rate of speed of 57 miles per hour and he was driving in the middle of the three lanes of the highway. He testified that seconds before the accident a white box truck was passing his truck on the right side. He stated that the white box truck moved partially into the middle lane and then moved in front of his truck. At that point he stated that there was only one foot separating the vehicles and he had to apply his brakes. He then observed the white truck move back into the right lane. He stated that he then released his brakes and began accelerating to approximately 55 miles per hour when the white truck again moved into his lane. This time he had to apply his brakes harder. He testified that the brakes locked and he lost control of the truck. He said the fire extinguisher which was attached to his seat started discharging on its own and covered his field of vision with white powder. He stated that at that point he couldn't see anything. He remembers his tractor-trailer moving to

the left and he felt two separate contacts. He stated that he did not see his truck make contact with any other vehicles. Kreciewski stated that he does not know if his car came into contact with either the limousine or the SUV. After his vehicle stopped moving and the powder from the fire extinguisher cleared, he saw a silver SUV in front of him in the HOV lane. After he got out of the truck he saw the Lincoln with damage to its front. When his vehicle stopped it was across three lanes of traffic. He stated that when the police came to the scene he told the officer that a white box truck cut him off.

Counsel for defendant Versailles asserts that the deposition testimony of the parties is sufficient to demonstrate, prima facie, that Versailles bears no liability for causing the accident. Counsel claims that the sole proximate cause of the accident was codefendant, Kreciewski, having lost control of his truck and the truck cutting across several lanes of traffic and striking both the plaintiff's vehicle as well as the Versailles vehicle. Counsel states that the evidence shows that when Versailles observed the truck begin to swerve, she attempted to avoid the accident by changing lanes. Counsel argues that the sworn testimony of Ms. Versailles indicates that she was traveling lawfully within the left lane of the Expressway at a safe rate of speed and that she was not negligent as a matter of law. He contends that defendant Kreciewski's negligent actions in jackknifing his vehicle and suddenly changing lanes without warning when it was not safe to do so was the sole proximate cause of the accident.

Ritzul's attorney cross-moves for an order granting summary judgment against defendants Consumer Product Services and Wojciech Kreciewski on the issue of liability. Relying on the deposition testimony, plaintiff asserts that there is no dispute that the accident occurred when the driver of the tractor trailer lost control of his vehicle and lost his field of vision and consequently left his lane of travel, jackknifed and swerved into the left lanes, striking the vehicles of co-defendant Versailles and plaintiff Ritzul. Counsel claims that the actions of the defendant violated VTL § 1128(a) and constituted negligence as a matter of law. Counsel asserts that the truck driver can not claim that he was faced with an emergency based upon the white box truck cutting him off because he did not show that he was confronted by a sudden and unanticipated condition as the truck driver was aware of the actions of the white truck prior to the accident (citing Caristo v Sanzone, 96 NY2d 172 [2001]). Further, counsel claims that although plaintiff testified that he observed the truck's tires smoking before the impact, plaintiff did not have sufficient time to take evasive action to avoid the accident. Counsel also contends that the motion of co-defendant Versailles should be

denied as her testimony raises a question of fact as to whether she was traveling too closely to the tractor trailer in front of her which inhibited her ability to take evasive action when the tractor trailer lost control.

CPS opposes the motion on the ground that the testimony of the truck driver, Mr. Kreciewski, raises a question of fact as to his liability for the occurrence given that he testified that a white box truck began to cut in front of him necessitating the abrupt application of his brakes which led to the brakes locking and the truck veering over to the left lanes. Counsel claims that he was faced with a potential emergency situation and as such there is a question of fact for the jury. Counsel also claims that the testimony of Versailles raises a question of fact as to whether she could have operated her vehicle in a manner which would have prevented contact by the truck.

The proponent of a summary judgment motion must tender evidentiary proof in admissible form eliminating any material issues of fact from the case. If the proponent succeeds, the burden shifts to the party opposing the motion, who then must show the existence of material issues of fact by producing evidentiary proof in admissible form, in support of his position (see Zuckerman v. City of New York, 49 NY2d 557[1980]).

Upon review of the motion for summary judgment by defendant Versailles, the cross-motion for summary judgment by plaintiff, and the affirmations in opposition and reply thereto, this Court finds as follows:

Ms. Versailles established her prima facie entitlement to judgment as a matter of law through the submission of her deposition testimony indicating that she was lawfully proceeding eastbound on the Long Island Expressway, traveling at a speed of 50 miles per hour, when the co-defendants' tractor-trailer abruptly entered the left lane from the middle lane causing an impact with her vehicle and purportedly pushing it into the plaintiff's vehicle.

Versailles' vehicle, which had the right-of-way, was entitled to anticipate that the other vehicles would obey the traffic laws. Moreover, although Ritzul testified his vehicle was impacted by the Versailles vehicle, there is no dispute that the impact was precipitated by the actions of the tractor-trailer. Versailles' actions in changing lanes prior to the accident was an attempt to avoid the swerving truck. Neither the deposition of the plaintiff, nor the deposition testimony of the truck driver, was sufficient to raise a question of fact as to whether Versailles' actions may have

been a factor in the happening of the accident.

The deposition testimony submitted in support of the motion demonstrated that the subject motor vehicle accident was not proximately caused by any negligence on the part of Ms. Versailles (see Alvarez v Prospect Hosp., 68 NY2d 320 [1986]). "The proponent of a summary judgment motion has the burden of establishing freedom from comparative negligence as a matter of law" (Pollack v Margolin, 84 AD3d 1341 [2d Dept. 2011]; also see Gardella v Esposito Foods, Inc., 80 AD3d 660, [2d Dept. 2011]). The deposition testimony of Ms. Versailles, submitted in support of her motion, is sufficient to show that her actions were free of any negligence on her part. Thus, this Court finds that defendant Versailles established, prima facie, her entitlement to judgment as a matter of law.

In opposition to Versailles' prima facie showing, the plaintiff and co-defendant have failed to raise any material questions of fact as to whether Ms. Versailles was comparatively negligent (see Zuckerman v City of New York, 49 NY2d 557, 562 [1980]; Moreno v Gomez, 58 AD3d 611, 612 [2d Dept. 2009]; Pitt v. Alpert, 51 AD3d 650 [2d Dept. 2008]; Gorelik v Laidlaw Tr. Inc., 50 AD3d 7389 [2d Dept. 2007]; Moreback v Mesquita, 17 AD3d 420, 421 [2d Dept. 2005]).

In his cross-motion for summary judgment on liability, plaintiff contends that Kreciewski was negligent as a matter of law in changing lanes when it was not safe to do so, in failing to properly signal and in failing to yield the right of way to Ritzul's vehicle and that said negligence was the sole proximate cause of the accident. However, this court finds that the deposition testimony submitted in support of the motion fails to demonstrate that the driver of the tractor-trailer was negligent as a matter of law. Viewing the evidence in the light most favorable to defendant Kreciewski and giving him the benefit of every reasonable inference in ascertaining whether there exists any triable issue of fact, this court finds that the deposition testimony to the effect that he was abruptly cut off raises a question of fact as to whether Kreciewski was faced with an emergency situation not of his own making. His testimony that he was required to press hard on the brakes to avoid colliding with a vehicle that cut in front of him also raises a question of fact for the jury as to whether his actions were reasonable and prudent when faced with an emergency situation (see Caristo v Sanzone, 96 NY2d 172 [2001]; Williams v City of New York, 88 AD3d 989 [2d Dept. 2011] [both the existence of an emergency and the reasonableness of a party's response thereto will ordinarily present questions of fact]; Miloscia v New York City Bd. of Educ., 70 AD3d 904 [2d Dept.

2010]; Draper v. Canada Dry Bottling of N. Y., 45 AD3d 526 {2d Dept. 2007}; Roviello v Schoolman Transp. Sys., 10 AD3d 356 {2d Dept. 2004}; Barath v Marron, 255 AD2d 280 [2d Dept. 1998]).

Accordingly, based upon the foregoing it is hereby

ORDERED that the motion of Christine Versailles is granted, and the defendant Christine Versailles shall have summary judgment dismissing the plaintiff's complaint and all cross-claims as against defendant Versailles only, and it is further

ORDERED that the cross-motion of plaintiff Brian Ritzul and Blaga Ritzul for summary judgment against defendants Consumer Product Services and Wojciech Kreciewski is denied.

Dated : Long Island City, N.Y.
March 6, 2012

ROBERT J. MCDONALD
J.S.C.