

Riddick v Kommor

2012 NY Slip Op 30705(U)

March 12, 2012

Supreme Court, Nassau County

Docket Number: 23639/09

Judge: Anthony L. Parga

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**SHORT FORM ORDER
SUPREME COURT - STATE OF NEW YORK - NASSAU COUNTY**

Present:

HON. ANTHONY L. PARGA

Justice

-----X
CANDENCE RIDDICK,

Plaintiff,

-against-

SEYMOUR KOMMOR, FRANCES KOMMOR and
KAREN RIDDICK,

Defendants.

-----X
FRANCES KOMMOR,

Plaintiff,

-against-

KAREN RIDDICK,

Defendant.

-----X
KAREN RIDDICK,

Third Party Plaintiff,

-against-

SEYMOUR KOMMOR,

Third Party Defendant,

-----X
KAREN RIDDICK,

Plaintiff,

-against-

FRANCES KOMMOR and SEYMOUR KOMMOR,

Defendants.

-----X

PART 6

INDEX NO. 23639/09
ACTION NO. 1

**MOTION DATE: 01/24/12
SEQUENCE NO. 002**

INDEX NO. 3657/10
ACTION NO. 2
XXX

INDEX NO. 7283/10
ACTION NO. 3

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Upon the foregoing papers, the motion by defendant Karen Riddick, for an order granting her summary judgment, pursuant to CPLR §3212, on liability grounds, against plaintiff Candence Riddick in Action #1 and against plaintiff Frances Kommor in Action #1, and for dismissal of all cross-claims against her in Actions #1 and #2, is granted. Accordingly, plaintiff Karen Riddick is also granted summary judgment on liability grounds only in Action #3.

The three above-captioned actions were brought by the plaintiffs in Actions #1, 2, and 3 for personal injuries allegedly sustained as the result of a motor vehicle accident which occurred on November 28, 2008, at or near the intersection of Bayview Avenue and Merrick Road, in Nassau County, New York. The three actions were previously consolidated for the purposes of a joint trial.

Defendant Karen Riddick moves for summary judgment on liability grounds against plaintiff Candence Riddick in Action #1 and against plaintiff Frances Kommor in Action #2. Defendant Karen Riddick contends that the vehicle owned by Frances Kommor, and driven by Seymour Kommor (the “Kommor vehicle”), attempted to make a left turn across Merrick Road from Bayview Avenue, failed to yield the right of way to the oncoming vehicle driven by Karen Riddick (the “Riddick vehicle”), and was the sole proximate cause of the collision between the two vehicles. As such, defendant Karen Riddick argues that she is entitled to summary judgment on liability grounds.

In support of her motion, Karen Riddick submits her own deposition transcript, the deposition transcript of driver, Seymour Kommor, and the deposition transcript of a non-party witness, Steven D. Lense. At her deposition, defendant Karen Riddick testified that she was driving eastbound on Merrick Road in the left lane prior to the accident. She had traveled approximately five car lengths past the intersection of Hewlett Avenue and Merrick Road when the accident happened. When she passed the intersection of Hewlett Avenue, she testified that

she had a green light in her favor on Merrick Road. The next intersection after Hewlett Avenue was Bayview Avenue. Karen Riddick testified that there was no traffic control device governing traffic on Merrick Road at the intersection of Bayview Avenue. Immediately before the accident, there were no vehicles traveling in front of her vehicle, and she testified that she was traveling at 15 miles per hour. The Kommor vehicle came from Bayview Avenue on her right side and attempted to make a left turn onto Merrick Road, to travel westbound. The two vehicles collided, and, after the accident, the Kommor vehicle was in the left lane of Merrick Road.

The non-party witness, Steven D. Lense, testified that he witnessed the subject automobile accident. Mr. Lense testified that his vehicle was stopped behind the Kommor vehicle on Bayview Avenue prior to the accident. He also testified that there was a stop sign on Bayview Avenue at its intersection with Merrick Road. Mr. Lense testified that the Kommor vehicle was at a full stop for four to five minutes waiting to proceed left onto Merrick Road prior to the accident. Mr. Lense testified that he witnessed the Kommor vehicle accelerate “very quickly” into the intersection before the accident happened and testified that the Kommor vehicle did not slowly creep forward, but did a “quick jutting out” into Merrick Road. Mr. Lense further testified that the impact occurred when the Kommor vehicle proceeded out across Merrick Road.

Defendant Seymour Kommor testified that he was the operator of a vehicle owned by his wife, Frances Kommor, at the time of the accident. He testified that he was stopped on Bayview Avenue at the intersection of Merrick Road for two to three minutes waiting to make a left turn onto Merrick Road. He testified that there was nothing blocking his view of Merrick Road as he looked left from Bayview Road. He did not see the vehicle driven by Karen Riddick at any time prior to the accident, but “assumed” that she ran the red light at the prior intersection. He testified that the accident occurred when he entered the intersection and that his vehicle was in the first and second lanes of moving traffic on Merrick Road at the time of the accident. The front left, driver’s side of his vehicle had contact with the front of the Riddick vehicle.

Defendant Karen Riddick has demonstrated her prima facie entitlement to summary judgment as a matter of law by establishing that Seymour Kommor violated Vehicle and Traffic Law §1141 when he made a left turn into the path of Karen Riddick’s oncoming vehicle, failed to yield the right of way, and failed to see what was there to be seen. (*See, Loch v. Garber*, 69

A.D.3d 814, 893 N.Y.S.2d 233 (2d Dept. 2010); *Berner v. Koegel*, 31 A.D.3d 591, 819 N.Y.S.2d 89 (2d Dept. 2006); *Kiernan v. Edwards*, 97 A.D.2d 750, 468 N.Y.S.2d 381 (2d Dept. 1983); *Kann v. Maggies Paratransit Corp.*, 63 A.D.3d 792, 882 N.Y.S.2d 129 (2d Dept. 2009)). A driver who has the right of way is entitled to anticipate that the other motorist will obey the traffic laws which require them to yield the right of way. (*Todd v. Godek*, 71 A.D.3d 872, 895 N.Y.S.2d 861 (2d Dept. 2010); *Kann v. Maggies Paratransit Corp.*, 63 A.D.3d 792, 882 N.Y.S.2d 129 (2d Dept. 2009)). Further, a driver is negligent in admittedly having failed to see a vehicle approaching from the opposite direction and in crossing into its path when it was hazardous to do so. (*Torro v. Schiller*, 8 A.D.3d 364, 777 N.Y.S.2d 915 (2d Dept. 2004); *Rieman v. Smith*, 302 A.D.2d 510, 755 N.Y.S.2d 256 (2d Dept. 2003)). Where the moving party has demonstrated her entitlement to summary judgment, the party opposing the motion must demonstrate by admissible evidence the existence of a factual issue requiring a trial of the action or tender an acceptable excuse for his failure to do so. (*Zuckerman v. City of New York*, 49 N.Y.2d 557, 427 N.Y.S.2d 595 (1980)).

The opponents to the instant motion, plaintiff Frances Kommor, plaintiff Candence Riddick, and defendants Seymour Kommor and Frances Kommor, fail to raise a triable issue of fact sufficient to defeat plaintiff's prima facie showing of entitlement to summary judgment. The opponents contend that there is a question of fact as to whether the intersection of Bayview Avenue was controlled by a stop sign, as there is conflicting deposition testimony regarding same. The opponents to the instant motion argue that this may have been an uncontrolled intersection and Seymour Kommor may have already been inside of the intersection when struck by Karen Riddick, thereby creating a question of fact with respect to the negligence of Karen Riddick. There is no evidence to suggest that the Kommor vehicle entered the intersection first, as there is no testimony regarding same, and as the points of impact were to the front of the Riddick vehicle and to the front driver's side of the Kommor vehicle. In addition, regardless of whether the Kommor vehicle did or did not have a stop sign, driver Seymour Kommor still had a duty to yield the right of way to the Riddick vehicle and failed to do so. (*See*, VTL §1141).

In addition, the opponents to the instant motion contend that Candence Riddick, a rear driver's side passenger in the Riddick vehicle, testified that she saw the Kommor vehicle before

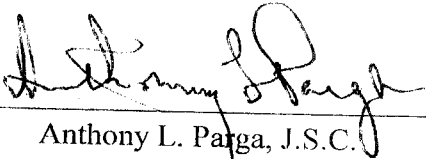
the accident and screamed to driver Karen Riddick, “but by that time it was already impact,” yet Karen Riddick testified that she never saw the Kommor vehicle prior to impact. As a driver traveling on a highway is still required to use reasonable care to avoid a collision with a vehicle already in the intersection, the opponents of summary judgment contend that there is a question of fact sufficient to warrant the denial of defendant Karen Riddick’s motion. As noted *supra*, however, the points of impact were to the front of both vehicles, and there has been no evidence submitted to indicate that the Kommor vehicle entered the intersection prior to the Riddick vehicle.

The opponents hereto further contend that plaintiff Frances Kommor, a passenger in the vehicle driven by her husband, Seymour Kommor, testified that she saw Karen Riddick’s vehicle traveling from east to west at a high rate of speed. Plaintiff Frances Kommor, however, testified that she was unable to estimate how far away the Riddick vehicle was from her when she first saw it or how fast the Riddick was going prior to the accident. Frances Kommor’s conclusory testimony that the Riddick vehicle was “close” and “going very fast” is insufficient to raise a triable issue of fact with respect to liability. The opponents’ conclusory assertions concerning defendant Karen Riddick’s speed and possible comparative negligence are insufficient to warrant the denial of defendant’s motion. (*See, Berner v. Koegel*, 31 A.D.3d 591, 819 N.Y.S.2d 89 (2d Dept. 2006); *Maloney v. Niewender*, 27 A.D.3d 426, 812 N.Y.S.2d 585 (2d Dept. 2006); *Loch v. Garber*, 69 A.D.3d 814, 893 N.Y.S.2d 233 (2d Dept. 2010)).

Accordingly, defendant Karen Riddick’s motion for summary judgment on liability grounds against plaintiff Candence Riddick in Action #1 and plaintiff Frances Kommor in Action #2 is granted. As such, plaintiff Candence Riddick’s action (#1) and plaintiff Frances Kommor’s action (#2), along with all cross-claims, are dismissed as against defendant Karen Riddick. In accordance with same, plaintiff Karen Riddick in Action #3 is also granted summary judgment on liability grounds only.

This constitutes the decision and Order of this Court.

Dated: March 12, 2012



 Anthony L. Patga, J.S.C.

ENTERED
 MAR 15 2012
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