

Klein v Kraese

2018 NY Slip Op 34104(U)

July 9, 2018

Supreme Court, Orange County

Docket Number: Index No. EF003221-2017

Judge: Sandra B. Sciortino

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This opinion is uncorrected and not selected for official publication.

To commence the statutory time for appeals as of right (CPLR 5513 [a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

-----X

ALEX KLEIN,

Plaintiff,

DECISION AND ORDER
INDEX NO.: EF003221-2017
Motion Date: 4/20/2018
Sequence No. 1

-against-

MICHELLE KRAESE and NICOLE KRAESE,
Defendants.

-----X

SCIORTINO, J.

The following papers numbered 1 to 7 were considered in connection with plaintiff's unopposed motion seeking an order granting partial summary judgment on the issue of liability:

PAPERS

NUMBERED

Notice of Motion/Affirmation (Calderin)/Exhibits A-F

1 - 7

Background and Procedural History

This personal injury action arises out of a motor vehicle accident that took place on May 21, 2015, on Mt. Hope Road intersecting with Whipple Road, in the Town of Wallkill, County of Orange, State of New York. Plaintiff commenced this action by filing a Summons and Complaint (Exhibit A) on or about May 1, 2017. The essential facts underpinning this action are not significantly disputed.

On the date of the accident, plaintiff was operating a 2004 Ford motor vehicle, when it came into contact with a 2010 Subaru motor vehicle driven by defendant Michelle Kraese with the permission of defendant-owner Nicole Kraese. The collision is alleged to have caused severe and permanent injuries to plaintiff.

Defendants served an answer dated May 5, 2017 (Exhibit A).

Current Motion

By Notice of Motion filed October April 20, 2018, plaintiff seeks: (1) partial summary judgment against the defendants on the issue of liability upon the grounds that there are no triable issues of fact and that, as a matter of law, the plaintiff is entitled to such judgment; (2) dismissal of the defendants' affirmative defenses alleging comparative negligence, contributory negligence and culpable conduct of the plaintiff; and (3) upon the granting of summary judgment, setting this action down for trial on the assessment of damages.

In support of his motion, plaintiff includes his own affidavit (Exhibit B) in which he avers that, on May 21, 2015, he was traveling on Mt. Hope Road, when suddenly and without warning, a motor vehicle, operated by defendant Michelle Kraese and owned by defendant Nicole Kraese, crossed the double yellow line. The front of the defendant's vehicle struck the front of the plaintiff's vehicle, causing the impact.

Appended to the moving papers as Exhibit C is a certified Police Accident Report. This report indicates that defendant, operator of "Vehicle 1", stated that, while traveling eastbound, a deer ran in front of her vehicle, causing her to move into the westbound lane into oncoming traffic and to strike the plaintiff, operator of "Vehicle 2". Plaintiff states that he observed Vehicle 1 swerving into the westbound lane and then striking his vehicle.

Plaintiff states that he did not observe a deer in the roadway. Furthermore, the defendant was arrested and charged with Driving While Ability Impaired by the consumption of drugs in violation of Vehicle & Traffic Law §1192.4 and was given related tickets. The defendant ultimately pled guilty to the charge. Plaintiff further appends his attorney's affirmation, in which he argues that crossing the double yellow line establishes *prima facie* negligence on the

part of the operator of the vehicle. Section 1120(a) of the Vehicle and Traffic Law, entitled "Driving on right side of roadway," reads, "Upon all roadways of sufficient width a vehicle shall be driven upon the right half of the roadway." Section 1126(a) of the Vehicle and Traffic Law, entitled "No-passing zones," reads, "When official markings are in place indicating those portions of any highway where overtaking and passing or driving to the left of such markings would be especially hazardous, no driver of a vehicle proceeding along such highway shall at any time drive on the left side of such markings."

In the instant matter, plaintiff was injured when defendant's vehicle crossed the double yellow line into the opposite lane, hitting plaintiff's vehicle head-on. Defendant was issued a ticket for her failure to keep right causing the collision. Furthermore, section 1192.4 of the Vehicle and Traffic Law, entitled "Operating a motor vehicle under the influence of alcohol or drugs," reads that "No person shall operate a motor vehicle while the person's ability to operate such a motor vehicle is impaired by the use of a drug as defined in this chapter." In the instant matter, plaintiff was injured when his car was struck head-on by defendant's vehicle. Attached as Exhibit D is the certificate of deposition of defendant Michelle Kraese in which she pled guilty to operating under the influence of drugs in violation of Vehicle and Traffic Law §1192.4 in the Town of Wallkill Justice Court in connection with this accident. The defendants have not filed any opposition papers.

Discussion

Summary judgment is a drastic remedy, appropriate only when there is a clear demonstration of the absence of any triable issue of fact. (*Piccirillo v. Piccirillo*, 156 A.D.2d 748 [2d Dept 1989], citing *Andre v. Pomeroy*, 35 N.Y.2d 361 [1974]) The court's function on such a motion is issue finding, not issue determination. (*Sillman v. Twentieth Century-Fox Film Corp.*, 3

N.Y.2d 395 [1957]) The court is not to engage in the weighing of evidence; instead, the Court must determine whether “by no rational process could the trier of facts find for the non-moving party.” (*Jastrzebski v. N. Shore Sch. Dist.*, 232 A.D.2d 677, 678 [2d Dept 1996]) The court is obligated to draw all reasonable inferences in favor of the non-moving party. (*Rizzo v. Lincoln Diner Corp.*, 215 A.D.2d 546 [2d Dept 2000]) Where facts are in dispute, where conflicting inferences may be drawn from the evidence, or where there are issues of credibility, summary judgment must not be granted. (*Jastrzebski*, 223 A.D.2d at 678) However, bare conclusory allegations are insufficient to defeat a motion for summary judgment. (*Kruger Pulp & Paper Sales, Inc. v. Intact Containers, Inc.*, 100 A.D.2d 894 [2d Dept 1984])

In the matter at bar, plaintiff has established *prima facie* entitlement to summary judgment, by the proffer of a sworn statement alleging that defendant crossed the double yellow line into the opposite lane, causing the head-on collision with the plaintiff. (*Marsicano v. Dealer Storage Corp.* 8 A.D.2d 451 at 452 [2nd Dept 2004], *see also Winegrad v. New York Univ. Med. Ctr.*, 64 N.Y.2d 851 [1985]; *Demetri v. Mallari*, 295 A.D.2d 395 [2nd Dept 2002]; *Gadon v. Oliva*, 294 A.D.2d 397 [2nd Dept 2002]) The plaintiff has established his entitlement to summary judgment by submitting evidence showing defendant violated Vehicle and Traffic Law § 1126(a) by crossing over a double yellow line, and thereby causing the collision.

The denials and affirmative defenses in defendants’ Answer do not suggest, much less demonstrate, that there are any facts in dispute that would rebut the presumption of negligence established by the rear-end collision. The defendants’ failure to raise the pleaded affirmative defenses in opposition to the motion for summary judgment renders those defenses abandoned and thus subject to dismissal. (*Federal Nat. Mortg. Ass’n v. Karastamatis*, 36 N.Y.S.3d 360 [Suffolk County 2016])

Accordingly, the motion for partial summary judgment on the issue of liability is granted.

The parties shall appear for settlement conference on August 2, 2018 at 9:00 a.m.

This decision shall constitute the order of the Court.

Dated: July 9, 2018
Goshen, New York

ENTER:



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