

Servedio v Sarfaty

2018 NY Slip Op 34125(U)

June 7, 2018

Supreme Court, Putnam County

Docket Number: Index No. 500252/2017

Judge: Janet C. Malone

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

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

SUPREME COURT STATE OF NEW YORK
COUNTY OF PUTNAM

_____ X
MARIA SERVEDIO,

Plaintiff,

-against-

MARC SARFATY,

Defendant.

_____ X
MALONE, J.

Index No.: 500252/2017

DECISION AND ORDER
Motion Sequence: 2
(Summary Judgment)

Motion date: March 30, 2018

The following papers numbered 1-3 were read and considered in deciding Plaintiff's Notice of Motion pursuant to CPLR R 3212:

<u>Papers</u>	<u>Numbered</u>
Notice of Motion/Affirmation of Philip A. Pollastrino, Esq./ Exhibits 1-11	1
Affirmation of Michalina N. Shuter, Esq. in Opposition/ Exhibits A.1-A.2	2
Reply Affirmation of Philip A. Pollastrino, Esq./Exhibit 12	3

This negligence action arises out of a motor vehicle accident which occurred on August 4, 2016, when the parties' vehicles came in contact on Route 6N in the Town of Mahopac, County of Putnam, State of New York. Plaintiff commenced the instant action by Summons and Verified Complaint on May 16, 2017, and issue was joined by Defendant filing a Verified Answer on June 30, 2017. See, Affirmation of Philip A. Pollastrino, Esq. at paragraph 4; see also, Summons and Verified Complaint and Verified Answer as Plaintiff's Exhibits 2 and 3.

On July 26, 2017, Plaintiff moved for partial summary judgment on the issue of liability and for the trial to proceed solely on the issue of damages and Defendant submitted opposition to the motion on September 6, 2017. During a conference on September 29, 2017, Plaintiff's motion was denied by the Honorable Paul I. Marx, from the bench and there is no dispute by the parties that Plaintiff's motion was denied in large part due to Defendant's allegation in his Affidavit in opposition dated August 10, 2017 that Plaintiff was speeding, therefore creating an issue of fact. *See*, Affirmation of Philip A. Pollastrino, Esq. at paragraphs 6-8, 12, 20, 33 and Affirmation of Michalina N. Shuter, Esq. in Opposition at paragraphs 7 and 9; *see also*, Affidavit of Defendant dated August 10, 2017 as Plaintiff's Exhibit 7.

Now, by way of a Notice of Motion dated March 8, 2018 Plaintiff is again moving for summary judgment on the issue of liability and directing that the trial of this matter proceed solely on the issue of damages, which is opposed by Defendant. *See*, CPLR R 3212(e).

Plaintiff claims, without any proof, that during the conference on September 29, 2017, the Honorable Paul I. Marx permitted Plaintiff to renew his application for summary judgment after the completion of discovery.¹ *See*, Affirmation of Philip A. Pollastrino, Esq. at paragraph 8. Defendant argues that Plaintiff's instant motion should be denied on procedural grounds as Plaintiff has not attached the transcript of the proceeding before the Honorable Paul I. Marx on September 29, 2017 purportedly permitting Plaintiff to file a second motion for summary judgment. *See*, Affirmation of Michalina N. Shuter, Esq. at paragraphs 7 and 9.

¹ Plaintiff's Examination before Trial was conducted on November 3, 2017 and Defendant's Examination Before Trial was conducted on December 1, 2017. *See*, Affirmation of Philip A. Pollastrino, Esq. at paragraph 9 and the Examination Before Trial Transcripts as Plaintiff's Exhibits 8 and 9.

It is well settled, that successive motions for summary judgment should not be entertained, absent a showing of newly discovered evidence or other sufficient cause. *See, Sutter v. Wakefern Food Corp.*, 69 A.D.3d 844 (2d Dept. 2010), *Kimber Mfg., Inc. v Hanzus*, 56 A.D.3d 615 (2d Dept. 2008), *Vinar v Litman*, 110 A.D.3d 867 (2d Dept. 2013) and *Ramos v City of NY*, 51 A.D.3d 753 (2d Dept. 2008).

To the extent that Plaintiff has not attached the transcript of the proceedings before the Honorable Paul I. Marx on September 29, 2017 to either Plaintiff's moving papers or Reply Affirmation² and as the Court's file does not reflect that Plaintiff was permitted to make a second motion for summary judgment, without reaching the merits of Plaintiff's summary judgment motion, it is **dismissed** and therefore **denied**.

This constitutes the Decision and Order of this Court.

To the extent not addressed, the remaining relief is denied.

Dated: June 7, 2018
Carmel, New York

ENTER:



HONORABLE JANET C. MALONE
Justice of the Supreme Court

To:

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² Instead of attaching a copy of the transcript from the Honorable Paul I. Marx on September 29, 2017, Plaintiff's counsel argues that while he was in Court on September 29, 2017, Defendant's counsel was not in Court that day and has not offered a statement in rebuttal from any attorney from Defendant's firm who attended the conference disputing that he was granted leave to make the instant motion. *See*, Reply Affirmation of Philip A. Pollastrino, Esq. at paragraphs 21-22.

To:

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