

Kaur v Grant

2018 NY Slip Op 34295(U)

December 17, 2018

Supreme Court, Nassau County

Docket Number: Index No. 608184/16

Judge: Jeffrey S. Brown

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SHORT FORM ORDER

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU**

**P R E S E N T : HON. JEFFREY S. BROWN
JUSTICE**

-----X
SURINDER KAUR,

Plaintiff,

-against-

ROBERT GRANT,

Defendant.

TRIAL/IAS PART 12

INDEX # 608184/16

Mot. Seq. 3, 4, 5

**Mot. Date 10.12/10.12 &
11.16.18**

Submit Date 11.16.18

-----X
ROBERT GRANT,

Third-Party Plaintiff,

-against-

GAGANDEEP SINGH and AVTAR SINGH,

Third-Party Defendants.

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The following papers were read on this motion:

	Documents Numbered		
	MS 3	MS 4	MS5
Notice of Motion, Affidavits (Affirmations), Exhibits Annexed.....	65	75	86
Opposition.....	82,96	84,95	104, 5
Reply Affidavit.....			119

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Third-party defendants Gagndeeep Singh and Avtar Singh (collectively the Singh defendants) move by notice of motion (Seq. No. 3) for an order staying all proceedings in this action and granting reargument, modification or clarification of an order entered by Justice George R. Peck on August 2, 2018. Plaintiff Surinder Kaur moves for an order to sever the third-party action and proceed with a trial on plaintiff’s damages in the main action (Seq. No. 4). Defendant Robert Grant cross-moves to reargue Justice Peck’s August 2, 2018 decision and order (Seq. No. 5).

This action arises out of a motor vehicle collision that occurred on Old Country Road, at or near its intersection with Barnum Avenue in Plainview, New York on February 25, 2015. Plaintiff was a passenger in the Singh vehicle when the defendant Grant allegedly failed to yield the right of way by making a left turn into the path of the Singh vehicle. By his decision and order, Justice Peck granted summary judgment in favor of the plaintiff as an innocent passenger. No party disputes that finding. The Singh-third party defendants, however, had also moved for summary judgment on the issue of liability. In sum, Justice Peck made the following relevant determinations:

“The movant, in support of the motion for summary judgment, submitted evidence in admissible form which established as a matter of law that the accident occurred when the defendant driver, Robert Grant, failed to ascertain the cars safely surrounding him when making a left turn. The defendant in opposition, failed to demonstrate the existence of a triable issue of fact.

“Here, the plaintiff established her prima facie entitlement to judgment as a matter of law by submitting evidence which demonstrated that her vehicle had the right of way when it was struck by defendant’s vehicle. In opposition to the motion, the defendants have offered speculative allegations which fail to raise a triable issue of fact as to whether the plaintiff’s conduct contributed to the happening of the accident; namely, unsubstantiated averments that, *inter alia*, the plaintiff failed to take steps to avoid the accident (*Le Grand v. Silberstein*, *supra*, 123 AD3d 773, 775; *Cheow v. Cheng Lin Jin*, *supra*, 121 AD3d 1058; *Billis v. Tunjian*, *supra*, 120 AD3d 1168, 1169).

“The Court has considered the defendant’s remaining contentions and concludes that they are insufficient to raise a triable issue of fact in opposition to the motion.” (Peck Decision and Order, p. 2, 8/2/18)

The Singh third-party defendants contend that Justice Peck’s order was clearly rendered in their favor but he failed to indicate the same in the so-ordered paragraphs and clarification is necessary. Defendant Grant argues that full reargument is warranted because Justice Peck failed to consider or reference the testimony of non-party eyewitness Suzanne Antoniou, who, according to defendant, testified that the Singh vehicle passed a red light just prior to the accident.

A motion to reargue is addressed to the discretion of the court and is designed to afford a party an opportunity to establish that the court overlooked or misapprehended the relevant facts, or misapplied a controlling principle of law. (CPLR 2221[d] [2]; *see Haque v. Daddazio*, 84 AD3d 940 [2d Dept 2011]). It is not designed as a vehicle to afford the unsuccessful party with successive opportunities to argue once again the very questions previously decided. (*Ahmed v.*

Pannone, 116 AD3d 802 [2d Dept 2014]; *Gellert & Rodner v. Gem Community Mgt., Inc.*, 20 AD3d 388 [2d Dept 2005]). Nor is it designed to provide an opportunity for a party to advance arguments different from those originally tendered. (*V. Veeraswamy Realty v. Yenom Corp.*, 71 AD3d 874 [2d Dept 2010]; *Amato v. Lord & Taylor, Inc.*, 10 AD3d 374, 375 [2d Dept. 2004]) or argue a new theory of law or raise new questions not previously advanced (*Haque*, 84 AD3d 940). Instead, the movant must demonstrate the matters of fact or law that he or she believes the court has misapprehended or overlooked. (*Hoffmann v. Debello-Teheny*, 27 AD3d 743 [2d Dept 2006]). Absent a showing of misapprehension or the overlooking of a fact, the court must deny the motion. (*Barrett v. Jeannot*, 18 AD3d 679 [2d Dept 2005]).

On the initial motion, defendant Grant submitted excerpts of both driver's depositions as well as the full deposition transcript of the non-party witness.

Avtar Singh testified that he saw the Grant vehicle standing prior to starting to turn toward the intersection. When he saw the Grant car, he applied his brakes. The traffic light at the intersection was yellow when he first saw it, a few yards away, and it did not change before the accident occurred. Singh testified that he was traveling below the speed limit.

Robert Grant testified that he entered the turning lane on Old Country Road and Barnum Avenue and was decelerating to make the turn. There is no turning arrow for cars making a left turn. When he reached the intersection, the traffic light was green, which would mean that the traffic in the opposite direction had a green signal as well. He stopped at the traffic light with his turn signal on. He waited for an opening for about twenty seconds. The traffic light turned from green to yellow and a car stopped in the right lane of the oncoming traffic side, so he turned left. He saw the Singh vehicle in the left lane of the eastbound side before he made the left turn.

Non-party witness Suzanne Antoniou testified that she witnessed the accident on February 25, 2015 between 4:00 and 5:00 p.m. She testified that she was driving on Old Country Road heading towards Plainview. She came upon a red light and stopped behind another vehicle. She described the accident as follows:

"Well, we were driving, the light is going yellow, the cars in front of me are slowing, I slow, we're at the red, there was a car coming the way that was slowing and then all of a sudden gunned it and then next thing you know a car flew this way in front of us."

When asked who hit who, she indicated that "the car that's coming [the car on Old Country Road], that didn't stop at the red light, that kept going" hit the other vehicle.

Contrary to the contentions of the third-party defendants, Ms. Antoniou's testimony was neither self-contradictory, physically impossible, nor manifestly untrue, rendering it incredible. Rather, she consistently stated that the Singh vehicle passed a red traffic signal. This is sufficient

to raise an issue of fact that precludes summary judgment as between the two drivers. As Justice Peck did not address this testimony, defendant Grant's motion for reargument will be granted.

Both the Grant and Singh defendants oppose plaintiff's motion to sever the first party action and have the matter set down for an immediate damages trial.

CPLR 603 provides that '[i]n furtherance of convenience or to avoid prejudice the court may order a severance of claims, or may order a separate trial of any claim, or of any separate issue.' 'The determination to grant or deny a request for a severance pursuant to CPLR 603 is a matter of judicial discretion which should not be disturbed on appeal absent a showing of prejudice to a substantial right of the party seeking the severance' (*Naylor v. Knoll Farms of Suffolk County, Inc.*, 31 A.D.3d 726, 727; see *Mothersil v. Town Sports Int'l.*, 24 A.D.3d 424, 425)." (*Sumi Chuang Yeh v. Leonardo*, 134 A.D.3d 695, 696 [2d Dept. 2015]). Here, plaintiff identifies no significant prejudice that she will suffer by having these actions tried together and, in light of the court's finding that summary judgment in favor of the third-party defendants is inappropriate, third-party defendants should have the opportunity to participate in the damages phase of the trial. (*See Neckles v. VW Credit, Inc.*, 23 AD3d 191 [1st Dept 2005])["[D]enial of plaintiff's motion to sever will allow the third-party defendant, who may be liable for indemnification to appellant, to participate in the damages phase of the first-party action."].

Accordingly, it is hereby

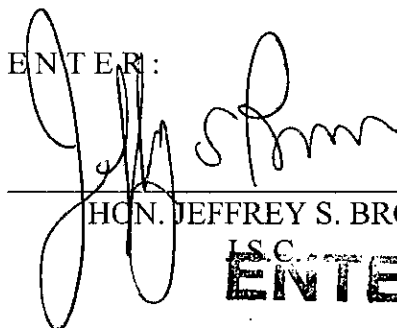
ORDERED, that the defendants' respective motions to reargue (Seq. No. 3 and 5) are **granted** and, upon reargument, summary judgment in favor of the third-party defendants is **denied**; and it is further

ORDERED, that plaintiff's motion to sever the third-party action (Seq. No. 4) is **denied**.

This constitutes the decision and order of this court. All applications not specifically addressed herein are denied.

Dated: Mineola, New York
December 17, 2018

ENTER:



HON. JEFFREY S. BROWN

LS
ENTERED

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NASSAU COUNTY
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