

Caltenco v Orange County Medi-Coach, Inc.
2018 NY Slip Op 34314(U)
December 20, 2018
Supreme Court, Orange County
Docket Number: Index No. EF005737-2016
Judge: Sandra B. Sciortino
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To commence the statutory time period 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
SUSAN CALTENCO,

Plaintiff,

Index No. EF005737-2016

- against -

DECISION AND ORDER

Motion Date: 10/19/18

Motion Sequence #1

**ORANGE COUNTY MEDI-COACH, INC.,
TIMOTHY DOWLING, PAULA CALTENCO and
ALEXIA CALTENCO,**

Defendants.
-----X

SCIORTINO, J.

The following papers numbered 1 - 5 and the exhibits annexed thereto were read on this motion by defendants, Orange County Medi-Coach, Inc. and Timothy Dowling, for an order pursuant to CPLR 3212 granting them summary judgment dismissing all claims against them in this action brought by plaintiff to recover damages for personal injuries allegedly sustained as a result of a motor vehicle accident:

PAPERS

NUMBERED

Notice of Motion-Affirmation
Affirmation in Opposition
Affirmation in Opposition
Reply Affirmation

1 - 2
3
4
5

Plaintiff commenced this action on August 19, 2016 to recover for personal injuries allegedly sustained on November 6, 2015 when two motor vehicles collided at the intersection of East Main Street and Grand Avenue in the City of Middletown. Discovery is complete and the plaintiff has filed a note of issue. Defendants, Orange County Medi-Coach, Inc. and Timothy Dowling, now

move for summary judgment on the grounds that they were not negligent in connection with the motor vehicle accident.

Plaintiff was a passenger in a vehicle owned by defendant Paula Caltenco and operated by defendant, Alexia Caltenco ("Caltenco vehicle"). At the time of the accident, the Caltenco vehicle was in the process of making a left turn from the westbound left-turn lane of East Main Street onto the northbound lane of Grand Avenue. The other vehicle involved in the accident was owned by defendant, Orange County Medi-Coach, Inc., and operated by defendant, Timothy Dowling ("Dowling vehicle"). The Dowling vehicle was traveling eastbound on East Main Street intending to cross the intersection. The intersection was controlled by a traffic light and at the time of the accident, the light was green for traffic proceeding east/west on East Main Street. In addition to lanes for traffic traveling through the intersection, East Main Street also has left-turn lanes for eastbound and westbound traffic at the intersection. The contact between the vehicles occurred within the intersection in the eastbound lane of East Main Street. The front of the Dowling vehicle was in contact with the passengers side doors of the Caltenco vehicle.

Dowling testified that he stopped his vehicle on East Main Street before reaching the intersection, behind cars stopped for the red light. When the light turned green, he moved toward the intersection. The vehicle in front of him moved into the left turn lane and he continued driving his vehicle into the intersection. Dowling testified that the Caltenco vehicle pulled in front of him. He saw the vehicle only a second before impact and, while he did apply the brakes, he could not take any other action to avoid contact with the Caltenco vehicle.

Alexia Caltenco testified that she was stopped facing west in the left-turn lane on East Main Street waiting to turn left onto Grand Avenue. When she started to make the left turn, she did not

see any vehicles in the eastbound lane of East Main Street. She testified that she had a clear view of the eastbound lane and did not see the Dowling vehicle until after there was contact between the vehicles. At that point, she said the vehicle was more than half way through the turn. The plaintiff, a passenger seated in the front passenger seat of the Caltenco vehicle, saw the Dowling vehicle through the passenger's side window "two seconds" before the vehicles collided. When plaintiff saw the Dowling vehicle, she said the Caltenco vehicle was half way through making the left hand turn.

The moving defendants contend that they are entitled to summary judgment because the defendant Alexia Caltenco violated the rules of the road in that she failed to see what was there to be seen and that she violated Vehicle and Traffic Law section 1141 by turning left into the intersection when it was not safe to do so.

The moving defendants are not entitled to summary judgment because they fail to eliminate all triable issues of fact with respect to Dowling's culpable conduct. It is well established that the "proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case. (*Winegrad v New York University Medical Center*, 64 NY2d 851 [1985]) As summary judgment is a drastic remedy, it should not be granted where there is any doubt as to the existence of a triable issue. (*Rotuba Extruders v Ceppos*, 46 NY2d 223 [1978]) A party moving moving for summary judgment on the issue of liability must demonstrate the absence of triable issues of fact as to how an accident happened and the movant's freedom from negligence as well. (*Antaki v Mateo*, 100 AD3d 579 [2d Dept 2012]) Moreover, there can be more than one proximate cause of an accident. (*Id.*; *Tapia v Royal Tours Serv., Inc.*, 67 AD3d 894 [2d Dept 2009])

A driver who proceeds in the face of a green light may be found negligent if he/she does not

use reasonable care to avoid collision with other vehicles. (*Tapia*, 67 AD3d 894) The driver with the right of way is still required to see what can be seen through the reasonable use of his senses in order to avoid colliding with other vehicles. (*Mark v New York City*, 150 AD3d 980 [(2d Dept 2017], *Hartsuff v Michaels*, 139 AD3d 1005 [2d Dept 2016], *Frey v Richmond Hill Lumber & Supply*, 139 AD3d 803 [2d Dept 2015], *Calderon-Scotti v Rosenstein*, 119 AD3d 722 [2d Dept 2014]) The failure to do so can result in a finding of negligence. (*Mark*, 150 AD3d 980; *Hartsuff* 139 AD3d 1005; *Frey*, 139 AD3d 803; *Calderon-Scotti*, 119 AD3d 722)

Here, neither driver saw the other vehicle until it was too late to avoid contact between the vehicles. Dowling's view of the intersection was not obstructed after the vehicle in front of him moved into the left turn lane. The points of contact of the vehicles as depicted on the police accident report and the photographs of the Caltenco vehicle would indicate that the Caltenco vehicle was well within the intersection prior to the time of impact.¹ These facts demonstrate the existence of a triable issue of fact as to whether Dowling should have seen what was there to be seen before entering the intersection. As discussed above, even if Dowling is deemed the driver with the right-of-way and was entitled to assume that a vehicle turning left from the opposite lane would obey the traffic laws, Dowling was required to see what can be seen through the reasonable use of his senses in order to avoid colliding with other vehicles. Having failed to demonstrate that Dowling was not negligent as a matter of law, the moving defendants have failed to meet their burden on the motion for summary judgment.

Accordingly, based upon the foregoing, it is hereby

¹This also raises an issue of fact as to the applicability of Vehicle and Traffic Law section 1141. This section would not apply if the Caltenco vehicle was in the intersection when Dowling could have reacted.

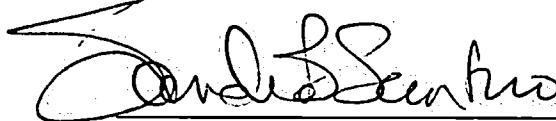
ORDERED, that the defendants' motion for summary judgment is denied.

A conference will be held in this matter on January 16, 2019 at 9:00 AM

The foregoing constitutes the Decision and Order of the Court.

Dated: December 20, 2018
Goshen, New York

ENTER:

A handwritten signature in black ink, appearing to read "Sandra B. Sciortino", is written over a horizontal line.

HON. SANDRA B. SCIORTINO, J.S.C.

TO: *Counsel of Record via NYSCEF*