

Garcia v Weissman
2018 NY Slip Op 34428(U)
March 27, 2018
Supreme Court, Rockland County
Docket Number: Index No. 033853/2015
Judge: Robert M. Berliner
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SUPREME COURT: STATE OF NEW YORK
COUNTY OF ROCKLAND
HON. ROBERT M. BERLINER, J.S.C.

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.

-----X
BRIAN GARCIA,

Plaintiff,

-against-

LAWRENCE A. WEISSMAN, VILLAGE OF
SPRING VALLEY, SPRING VALLEY POLICE
DEPARTMENT and RONELL CHARLES, as
Police Officer of Spring Valley Police
Department,

Defendants.
-----X

RONELL CHARLES,

Plaintiff,

-against-

LAWRENCE A. WEISSMAN,

Defendant.
-----X

DECISION AND ORDER

ACTION 1

Index No. 033853/2015

Motion Sequence #1

ACTION 2

Index No. 034177/2015

Motion Sequence #1

The following papers, numbered 1 to 8, were read in connection with Defendants Village of Spring Valley, Spring Valley Police Department and Ronell Charles, as Police Officer of the Spring Valley Police Department [hereinafter "Village Defendants"] motion seeking summary judgment pursuant to CPLR §3212 and Defendant Lawrence A. Weissman's [hereinafter "Weissman"] motion for summary judgment pursuant to CPLR §3212 dismissing the complaint of Plaintiff Ronell Charles:

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Upon the foregoing papers, it is ORDERED that this motion is disposed of as follows:

These actions arise from a motor vehicle accident that occurred on August 29, 2014 at “146 North Main Street, Spring Valley, New York.” The accident occurred when Officer Ronell Charles [hereinafter “Officer”] was dispatched to an emergency and was traveling southbound on North Main Street with lights and sirens activated. Allegedly Defendant Weissman attempted to turn left in front of the Officer’s vehicle thereby causing him to turn his vehicle quickly, passing completely into the northbound lane to avoid contact with Weissman’s vehicle. In doing so, the Officer’s vehicle struck the curb and became airborne. The Officer’s vehicle made contact with the vehicle in which Plaintiff Brian Garcia [hereinafter “Garcia”] was a passenger in. The owner of the vehicle, Brian Bullock, was pumping gas at the time of the accident. Action 1, Index No. 033853/2015 [hereinafter “Action 1”], was commenced by Garcia against the Village Defendants and Weissman. Garcia asserts a cause of action sounding in negligence and seeks to recover damages for economic loss and injuries suffered due to the accident. Action 2, Index No. 034177/2015 [hereinafter “Action 2”], was commenced by Ronell Charles, individually [hereinafter “Charles”], against Weissman. Charles asserts causes of action sounding in negligence and seeks to recover damages for personal injuries suffered due to the accident.

“As we have stated frequently, 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 demonstrate the absence of any material issues of fact. Failure to make such prima facie showing requires a denial of the motion, regardless of the sufficiency of the opposing papers. Once this showing has been made, however, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action.” *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986][internal citations omitted].

¹ Pursuant to the Court’s part rules, page 1, paragraph 4, submissions, including letters, sent after the motion’s return date were neither read nor considered by the Court.

Action 1 - Village Defendants' Motion for Summary Judgment

In moving for summary judgment to dismiss Plaintiff's complaint and any cross-claims or counterclaims, Village Defendants assert that they are entitled to qualified privilege pursuant to VTL §1104 because the Officer was engaged in emergency operations in that he was responding to an emergency 911 call. Village Defendants aver that the Officer was not operating his police vehicle with reckless disregard for the safety of others. The Officer stated in his deposition that he was traveling at approximately 35-40 miles per hour, in an area with a posted speed limit of 30 miles per hour, with his lights and sirens activated. He stated that two previous vehicles had yielded to him as he traveled southbound along North Main Street and that he was driving slightly in the northbound only in order to safely pass the yielding vehicles. The Officer stated that he first observed Weissman's vehicle 125 feet away from him and he slowed down his vehicle and prepared to pass Weissman on the left side of Weissman's car. Weissman's car had come to a stop with a small portion of his car over the double yellow line. The Officer testified that Weissman's vehicle abruptly and suddenly moved and began turning to the left in order to make a left-hand turn. The Officer attempted to avoid a collision with Weissman's vehicle by turning his wheel sharply to the left when his car struck the curb and became airborne. Village Defendants argue that the actions of the Officer cannot be said to amount to reckless disregard of a highly probable risk of harm with conscious indifference to the outcome. Instead, the Officer's actions show an effort to avoid probable risk of harm. Village Defendants contend that there is no evidence that the Officer was inattentive or otherwise acted in an unreasonably dangerous manner and that his speed was not excessive under the circumstances.

Furthermore, the Village Defendants assert that they are not liable for the Plaintiff's injuries since the Officer's action were precipitated by an emergency. The Village Defendants argue that under the emergency doctrine, the Officer was given mere seconds to react to Weissman's sudden and unanticipated decision to turn left into the path of the Officer's police vehicle. Therefore, the Officer needed to make a split-second decision to avoid a collision with Weissman without the luxury of time to weigh the alternative course of conduct.

In opposition, Weissman contends that Village Defendants are partially liable for the accident in that the Officer failed to take reasonable precautions in order to avoid the accident. Weissman argues that VTL §1104(e) only applies to a driver of an authorized emergency vehicle involved in an emergency operation but that this provision does not protect a driver from the

consequences of his reckless disregard for the safety of others. Weissman contends that the Officer's inattentiveness and high rate of speed contributed to the accident. Weissman argues that triable issue of fact exists as to whether the Officer acted in reckless disregard for the safety of others.

In opposition, Plaintiff Garcia asserts that Village Defendants have failed to demonstrate that the Officer's conduct did not rise to the level of reckless disregard for the safety of others. Garcia argues that the Officer's testimony and his stated 30 to 40 mile an hour speed is inconsistent with responding to an emergency situation. Garcia contends that the Officer's testimony is at odds with Weissman's testimony and the video surveillance footage of the accident. Weissman repeatedly contends that the Officer was "flying" and estimated his speed to be approximately 70-80 miles per hour. Garcia believes this evidence raises a triable issue of fact as to whether the Officer's conduct was reckless.

In reply, the Village Defendants reassert the arguments in their moving papers and argue that Plaintiffs failed to refute or raise a triable issue of fact as to the applicability of the emergency doctrine in this action.

"Vehicle and Traffic Law §1104 grants the driver of an authorized emergency vehicle special driving privileges when involved in an emergency operation. Those privileges include passing through red lights and stop signs, exceeding the speed limit and disregarding regulations governing the direction of movement or turning in specified directions. But drivers of emergency vehicles are not relieved of their duty to drive with due regard for the safety of all persons and section 1104 does not protect the driver from the consequences of his reckless disregard for the safety of others. This "reckless disregard" standard demands more than a showing of a lack of due care under the circumstances—the showing typically associated with ordinary negligence claims. Rather, for liability to be predicated upon a violation of Vehicle and Traffic Law §1104, there must be evidence that the actor has intentionally done an act of an unreasonable character in disregard of a known or obvious risk that was so great as to make it highly probable that harm would follow and has done so with conscious indifference to the outcome. . . . This approach avoids judicial second-guessing of the many split-second decisions that are made in the field under highly pressured conditions and mitigates the risk that possible liability could deter emergency personnel from acting decisively and taking calculated risks in order to save life or property or to apprehend miscreants." *Frezzell v City of New York*, 24 NY3d 213, 217 [2014][internal citations omitted]; see Vehicle and Traffic Law §1104.

In applying these legal principles, it is clear from the evidence presented that the Officer did not intentionally act in disregard of a known or obvious risk that was so great as to make it

highly probably that harm would follow and with conscious indifference to the outcome. The Officer was responding to an emergency, traveling over the posted speed limit, had engaged his lights and sirens and made a split-second decision when he encountered a vehicle in his path of travel. There is no proof that the Officer's actions or decision to pass Weissman satisfies the reckless disregard standard. Accordingly, the Court finds that the Village Defendants are entitled to summary judgment based upon qualified privilege.

Action 2 – Defendant Weissman's Motion for Summary Judgment

In moving for summary judgment on the issue of liability, Weissman argues he is not liable for the motor vehicle accident. Weissman contends that upon hearing sirens he looked in all of his mirrors, however he did not see where the sirens were coming from. Weissman states that he was stopped in the southbound lane when a police car passed him, traveling southbound and in the northbound lane of traffic. Weissman argues that there are no triable issues of fact and that a trial on the issue of liability against him would be futile. Weissman contends that given the evidence submitted, Plaintiff has failed to establish any inference of negligence against him. Weissman argues that the sole proximate cause of this accident was the fact that Charles crossed over into the northbound lane, passing Weissman and lost control of his vehicle causing the accident.

In support of Village Defendants' summary judgment motion and in opposition to Weissman's summary judgment motion, Charles argues that Weissman's negligence in failing to yield caused the subject accident. Charles echoes Village Defendants' argument that they are entitled to qualified privilege under VTL §1104. Charles argues that Weissman's affirmation in opposition in Action 1 renders his own summary judgment motion moot as he avers that there exists a triable issue of fact as to credibility because Charles and Weissman provide conflicting testimony concerning liability. Furthermore, Charles contends that Weissman's failure to yield to an emergency vehicle was the proximate cause of the accident, not the Officer's decision to swerve to avoid hitting Weissman's vehicle, striking the curb and becoming airborne.

The Court has considered the evidence submitted by Weissman and finds that he fails to make a *prima facie* showing of entitlement to judgment as a matter of law. Weissman fails to submit sufficient evidence to demonstrate the absence of any material issue of fact. Weissman merely avers that he did not see the police car and that it was Charles's own actions which caused the accident. However, the Court finds that there remains a triable issue of fact as to whether

Weissman's alleged negligence and failure to yield to an emergency vehicle was the proximate cause of the accident. Therefore, Weissman's motion for summary judgment is denied.

Based upon the foregoing, Village Defendants' motion for summary judgment is granted and Defendant Weissman's motion for summary judgment in Action 2 is denied.

The remaining parties are advised that a pre-trial conference has been scheduled in this matter at **9:30 a.m. on April 12, 2018.**

The foregoing constitutes the Decision and Order of the Court.

Dated: New City, New York
March 27, 2018

ENTER



HON. ROBERT M. BERLINER, J.S.C.

To:
Daniel M. Miller, Esq.
Kaufman Dolowich & Voluck, LLP
Morris Duffy Alonso & Faley
Mead Hecht Conklin & Gallagher
Valerie J. Crown, Esq.