Price v Melnyk
2019 NY Slip Op 31431(U)
May 22, 2019
Supreme Court, Broome County
Docket Number: EFCA2017001425
Judge: Eugene D. Faughnan

At a Special Term of the Supreme Court of the State of New York held in and for the Sixth Judicial District at the Broome County Courthouse, Binghamton, New York, on the 8th day of April, 2019.

PRESENT: HON. EUGENE D. FAUGHNAN
Justice Presiding

STATE OF NEW YORK
SUPREME COURT : COUNTY OF BROOME

DYLAN PRICE,

Plaintiff,

DECISION AND ORDER

Index No. EFCA2017001425

-against

THERESA MELNYK, ROBERT MELNYK, JOSHUA FREEZE and LAURA FREEZE,

Defendants.

APPEARANCES:

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EUGENE D. FAUGHNAN, J.S.C.

This matter comes before the Court upon a motion by Dylan Price ("Price") which seeks summary judgment against Theresa Melnyk and Robert Melnyk regarding liability and serious injury pursuant to CPLR §3212. Joshua Freeze ("JF") and Laura Freeze ("LF") (collectively "Freezes") cross move for summary judgment seeking dismissal of all cross claims[1] pursuant to CPLR §3212.

On December 24, 2016, Price was a front seat passenger in a car driven by JF and owned by LF. The Freeze vehicle was proceeding westbound on State Highway 434 approaching an on-ramp to State Route 17 East. A vehicle operated by Theresa Melnyk ("TM") and owned by Robert Melnyk was proceeding eastbound on State Highway 434 intending to turn left onto the State Route 17 East on-ramp. TM positioned her car in a left turn lane at the intersection for the on-ramp. The accident occurred when TM turned left into the path of JF and the vehicles collided. Price suffered various injuries including a Left Salter 1 Fracture. TM was issued a ticket for violation of New York Vehicle and Traffic Law §1141 for failure to yield the right of way when making a left turn.

This action was commenced by the filing of a verified summons and complaint on June 27, 2017. Issue was joined by the service of verified answers by Defendants. The Melnyks' verified answer also included cross-claims against the Freezes.

Regarding liability, Price argues that TM is precluded from arguing against liability because she pleaded guilty to a violation of VTL §1141. In the alternative, Price argues that no one, other than TM, alleges that she had a green arrow and the right of way when she proceeded to make the left turn. According to Price, this includes her passenger and co-defendant, Robert Melnyk. Price argues that Robert Melnyk testified that the light was green for drivers in both directions, and that TM was negligent in turning in front of the Freeze vehicle.

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[1]Price's claim against the Freezes was previously discontinued with prejudice.

Regarding serious injury, Price submitted an affirmation dated December 17, 2018 from a Board Certified Radiologist, Steven Martin, MD, which verified the presence of a Salter I fracture. Additionally, Price offered an affirmation dated December 31, 2018 from his treating orthopedic surgeon, Daniel P. Federowicz, MD, in which he documents that Price suffered a fracture of the medial wall of the left acetabulum as a direct result of the subject motor vehicle accident.

In support of Freezes' motion to dismiss Melnyks' cross claims, Freezes argue that the testimony supports the conclusion that JF was traveling at the posted speed limit and saw the Melnyk vehicle stopped at the intersection. JF testified that he had a solid green light from the first time he observed the light. He was not in any way distracted and observed the Melnyk vehicle stopped at the intersection. When he came to approximately 20 feet of the intersection, TM made an abrupt left turn in front of him. Despite applying his brakes, JF was unable to avoid the accident. Freezes argue that the only allegation of TM having a green arrow comes from TM. Robert Melnyk testified that TM had a green light and reported the same to the investigation officer.

In opposition to both motions, Melnyks argue that there is a question of fact as to whether TM had a green arrow giving her the right of way at the time of the accident. TM testified that she first saw JF when his car was approximately "two football fields away" and proceeded to turn when he was "one football field away". TM testified that she had a green arrow and the right of way at the time of the accident. This is the reason she never came to a stop prior to making the left turn. TM further argues that Robert Melnyk's testimony is equivocal, at best, regarding the color of the light. He testified that he did not recall speaking to the investigating officer but did not dispute the accuracy of the report which indicated that he told the officer that TM had a "green light". However, this assumes, without proof, that Robert Melnyk was actually making the distinction between a "green light" and a "green arrow". Robert Melnyk was not asked whether TM had a green arrow. Melnyks offer no opposition to a finding of serious injury.

When seeking summary judgment, the movant must make a *prima facie* showing of entitlement

to judgment as a matter of law, by offering evidence which establishes there are no material issues of fact. *Amedure v. Standard Furniture Co.*, 125 AD2d 170 (3rd Dept. 1987); *Bulger v. Tri-Town Agency*, 148 AD2d 44 (3rd Dept. 1989). Once this burden is met, the burden shifts to the respondent to establish that a material issue of fact exists. *Dugan v. Sprung*, 280 AD2d 736 (3rd Dept. 2001); *Sheppard-Mobley v. King*, 10 AD3d 70, 74 (2nd Dept. 2004) *aff'd as mod.* 4 NY3d 627 (2005); *Alvarez v. Prospect Hosp.*, 68 NY2d 320, 324 (1986); *Winegrad v. N.Y. Univ. Med. Ctr.*, 64 NY2d 851, 853 (1985). "When faced with a motion for summary judgment, a court's task is issue finding rather than issue determination *(see, Sillman v. Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404 [1957]) and it must view the evidence in the light most favorable to the party opposing the motion, giving that party the benefit of every reasonable inference and ascertaining whether there exists any triable issue of fact." *Boston v. Dunham,* 274 AD2d 708, 709 (3rd Dept. 2000); *see, Boyce v. Vazquez*, 249 AD2d 724, 726 (3rd Dept. 1998). The motion "should be denied if any significant doubt exists as to whether a material factual issue is present or even if it is arguable that such an issue exists." *Haner v. De Vito*, 152 AD2d 896, 896 (3rd Dept. 1989); *Asabor v. Archdiocese of N.Y.*, 102 AD3d 524 (1st Dept. 2013). It "is not the function of a court deciding a summary judgment motion to make credibility determinations or findings of fact." *Vega v. Restani Constr. Corp.*, 18 NY3d 499, 505 (2012) (citation omitted).

In the present matter, the moving parties essentially make similar arguments in favor of summary judgment on liability-that TM was responsible for the accident. Freezes claim JF had the right of way and no time to avoid the collision as TM turned into his lane when he was 20 feet from the intersection. Freezes point to the testimony of Robert Melnyk as standing for the proposition that TM did not have a green arrow at the time she turned into the opposing lane, but only a green light. As such, they argue that the only person claiming she had a green arrow is TM. They further argue that TM's plea of guilty for failure to yield the right of way is at least significant evidence of her negligence.

"*Vehicle and Traffic Law § 1141* requires the driver of a vehicle intending to turn left within an

intersection to yield the right-of-way to any vehicle approaching from the opposite direction which is within the intersection or so close as to constitute an immediate hazard." *Vogel v. Gilbo,* 276 AD2d 977, 978 (3rd Dept. 2000). However, all drivers are "bound to see what by the proper use of [his] senses [he] might have seen." *Weigand v. United Traction Co.*, 221 NY 39, 42 (1917). Put another way, "every operator of a motor vehicle has an obligation to keep a proper lookout and to see what can be seen through the reasonable use of his or her senses." *Calderon-Scotti v. Rosenstein*, 119 AD3d 722, 723 (2nd Dept. 2014).

The Court concludes that there is a question of fact as to the distance between the vehicles at the time TM made her turn into the opposing lane of traffic. TM alleges that JF was "a football field away" at the time she made the left turn. JF alleges his vehicle was 20 feet from the intersection when TM made an abrupt turn into his lane of travel. JF further alleges that he had no time to avoid the collision. The discrepancy between the parties' testimony raises a question of fact as to whether the JF actually had enough time to take evasive action and failed to do so.

There is also a question of fact as to whether TM had a green arrow when she turned into the opposing lane. TM testified that she did have a green arrow. Price and JF testify that they had a green light. Robert Melnyk testified that TM's light was green but he was never asked whether that was a green arrow or a solid green light. Both could be considered "green lights" and without further clarification, the Court cannot conclude what Robert Melnyk meant. Moreover, the fact that TM gave specific testimony about having a green arrow does raise a question of fact regarding who had the right of way. That TM and Robert Melnyk are interested witnesses cannot be considered upon a motion for summary judgment as the Court is constrained from making credibility determinations. *Vega*, 18 NY3d at 505.

Finally, the fact that TM plead guilty to failure to yield the right of way is not dispositive of issues of negligence. "[A]lthough [a driver's] plea of guilty to failure to yield is evidence of her negligence, it does not preclude the existence of a fact issue as to defendant['s] comparative fault." *Lopez-Viola v. Duell*, 100 AD3d 1239, 1242 (3rd Dept. 2012).

For the reasons set forth herein, the Court concludes that there are questions of fact as to whether TM, JF, or both were at fault. These questions must be resolved by the jury and do not lend themselves to summary disposition. Therefore Price's and Freezes' motions for summary judgment on liability are **DENIED**.

However, based upon the lack of opposition to Price's motion regarding serious injury and the conceded related fracture, his motion for a finding of serious injury is **GRANTED**.

This constitutes the **Decision and Order** of the Court.

Dated: May 22, 2019
Binghamton, New York

HON. EUGENE D. FAUGHNAN
Supreme Court Justice