

Carter v Russo Fuel Inc.
2019 NY Slip Op 34289(U)
May 1, 2019
Supreme Court, Ulster County
Docket Number: Index No. 18-2339
Judge: Christopher E. Cahill
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**STATE OF NEW YORK
SUPREME COURT
GEOFFREY CARTER,**

ULSTER COUNTY

Plaintiff,

-against-

**Decision & Order
Index No.: 18-2339**

RUSSO FUEL INC., and ARIEL DRAKE,

Defendants.

Supreme Court, Ulster County
Motion Return Date: March 29, 2019
RJI No. 55-19-00236

Present: Christopher E. Cahill, JSC

Appearances: SOBO & SOBO, LLP
Attorneys for Plaintiff
1 Dolson Avenue
Middletown, New York 10940
By: Raymond J. Iaia, Esq.

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Nina Postupack
Ulster County Clerk

MAYNARD O'CONNOR SMITH & CATALINOTTO, LLP
Attorneys for Defendants
6 Tower Place
Albany, New York 12203
By: Andrea P. Demers, Esq.

Cahill, J.:

Plaintiff seeks damages for the personal injuries he sustained in a October 25, 2017 rear-end accident that occurred at approximately 8:48 a.m. on US Highway 9W (hereinafter "9W"), located in the Town of Lloyd, Ulster County, New York, near its intersection with Woodside Place. Plaintiff contends that he was operating a 2011 Toyota pick-up vehicle in the southbound lane of 9W, approaching its intersection with

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Woodside Place. Coming to a complete stop in traffic, along with a multitude of other vehicles due to a yellow school bus stopped with its lights and stop signs displayed in the opposite lane of travel, he contends that his vehicle was suddenly and “violently” struck in the rear by a tanker truck operated by defendant Ariel Drake, owned by defendant Russo Fuel, Inc, sending it forward into the back of a third vehicle.

After joinder of issue but before discovery, plaintiff has made a motion for partial summary judgment on the issue of liability pursuant to CPLR § 3212. Given the fact that this was a rear-end collision with a stopped vehicle, plaintiff contends that its proffer of the certified police accident report along with his affidavit establishes a prima facie case of negligence, imposing a duty of explanation upon defendant Drake, as the operator of that vehicle, to rebut that inference by providing an adequate non-negligent explanation for the accident.

Finding plaintiff to have sustained its prima facie burden, this court reviewed defendants’ opposition which claims that despite it being a rear-end collision, defendant Drake was faced with a sudden and unexpected situation, not of his own making, that left little or no time for deliberation. Under these emergency circumstances, he contends that he took reasonable and prudent action and, therefore, can not be found to be negligent. Moreover, he contends that the motion is premature since further discovery and expert disclosure could have significant bearing on the issue of the emergency doctrine which is being claimed in this case. Annexing his own affidavit, defendant Drake explains that he

was operating the tanker truck during the course of his employment on this four-lane roadway, traveling in the left hand lane in a southerly direction. He explains that the road dips down a hill, then back up to the crest of the hill just before the intersection with Woodside Place; the road curves right just after the crest of the hill. He further states that as he approached the crest of the hill, it is not possible to observe traffic beyond the crest. He knows this because he utilizes this route “nearly every day.”

Traveling at or below the speed limit, not using any mobile device while operating such vehicle, and “maintaining a safe and reasonable distance” between the vehicle he was operating and the vehicle in front of him, he contends that as he reached the crest of the hill that morning, he observed a school bus stopped in the northbound lane and a vehicle, ahead of his in the left southbound lane, suddenly coming to a stop, causing all vehicles ahead of his to brake suddenly; although the other vehicles came to a stop, he was not able to stop before coming into contact with plaintiff’s vehicle. Due to the lack of sight lines at the location of the accident, he contends that he was unable to see the stopped school bus and, in turn, the vehicles stopping suddenly in front of him.

Acknowledging the obligation to view the evidence in a light most favorable to the non-moving party (see Shetsky v Corbett, 107 AD3d 1100 [2013]), this court cannot conclude either that the motion is premature or that defendant has raised a triable issue of fact. It is well settled that a driver traveling behind another vehicle has a duty to maintain a safe distance behind the front vehicle whether it is moving or stopped to avoid a rear

end collision” (see VTL § 1129[a]). Even if defendant Drake’s version of the facts are credited in its entirety, he acknowledges that he is a commercial and professional driver who utilizes this route on a daily basis. He further acknowledges that he was fully familiar with the nature of the roadway in that there is a crest of the hill, over which he is not able to observe any traffic conditions. As it is the driver’s duty and legal obligation to “tak[e] into account the weather and road conditions” (Rodriquez v City of New York, 259 AD2d 280 [1999]), driving a tanker truck over the crest of the hill without any sight distance requires such driver to proceed with extreme caution; the fact that defendant Drake never saw a school bus stopped in the roadway at or near the accident site in the past is not a viable explanation considering the timing of the accident, the ability of all other cars traveling in front of him to stop and the obligation to maintain a safe distance between his vehicle and those traveling in front of him to avoid collisions with stopped vehicles. In this court’s view, even an expert affidavit confirming defendant Drake’s version of the speed he was traveling would not change the result; this simply was not an emergency situation (see Renteria v Simakov, 109 AD3d 749 [1st Dept 2013]).

For these reasons, this court grants plaintiff’s motion for partial summary judgment.

This shall constitute the Decision and Order of the court. The original Decision and Order and all other papers are being delivered to the Supreme Court Clerk for transmission to the Ulster County Clerk for filing. The signing of this Decision and Order

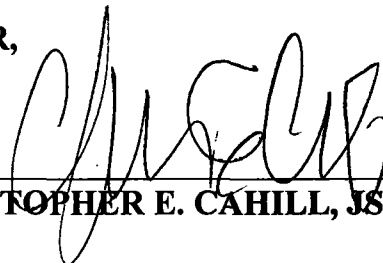
shall not constitute entry or filing under CPLR § 2220. Counsel is not relieved from the applicable provisions of that rule regarding notice of entry.

SO ORDERED.

Dated: Kingston, New York

May 1, 2019

ENTER,



CHRISTOPHER E. CAHILL, JSC

Papers considered: Notice of motion dated February 5, 2019 with affirmation in support by Raymond J. Iaia, Esq., dated January 15, 2019 with exhibits; affidavit of Geoffrey Carter sworn January 9, 2019; affirmation in opposition by Andrea P. Demers, Esq., dated March 15, 2019 and memorandum of law; affidavit of Ariel Drake sworn March 15, 2019; reply affirmation and legal argument by Raymond J. Iaia, Esq., dated March 29, 2019.

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Nina Postupack
Ulster County Clerk