

Marine v Defeo

2019 NY Slip Op 34345(U)

February 11, 2019

Supreme Court, Suffolk County

Docket Number: Index No. 604877/2017

Judge: George Nolan

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Short Form Order

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SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 55 - COUNTY OF SUFFOLK

P R E S E N T:

Hon. George Nolan
Justice Supreme Court

DECISION AND ORDER

_____ x
ANABEL MARINE,

Plaintiff,

-against-

DENISE DEFEO AND
CHRISTIAN DEFEO
_____ x
Defendants.

Mot. Seq. No. #001 - Case Disp -MG
Orig. Return Date: 1/23/2019
Mot. Submit Date: 1/31/2019

PLAINTIFF'S ATTORNEY

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DEFENDANT'S ATTORNEY

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The Law Offices of Russo, Apoznanski
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Upon the e-filed documents numbered 9 through 21, it is determined as follows:

Plaintiff Anabel Marine commenced this action to recover damages for personal injuries allegedly sustained in a motor vehicle accident that occurred on North Wellwood Avenue at or near its intersection with Straight Path in Lindenhurst, New York on December 2, 2016. The collision occurred between a vehicle driven by defendant Christian DeFeo and owned by Denise DeFeo and a vehicle operated by plaintiff Anabel Marine.

The defendants Denise DeFeo and Christian DeFeo now move for an order granting summary judgment dismissing the complaint on the ground that the collision occurred because of plaintiff's failure to yield the right of way. In support of the motion, the defendants submit, among other things, copies of the pleadings and transcripts of the parties' deposition testimony. Plaintiff opposes the motion, arguing that a triable issue of

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fact exists as to whether defendant Christian DeFeo failed to act reasonably under the circumstances.

Defendant Christian DeFeo testified at his examination before trial that he was driving his vehicle in the left southbound lane of Wellwood Avenue, traveling at approximately thirty miles per hour, when he saw the plaintiff's vehicle exiting a gasoline service station on the right side of the road; that one or two car lengths separated the two vehicles when the plaintiff's vehicle entered his lane of travel; that he applied his brakes and turned his steering wheel to the left to avoid a collision; that the front bumper of the plaintiff's vehicle impacted the passenger side of his vehicle.

At her examination before trial, plaintiff Anabel Marine testified that prior to the collision she was stopped at a service station on Wellwood Avenue to get gas; that she drove to the service station exit intending to turn right onto Wellwood Avenue; that she came to a stop before entering Wellwood Avenue and saw no traffic to the left. However, the plaintiff could not remember anything that occurred from the moment she began to exit the gas station until the moment of impact.

On a motion for summary judgment the movant bears the initial burden and must tender evidence sufficient to eliminate all material issues of fact (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 487 NYS2d 316 [1985]). Once the movant meets this burden, the burden then shifts to the opposing party to demonstrate that there are material issues of fact; mere conclusions and unsubstantiated allegations are insufficient to raise any triable issues of fact (*see Zuckerman v City of New York*, 49 NY2d 557, 427 NYS2d 595 [1980]; *Perez v Grace Episcopal Church*, 6 AD3d 596, 774 NYS2d 785 [2004]). As the court's function on such a motion is to determine whether issues of fact exist, not to resolve issues of fact or to determine matters of credibility; the facts alleged by the opposing party and all inferences that may be drawn are to be accepted as true (*see Roth v Barreto*, 289 AD2d 557, 735 NYS2d 197 [2d Dept 2001]; *O'Neill v Fishkill*, 134 AD2d 487, 521 NYS2d 272 [2d Dept 1987]).

The defendants established their prima facie entitlement to summary judgment as a matter of law by presenting undisputed evidence that plaintiff's vehicle entered the roadway from a gasoline service station, and that it failed to yield the right of way to the defendant's approaching vehicle in violation of Vehicle and Traffic Law § 1143.

Vehicle and Traffic Law § 1143 provides that the "driver of a vehicle about to

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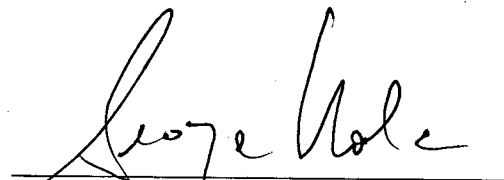
enter or cross a roadway from any place other than a roadway shall yield the right of way to all vehicles approaching on the roadway to be entered or crossed.” A violation of the Vehicle and Traffic Law constitutes negligence as a matter of law (*see Vainer v. Disalvo*, 79 AD3d 1023, 914 NYS2d 236 [2d Dept 2010]). Further, “the driver with the right-of-way is entitled to anticipate that the other motorist will obey traffic laws which require him or her to yield” (see, *Williams v. Hayes*, 103 AD3d 713, 959 NYS2d 713 [2d Dept 2013]; *Figuroa v. Diaz*, 107 AD3d 754, 967 NYS2d 109 [2d Dept 2013]).

While there can be more than one proximate cause of an accident, the plaintiff has failed to raise a triable issue of fact as to the defendant’s comparative negligence. Plaintiff Anabel Marine did not see the defendant’s vehicle at any time prior to the accident and she recalled nothing after she began to exit the service station. Plaintiff’s claim that the defendant was traveling at an unsafe rate of speed is mere speculation and insufficient to defeat summary judgment (*see, Colandrea v. Chuku*, 94 AD3d 1034, 943 NYS2d 166 [2d Dept 2012]).

Accordingly, the motion by defendants for summary judgment dismissing the complaint against them is **GRANTED**.

ENTER

Dated: February 11, 2019
Riverhead, New York



GEORGE NOLAN, J.S.C.

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FINAL DISPOSITION

NON-FINAL DISPOSITION