

Corona v Zaneski

2019 NY Slip Op 34497(U)

January 11, 2019

Supreme Court, Putnam County

Docket Number: Index No. 500852/2018

Judge: Victor G. Grossman

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This opinion is uncorrected and not selected for official publication.

To commence the 30 day 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 PUTNAM**

-----X

ANNA CORONA and ANTHONY CORONA,

Plaintiff,

-against -

MICHELLE ZANESKI and MICHAEL ZANESKI,

Defendants.

-----X

GROSSMAN, J.S.C.

The following papers, numbered 1 to 10, were considered in connection with Plaintiff's Notice of Motion, dated October 18, 2018, seeking summary judgment on the issue of liability.

PAPERS¹	NUMBERED
Notice of Motion/Affirmation in Support/Exhs. A-D	1-6
Affirmation in Opposition/Exh. A (Anna Corona Affidavit)	7-8
Affirmation in Reply/Exh. A	9-10

This is an action to recover damages for personal injuries, stemming from a 3-car accident in the eastbound lane of Route 301, at the intersection with Peekskill Hollow Road, Town of Kent, Putnam County on June 16, 2018. At the time of the accident, Defendant

¹The parties and counsel shall familiarize themselves with this Court's Part Rules, which can be found on the OCA website, as parts of this motion and the responsive papers fail to comply with those Rules, to the extent that Plaintiff shall designate exhibits by number, while Defendant shall designate exhibits by letter, and exhibit lettering or numbering shall not begin anew for subsequent papers submitted by the same party. Any future motions that do not comply with this Court's Part Rules may be rejected or dismissed.

Michelle Zaneski, while driving a vehicle owned by Defendant Michael Zaneski, began to make a left turn from her westbound lane on to Peekskill Hollow Road, but as she entered the eastbound lane to cross over, Plaintiff Anna Corona was driving eastbound on Route 301 and collided with the front left side of Defendant's vehicle. As a result, Mrs. Corona fractured her ribs. Her husband, Plaintiff Anthony Corona, is suing for loss of services.

Plaintiffs commenced this action on July 19, 2018. Defendants interposed an Answer on or about August 29, 2018.

Plaintiffs move for summary judgment on the issue of liability. In support of their motion, Plaintiffs submitted Mrs. Corona's affidavit; the Summons and Verified Complaint; Defendants' Verified Answer; and the MV-104 accident report signed by Barry W. Sanel, the driver of a third vehicle stopped at the stop sign on Peekskill Hollow Road.

In opposition, Defendants proffer Ms. Zaneski's affidavit.

It is axiomatic that summary judgment is a drastic remedy and should not be granted where triable issues of facts are raised and cannot be resolved on conflicting affidavits. See Millerton Agway Coop. v. Briarcliff Farms, 17 N.Y.2d 57, 61 (1966); Sillman v. Twentieth Century-Fox Film Corp., 3 N.Y.2d 395, 404 (1957). Initially, "the proponent... 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 issue of fact." However, once a movant makes a sufficient showing, "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 N.Y.2d 320, 324 (1986). Where the moving papers are insufficient, the court need not consider the sufficiency of

the opposing papers. Id.; see also Fabbricatore v. Lindenhurst Union Free School Dist., 259 A.D.2d 659 (2d Dept. 1999).

“Vehicle and Traffic Law 1141 provides that the ‘driver of a vehicle intending to turn to the left within an intersection shall 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.’” Katikireddy v. Espinal, 137 A.D.3d 866, 867 (2d Dept. 2016). “A violation of the statute constitutes negligence per se.” Id., citing Vainer v. DiSalvo, 79 A.D.3d 1023, 1024 (2d Dept. 2016); see also Ming-Fai Jon v. Wager, 165 A.D.3d 1253 (2d Dept. 2018).

Here, Plaintiffs made a prima facie showing that Ms. Zaneski violated Vehicle and Traffic Law §1141 by failing to yield the right of way to Ms. Corona when Ms. Corona was approaching from the opposite direction. Ms. Corona stated that while she “was traveling straight ahead on Route 301 through the intersection, my vehicle was struck by the defendants’ vehicle which made a sudden and unexpected left turn on to Peekskill Hollow Road right in front of me. Immediately before the incident, the defendant was traveling westbound on Route 301, and then made the left turn in front of me so suddenly and unexpectedly, that I could do nothing to avoid the accident” (Notice of Motion, Exh. D).

In opposition, however, Defendants raise a triable issue of fact. Based on Ms. Zaneski’s affidavit, she explained that prior to the accident, she was “waiting behind a 4x4 truck which was waiting to make a left turn onto Peekskill Hollow Road” (Affirmation in Opposition, Exh. A at ¶12). She stated that “[a]fter the truck made its turn, I moved my vehicle to the beginning of the break between the yellow lines, and stopped to wait for the roadway to clear” (Affirmation in Opposition, Exh. A at ¶13). Her left turn signal was on, and “[w]hen the roadway was clear, I

slowly moved from the stopped position and into my left turn” (Affirmation in Opposition, Exh. A at ¶16). Ms. Zaneski stated that her vehicle was traveling at 2 m.p.h. at the time of impact, and the “front portion of my vehicle was positioned inside the opposite travel lanes of Route 301” (Affirmation in Opposition, Exh. A at ¶¶17, 20).

Accordingly, the Court finds that there are issues of fact, warranting a denial of the summary judgment motion.

As such, it is hereby

ORDERED that Plaintiff’s motion is denied; and it is further

ORDERED that the parties and counsel are to appear before the undersigned on Friday, February 8, 2019 at 9:30 a.m. for a compliance conference, as previously scheduled.

The foregoing constitutes the Decision and Order of the Court.

Dated: Carmel, New York
January 11, 2019


HON. VICTOR G. GROSSMAN, J.S.C.

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