

Valladolid v Kearney
2019 NY Slip Op 34577(U)
July 22, 2019
Supreme Court, Westchester County
Docket Number: Index No. 50644/2019
Judge: Charles D. Wood
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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.

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER**

-----X
**JUAN B. GRANDA VALLADOLID and OLGA,
ESPERANZA AREVALO QUINDE,**

Plaintiffs,

**DECISION & ORDER
Index No. 50644/2019
Sequence No. 1**

-against-

MATTHEW KEARNEY,

Defendant.

-----X
WOOD, J.

The court read NYSCEF documents Numbers 9 through 21 in connection with plaintiff's motion for summary judgment on the issues of liability and serious injury, as defined by 5102 (b) of the New York State Insurance Law.

This is an action to recover damages for personal injuries allegedly sustained by Juan B. Granda Valladolid (the injured plaintiff), on or about December 31, 2018, while traveling on Crompond Road in Yorktown. Defendant, who was traveling in the opposite direction crossed over a solid double yellow line into injured plaintiff's lane of travel and crashed head-on into plaintiff's vehicle.

Plaintiffs now bring this motion for summary judgment. Upon the foregoing papers, the motion is decided as follows:

It is well settled that "a 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" (Alvarez v Prospect Hosp., 68 NY2d

320, 324 [1986]; see Orange County-Poughkeepsie Ltd. Partnership v Bonte, 37 AD3d 684, 686-687 [2d Dept 2007]; see also Rea v Gallagher, 31 AD3d 731 [2d Dept 2007]). Once the movant has met this threshold burden, the opposing party must present the existence of triable issues of fact (see Zuckerman v New York, 49 NY2d 557, 562 [1980]; see also Khan v Nelson, 68 AD3d 1062 [2d Dept 2009]). Conclusory, unsubstantiated assertions will not suffice to defeat a motion for summary judgment (Barclays Bank of New York, N.A. v Sokol, 128 AD2d 492 [2d Dept 1987]). A party opposing a motion for summary judgment may do so on the basis of deposition testimony as well as other admissible forms of evidence, including an expert's affidavit, and eyewitness testimony (Marconi v Reilly, 254 AD2d 463 [2d Dept 1998]). In deciding a motion for summary judgment, the court is required to view the evidence presented "in the light most favorable to the party opposing the motion and to draw every reasonable inference from the pleadings and the proof submitted by the parties in favor of the opponent to the motion" (Yelder v Walters, 64 AD3d 762, 767 [2d Dept 2009]; see Nicklas v Tedlen Realty Corp., 305 AD2d 385, 386 [2d Dept 2003]). The court must accept as true the evidence presented by the nonmoving party and must deny the motion if there is "even arguably any doubt as to the existence of a triable issue" (Kolivas v Kirchoff, 14 AD3d 493 [2d Dept 2005]); Baker v Briarcliff School Dist., 205 AD2d 652, 661-662 [2d Dept 1994]). Summary judgment is a drastic remedy and should not be granted where there is any doubt as to existence of a triable issue (Alvarez v Prospect Hospital, 68 NY2d 320, 324). On a summary judgment motion, a court must regard issue finding rather than issue determination (Celardo v Bell, 222 AD2d 547 [2d Dept 1995]).

Generally, Vehicle and Traffic Law §1129(a) imposes a duty on all drivers to drive at a safe speed and maintain a safe distance between vehicles, always compensating for any known adverse road conditions (Ortega v City of New York, 721 NYS2d 790 [2d Dept 2000]). "Crossing a double yellow line into the opposing lane of traffic, in violation of Vehicle and

Traffic Law §1126(a) constitutes negligence as a matter of law, unless justified by an emergency situation not of the driver's making" (Gadon v Oliva, 294 AD2d 397 [2d Dept 2002]). "A driver is not required to anticipate that a vehicle traveling in the opposite direction will cross over into oncoming traffic" (Eichenwald v Chaudhry, 17 AD3d 403, 404 [2d Dept 2005]). "Speculation that the driver in the opposing lane of traffic could have done something to avoid a vehicle crossing over a double yellow line is insufficient to defeat a motion for summary judgment" (Gadon v Oliva, 294 AD2d 397).

Here, there is no dispute among the parties that defendant did in fact cross the double yellow line, and caused the accident with injured plaintiff. Accordingly, the evidence submitted by plaintiffs demonstrate their entitlement to summary judgment prima facie on the issue of liability, inasmuch as injured plaintiff was not required to anticipate that another vehicle would cross over into his lane hitting his vehicle head on.

As for summary judgment on the serious injury issue, defendant's counsel asserts that this case is in its infancy, and no discovery has taken place, including that no medicals have been received directly from any of the medical facilities. Therefore, it is impossible for defendant to attest to the validity of the documentation received from plaintiff to date. Authorizations have not been yet received from plaintiff and defendant had not been given an opportunity to investigate the injury claimed by injury plaintiff. Plaintiffs offer no reply to these contentions.

In light of the foregoing, defendant established that plaintiffs' motion for summary judgment on the issue of serious injury was premature, because he demonstrated that additional discovery might lead to relevant evidence, or that facts essential to justify opposition to the motion were exclusively within the knowledge and control of plaintiffs (Tone v Studin, 148

AD3d 1205, 1206 [2d Dept 2017]) Accordingly, the branch of the motion for summary judgment on the issue of serious injury is denied without prejudice to renew, as the defendant has not had the opportunity to have an IME of plaintiff or to submit plaintiff's medical records to defendant's medical experts, and other outstanding discovery issues.

Therefore for the above stated reasons, it is hereby

ORDERED, that the branch of the plaintiff's motion for summary judgment on the issue of serious injury pursuant to Insurance Law §5102 is denied without prejudice to renew, and it is further,

ORDERED, that the branch of the plaintiff's motion for partial summary judgment on the issue of liability against defendant is granted and the Clerk of Court is authorized to enter judgment accordingly; and it is further,

ORDERED, that plaintiff shall serve a copy of this order with notice of entry upon the parties to this action within ten (10) days of entry, and file proof of service within five (5) days of service; and it is further

ORDERED, that serious injury will be tried during the damages phase of the trial, and that the granting of this summary judgment motion does not preclude further determination that plaintiff may or may not have sustained serious injury as defined by Insurance Law §5102[d]; and it is further

ORDERED, that the parties are directed to appear in the Preliminary Conference Part on August 19, 2019 at 9:30 A.M. in Room 811 of the Westchester County Courthouse, 111 Dr. Martin Luther King Jr. Blvd., White Plains, New York 10601.

The Clerk shall mark his records accordingly.

All matters not herein decided are denied. This constitutes the Decision and Order of the court.

Dated: July 22, 2019
White Plains, New York



HON. CHARLES D. WOOD
Justice of the Supreme Court

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