

Glynn v Sullivan

2019 NY Slip Op 34647(U)

October 1, 2019

Supreme Court, Westchester County

Docket Number: Index No. 53965/2019

Judge: Lawrence H. Ecker

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This opinion is uncorrected and not selected for official publication.

To commence the statutory time 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
MARY GLYNN,

Plaintiff,

Index No. 53965/2019

-against-

DECISION/ORDER

RILEY SULLIVAN and SEAN P. SULLIVAN,

Motion date: 08/14/2019

Motion Seq. 1

Defendants.

-----X
ECKER, J.

The following papers were considered on the motion of plaintiff MARY GLYNN (plaintiff) [Mot. Seq. 1], made pursuant to CPLR 3212, for an order granting partial summary judgment on the issue of liability in favor of plaintiff as against defendants RILEY SULLIVAN and SEAN P. SULLIVAN(defendants):

PAPERS

- Notice of Motion, Affirmation, and Exhibits A-D
- Affirmation in Opposition, Affidavit and Exhibits A-B
- Reply Affirmation

Upon the foregoing papers, the court determines as follows:

This is an action seeking damages for personal injuries that plaintiff alleges she sustained as a result of a motor vehicle accident. Plaintiff was a passenger in a vehicle driven by non-party Donald Seacrest (plaintiff's vehicle) that collided with defendants' vehicle (defendants' vehicle). The collision occurred on December 8, 2018, at approximately 6:30 p.m., on Route 117 at the intersection with Route 120, Town of New Castle, N.Y. Defendants' vehicle was operated by defendant Riley Sullivan (defendant driver) and owned by Sean P. Sullivan.

Plaintiff alleges that plaintiff's vehicle was traveling straight on Route 117 with a green light at the intersection with King Street. Defendants' vehicle was traveling in the opposite direction, northbound, on Route 117. Suddenly, and without notice, defendants' vehicle made a left turn, striking plaintiff's vehicle.

The certified police report contains a statement by defendant driver to the effect that the light was green and he thought plaintiff's vehicle was making a right-hand turn from the southbound lane of Bedford Road, onto King Street. Defendant proceeded into a left-hand turn when he hit plaintiff's vehicle which was traveling straight through the light and intersection, heading south. The police officer at the scene issued a ticket to defendant driver for a violation of VTL 1140(a).¹

In contrast, defendant driver alleges, in his affidavit, that when he arrived at the relevant intersection, he brought his vehicle to a complete stop. When the light turned green, defendant driver entered the intersection and waited to turn left. He saw plaintiff's vehicle, in the right turn lane, with its right turn signal on when he first arrived. Defendant driver avers that "it appeared to me that plaintiff's vehicle was making a right turn because it was in the right turn lane with its right turn signal on." He began his left turn when "plaintiff's vehicle swerved out of the right turn and proceeded straight into the intersection. Plaintiff's vehicle collided with the front passenger side of my car." [NYSCEF No. 27].

Plaintiff commenced this action based on negligence by service of summons and complaint on or about March 27, 2019. [NYSCEF No. 1]. Defendants filed an answer on June 6, 2019, asserting general denials and alleging three affirmative defenses: failure to wear a seatbelt; comparative negligence; and collateral source rule. [NYSCEF No. 3]. Issue was joined on April 16, 2019. A preliminary conference order was entered on June 3, 2019, directing the completion of discovery on or before May 12, 2020.

Plaintiff moved on June 19, 2019, [Mot. Seq. 1], pursuant to CPLR 3212, for an order granting partial summary judgment on the issue of liability as against defendants. The bill of particulars and response to PC and Demands were served on June 27, 2019.

Defendants oppose the motion as premature as discovery needs to be conducted such that defendants may file a third-party action against the driver of plaintiff's vehicle. In addition, defendants argue plaintiff fails to show that she sustained a "serious injury" as defined under the Insurance Law.

This motion was returnable on August 18, 2019.

¹VTL 1140(a) states: "(a) The driver of a vehicle approaching an intersection shall yield the right of way to a vehicle which has entered the intersection from a different highway".

On a motion for summary judgment it is the obligation of the court to determine whether or not there are issues of fact that militate against granting that relief to either plaintiff or defendant. It is not the court's function on a motion for summary judgment to assess credibility (*Chimbo v Bolivar*, 142 AD3d 944 [2d Dept 2016]; *Garcia v Stewart*, 120 AD3d 1298, 1299 [2d Dept 2014]), or to engage in the weighing of evidence (*Scott v Long Is. Power Auth.*, 294 AD2d 348 [2d Dept 2002]). Resolving questions of credibility, determining the accuracy of witnesses, and reconciling the testimony of witnesses are for the trier of fact (*Bykov v Brody*, 150 AD3d 808 [2d Dept 2017]). Thus a motion for summary judgment "should not be granted where the facts are in dispute, where conflicting inferences may be drawn from the evidence, or where there are issues of credibility" (*Ruiz v Griffin*, 71 AD3d 1112, 1115 [2d Dept 2010]; *Civil Serv. Empls. Assn. v County of Nassau*, 144 AD3d 1077 [2d Dept 2016]).

In addition, it is well settled that a party should be afforded a reasonable opportunity to conduct discovery prior to the determination of a motion for summary judgment, inasmuch as discovery may result in disclosure of evidence relevant to the causes of action asserted in the complaint (*Brea v Salvatore*, 130 AD3d 956 [2d Dept 2015]; *Bank of America v Hillside Cycles, Inc.*, 89 AD3d 653 [2d Dept 2011]). CPLR 3212(f) permits a party opposing summary judgment to obtain further discovery when it appears the facts supporting the position of the opposing party exist but cannot be stated (*Betz v NYC Premier Properties, Inc.*, 38 AD3d 815 [2d Dept 2007]; *Juseinoski v New York Hosp. Med. Ctr. Of Queens*, 29 AD3d 636, 637 [2d Dept 2006]).

At this early juncture, the court finds that a grant of summary judgment finding defendants entirely liable for the accident would be premature. While the police report and ticket are evidence of defendant driver's wrongdoing, they do not completely eviscerate defendants' allegation that the plaintiff's driver misused his directional and turned from the far-right turn lane and drove straight into defendants' passenger side door. As this action is young, having been commenced in late March 2019, the denial of this motion in order to permit discovery as to the issue of whether plaintiff's driver contributed to causing the accident will not result in undue delay (*Grant v Carrasco*, 165 AD3d 631 [2d Dept 2018]; *Hawana v Carbuccia*, 164 AD3d 563 [2d Dept 2018]; *Betz v NYC Premier Properties*, 38 AD3d 815 [2d Dept 2007]).

The court has considered the additional contentions of the parties not specifically addressed herein. To the extent any relief requested by either party was not addressed by the court, it is hereby denied. Accordingly, it is hereby

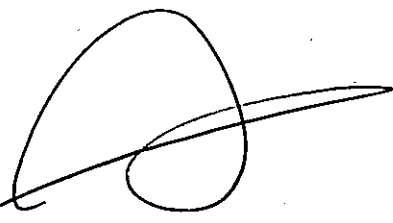
ORDERED that the motion of plaintiff MARY GLYNN (plaintiff) [Mot. Seq. 1], made pursuant to CPLR 3212, for an order granting partial summary judgment on the issue of liability in favor of plaintiff as against defendants RILEY SULLIVAN and SEAN P. SULLIVAN (defendants) is denied without prejudice to renewal after discovery is completed;

ORDERED that the parties shall appear at the Compliance Conference Part, as previously scheduled, on October 18, 2019, in Room 811 at 9:30 a.m.

The foregoing constitutes the Decision/Order of the court.

Dated: White Plains, New York
October 1, 2019

ENTER



HON. LAWRENCE H. ECKER, J.S.C.

Appearances

All parties appearing by NYSCEF