

Ramme v Giugliano
2019 NY Slip Op 34673(U)
July 8, 2019
Supreme Court, Suffolk County
Docket Number: Index No. 601940/2018
Judge: Joseph A. Santorelli
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ORIGINAL

SHORT FORM ORDER

INDEX No. 601940/2018

CAL No. _____

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 10 - SUFFOLK COUNTY**PRESENT:**Hon. JOSEPH A. SANTORELLI
Justice of the Supreme CourtMOTION DATE 4-12-19SUBMIT DATE 6-27-19

Mot. Seq. # 01 - MG

02 - MG

-----X
ELIZABETH RAMME,

Plaintiff,

-against-

SHEILA E. GIUGLIANO,

Defendant.
-----X

SHEILA E. GIUGLIANO,

Third-Party Plaintiff,

-against-

ALLISON E. RAMME,

Third-Party Defendant.
-----X**LEONICK LAW, PLLC***Attorneys for Plaintiff*

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Upon the following papers numbered 1 to 41 read on this motion for summary judgment; Notice of Motion/ Order to Show Cause and supporting papers 1 - 15 (#01); Notice of Cross Motion and supporting papers 16 - 28 (#02); Answering Affidavits and supporting papers 29 - 33 (#01); Replying Affidavits and supporting papers 34 - 41 (#01); ~~Other~~ _____; ~~(and after hearing counsel in support and opposed to the motion)~~ it is,

The third-party defendant, Allison E. Ramme, moves for an order granting summary judgment and dismissing the third-party complaint against her. The defendant/third-party plaintiff, Sheila E. Giugliano, opposes this application. The plaintiff cross moves for an order granting partial summary judgment on the issue of liability. There was no opposition to the cross motion.

A motion for summary judgment "shall be supported by affidavit, by a copy of the pleadings and by other available proof, such as depositions and written admission.

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The 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 eliminate any material issues of fact from the case (*Friends of Animals v Associated Fur Mfrs.*, 46 NY2d 1065, 416 NYS2d 790 [1979]). To grant summary judgment it must clearly appear that no material and triable issue of fact is presented (*Sillman v Twentieth Century-Fox Film Corporation*, 3 NY2d 395, 165 NYS2d 498 [1957]). Once such proof has been offered, the burden then shifts to the opposing party, who, in order to defeat the motion for summary judgment, must proffer evidence in admissible form . . . and must “show facts sufficient to require a trial of any issue of fact” CPLR3212 [b]; *Gilbert Frank Corp. v Federal Insurance Co.*, 70 NY2d 966, 525 NYS2d 793, 520 NE2d 512 [1988]; *Zuckerman v City of New York*, 49 NY2d 557, 427 NYS2d 595 [1980]). The opposing party must assemble, lay bare and reveal his proof in order to establish that the matters set forth in his pleadings are real and capable of being established (*Castro v Liberty Bus Co.*, 79 AD2d 1014, 435 NYS2d 340 [2d Dept 1981]). Furthermore, the evidence submitted in connection with a motion for summary judgment should be viewed in the light most favorable to the party opposing the motion (*Robinson v Strong Memorial Hospital*, 98 AD2d 976, 470 NYS2d 239 [4th Dept 1983]).

On a motion for summary judgment the court is not to determine credibility, but whether there exists a factual issue (see *S.J. Capelin Associates v Globe Mfg. Corp.*, 34 NY2d 338, 357 NYS2d 478, 313 NE2d 776 [1974]). However, the court must also determine whether the factual issues presented are genuine or unsubstantiated (*Prunty v Keltie's Bum Steer*, 163 AD2d 595, 559 NYS2d 354 [2d Dept 1990]). If the issue claimed to exist is not genuine but is feigned and there is nothing to be tried, then summary judgment should be granted (*Prunty v Keltie's Bum Steer*, *supra*, citing *Glick & Dolleck v Tri-Pac Export Corp.*, 22 NY2d 439, 293 NYS2d 93, 239 NE2d 725 [1968]; *Columbus Trust Co. v Campolo*, 110 AD2d 616, 487 NYS2d 105 [2d Dept 1985], *affd*, 66 NY2d 701, 496 NYS2d 425, 487 NE2d 282).

The plaintiff seeks the recovery of damages for personal injuries sustained as the result of a motor vehicle accident on November 3, 2017, on Stony Hollow Road at its intersection with Saratoga Avenue, Town of Huntington, County of Suffolk, State of New York. Plaintiff alleges that she was a passenger in a vehicle being operated by her daughter, third-party defendant Allison E. Ramme, which was traveling northbound on Stony Hollow Road. The plaintiff claims that the vehicle she was a passenger in was already in the middle of the intersection when the impact took place and that she was unsure if the Giugliano vehicle was making a left turn of “just floating into their lane”. The plaintiff alleges that the Giugliano vehicle entered into the northbound lane of travel when the accident occurred. The defendant/third-party plaintiff Giugliano contends that she was operating her vehicle traveling southbound on Stony Hollow Road attempting to make a left hand turn onto Saratoga Avenue when the front of her vehicle made contact with the driver’s side of the Ramme vehicle. The defendant/third-party plaintiff testified that she did not see the other vehicle prior to the accident. The third-party defendant testified that she was in the middle of the intersection when the accident occurred. The third-party defendant also alleges that she first saw the defendant/third-party plaintiff’s vehicle “two or three seconds before impact” it was “straddling the double yellow” lines. The third-party defendant’s attorney

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contends that defendant/third-party plaintiff is the sole cause of the accident in that she was not paying attention while driving and did not see what was there to be seen.

The Court in *Gabler v. Marly Bldg. Supply Corp.*, 27 AD3d 519, 520, 813 NYS2d 120 (App Div 2d Dep't 2006), held that

The defendants demonstrated their prima facie entitlement to judgment as a matter of law by establishing that the plaintiff violated Vehicle and Traffic Law § 1141 when he made a left turn directly into the path of the defendants' vehicle as it legally proceeded with the right of way (see *Moreback v Mesquita*, 17 AD3d 420, 793 NYS2d 148 [2005]; *Torro v Schiller*, 8 AD3d 364, 777 NYS2d 915 [2004]; *Casaregola v Farkouh*, 1 AD3d 306, 767 NYS2d 57 [2003]; *Rieman v Smith*, 302 AD2d 510, 755 NYS2d 256 [2003]; *Russo v Scibetti*, 298 AD2d 514, 748 NYS2d 871 [2002]; *Agin v Rehfeldt*, 284 AD2d 352, 726 NYS2d 131 [2001]; *Stiles v County of Dutchess*, 278 AD2d 304, 717 NYS2d 325 [2000]). As the defendants' vehicle had the right of way, Lam was entitled to anticipate that the plaintiff would obey the traffic laws which required him to yield to the defendants' vehicle (see *Bongiovi v Hoffman*, 18 AD3d 686, 795 NYS2d 354 [2005]; *Moreback v Mesquita*, supra; *Russo v Scibetti*, supra; *Agin v Rehfeldt*, supra; *Stiles v County of Dutchess*, supra; *Zambrano v Philhwan Seok*, 277 AD2d 312, 715 NYS2d 750 [2000]; *Cenovski v Lee*, 266 AD2d 424, 698 NYS2d 868 [1999])... he was negligent as a matter of law in failing to see that which he should have seen through the proper use of his senses (see *Bongiovi v Hoffman*, supra; *Spatola v Gelco Corp.*, 5 AD3d 469, 773 NYS2d 101 [2004]; *Breslin v Rudden*, 291 AD2d 471, 738 NYS2d 674 [2002]; *Agin v Rehfeldt*, supra; *Stiles v County of Dutchess*, supra; *Zambrano v Philhwan Seok*, supra; *Bolta v Lohan*, 242 AD2d 356, 661 NYS2d 286 [1997]; see also *Weigand v United Traction Co.*, 221 NY 39, 116 NE 345 [1917]).

Here, third-party defendant Allison E. Ramme established a prima facie entitlement to judgment as a matter of law as to the third-party complaint. The defendant/third-party plaintiff was then required to proffer evidence in admissible form to show facts sufficient to require a trial of any issue of fact. In opposition to the motion, defendant/third-party plaintiff did not rebut that prima facie entitlement, by showing that third-party defendant breached a duty owed to her. Plaintiff's, defendant/third-party plaintiff's and third-party defendant's version of the events leading up to the accident show that the Ramme vehicle had the right of way on the road when defendant/third-party plaintiff's vehicle turned left directly into it and caused the accident. Therefore the third-party defendant's motion for summary judgment and to dismiss the third-party complaint is granted.

Further, the plaintiff established a prima facie entitlement to judgment as a matter of law. The defendant/third-party plaintiff was then required to proffer evidence in admissible form to show facts sufficient to require a trial of any issue of fact. The defendant/third-party plaintiff failed to provide opposition to the cross motion, therefore the defendant failed to rebut the prima facie showing.

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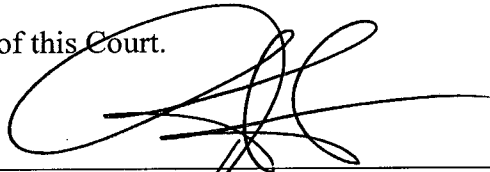
Accordingly, the motion by plaintiff for an order awarding partial summary judgment in her favor on the issue of liability is granted; and it is further

ORDERED that counsel for plaintiff shall serve a copy of this order upon opposing counsel and upon the Calendar Clerk of this court within twenty (20) days from the date of this order; and it is further

ORDERED that this action shall proceed to trial on the issue of damages.

The foregoing constitutes the decision and Order of this Court.

Dated: July 8, 2019



HON. JOSEPH A. SANTORELLI
J.S.C.