

**Valentine v Crawford**

2019 NY Slip Op 35186(U)

November 22, 2019

Supreme Court, Queens County

Docket Number: Index No. 714644/2017

Judge: Chereé A. Buggs

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Short Form Order

NEW YORK SUPREME COURT-QUEENS COUNTY

Present: HONORABLE CHEREÉ A. BUGGS

IAS PART 30

Justice

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VICKY VALENTINE,

Index No. 714644/2017

Plaintiff,

Motion

Date: October 30, 2019

-against-

Motion Cal. No.: 47

JEFFERY J. CRAWFORD, RAYSHA J.  
CRAWFORD, WAQAR RANA and  
SANNA RANA,

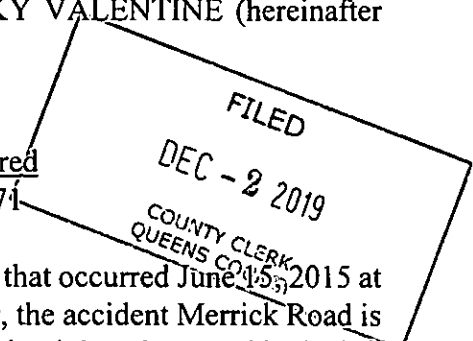
Motion Sequence No.: 3

Defendants.

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The following e-file papers numbered 59-71 submitted and considered on this motion by defendants WAQAR RANA and SANNA RANA (collectively referred to as "Defendants") seeking an Order pursuant to Civil Practice Law and Rules (hereinafter referred to as "CPLR") 3212 for summary judgment on the issue of liability to the plaintiff VICKY VALENTINE (hereinafter referred to as "Plaintiff").

Notice of Motion- Affirmation in Support .....

Papers  
Numbered  
EF 59-71



This is a negligence action arising out of a three car collision that occurred June 15, 2015 at or around 9:00 A.M. on Merrick Road in Nassau County. At or near, the accident Merrick Road is made up of four lanes two in either direction. Plaintiff was headed to her job and stopped in the left lane waiting for traffic to clear so that she could make a left turn and enter her jobs drop off location. The parties do not dispute that before the collisions Plaintiff was stopped. Defendant Raysha J. Crawford (hereinafter referred to as "Crawford") was on her way to an off site rotation traveling in the left lane on Merrick Road. Crawford attempted to enter the right lane in order to avoid contact with Plaintiff and instead the car Crawford was operating came into contact with the passenger side door of the car defendant Sanna Rana (hereinafter referred to as "Rana") was operating. Directly after the first impact the car Crawford was operating came into contact with the rear bumper of the

car Plaintiff was operating. Rana testified that the accident occurred at 9:15 A.M., that she was coming from Dunkin Donuts and headed to work (where she was to clock in at 9:00 A.M.) Also, Rana testified she was traveling at about 40 mph in the right lane before the collision.

Plaintiff moved this Court for partial summary judgment on May 1, 2019. By Short Form Order dated June 3, 2019 this Court granted Plaintiff's summary judgment motion as to Crawford, however, this Court denied Plaintiff's summary judgment motion as to the Defendants (hereinafter referred to as the "Order"). In the Order this Court stated in part:

However, Plaintiff's motion for partial summary judgment as to defendant Rana fails.

In *Gajjar v. Shah*, where a car traveling east on Hillside Ave crossed over three lanes of traffic including a double yellow line and collided with the front of a tractor trailer traveling in the farthest right west bound lane. (*Gajjar v. Shah*, 31 A.D. 3d 377 [2d Dept 2006]). The tractor-trailer moved for summary judgment and the opposing party submitted an attorneys affirmation that the tractor-trailer had enough time to avoid the out of control vehicle. (*Id* at 378). The court held that "a driver is not obligated to anticipate that a vehicle traveling in the opposite direction will cross over into oncoming traffic. Such an event constitutes a classic emergency situation, thus implicating the emergency doctrine". (*Id* at 377). The court also held even if the tractor-trailer could have conceivably swerved such agility was not required since the emergency doctrine applies. (*Id* at 378).

While not as dramatic as *Shah*, the undisputed facts are that defendant Crawford attempted to cross from the left lane to the right lane to avoid contact with the car Plaintiff was operating. The undisputed facts are that defendant Crawford had not fully crossed over to the right lane when the car she was driving came into contact with the car Rana was driving. It is undisputed that Rana was fully in the right lane prior to the accident.

Plaintiff suggests that since she heard two "booms" a triable issue of fact exists as to whether the car Rana was driving came into contact with Plaintiff's car. Neither Rana, nor Crawford's testimony suggests the same. In fact, Plaintiff testified she did not see who hit her, that she only heard a "boom, boom...". In *Acre v. 1133 Bldg. Corp.*, the court found that "mere speculation is insufficient to deny a motion for summary judgment" (*Acre v. 1133 Bldg. Corp.*, 257 A.D.2d 515, 516 [1<sup>st</sup> Dept 1999]). In *Acre*, the court found non-expert witness testimony about how the Plaintiff may have fell was insufficient to preclude a summary judgment motion (*Id*).

Here, Plaintiff's speculation that Rana's vehicle may have come into contact with the vehicle she was operating is not enough to grant summary judgment as to Rana's liability.

Now, Defendants move for an Order pursuant to CPLR 3212 finding that Defendants are not liable to Plaintiff.

### Summary Judgment

The Court's function on a motion for summary judgment is "to determine whether material factual issues exist, not to resolve such issues" (*Lopez v Beltre*, 59 AD3d 683, 685 [2d Dept 2009]; *Santiago v Joyce*, 127 AD3d 954 [2d Dept 2015]). As summary judgment is to be considered the procedural equivalent of a trial, "it must clearly appear that no material and triable issue of fact is presented .... This drastic remedy should not be granted where there is any doubt as to the existence of such issues ... or where the issue is 'arguable'" [citations omitted] (*Sillman v. Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404 [1957]; see also *Rotuba Extruders v. Ceppos*, 46 NY2d 223 [1978]; *Andre v. Pomeroy*, 35 NY2d 361 [1974]; *Stukas v. Streiter*, 83 AD3d 18 [2d Dept 2011]; *Dykeman v. Heht*, 52 AD3d 767 [2d Dept 2008]. 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" (*Collado v Jiacono*, 126 AD3d 927 [2d Dept 2014]), citing *Scott v Long Is. Power Auth.*, 294 AD2d 348, 348 [2d Dept 2002]; see *Chimbo v Bolivar*, 142 AD3d 944 [2d Dept 2016]; *Bravo v Vargas*, 113 AD3d 579 [2d Dept 2014]).

"[T]he 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" (*Ayotte v Gervasio*, 81 NY2d 1062, 1063 [1993], citing *Alvarez v Prospect Hospital*, 68 NY2d 320 [1986]; see *Schmitt v Medford Kidney Center*, 121 AD3d 1088 [2d Dept 2014]; *Zapata v Buitriago*, 107 AD3d 977 [2d Dept 2013]). Once a *prima facie* demonstration has been made, the burden shifts to the party opposing the motion to produce evidentiary proof, in admissible form, sufficient to establish the existence of a material issue of fact which requires a trial of the action (*Zuckerman v City of New York*, 49 NY2d 557 [1980]). The burden is on the party moving for summary judgment to demonstrate the absence of a material issue of fact. Failure to make such showing requires denial of the motion, regardless of the sufficiency of the opposing papers (see *Gilbert Frank Corp. v. Federal Ins. Co.*, 70 NY2d 966 [1988]; *Winegrad v. New York Med. Ctr.*, 64 NY2d 851 [1985]).

Defendants have proved *prima facie* entitlement to summary judgment. Rana was driving at 40 miles per hour in a 40 - 45 mph zone. Rana was proceeding in the lane adjacent to Plaintiff directly before the accident. Crawford attempted to avoid a collision with Plaintiff's stopped vehicle by attempting to enter Rana's lane of travel. However, Crawford came into contact with Rana's vehicle before fully entering the lane. Rana's car did not come into contact with Plaintiff's car.

Opposition papers were not submitted to raise a triable issue of fact. Therefore it is,

**ORDERED**, that Defendants' motion pursuant to CPLR 3212 is granted in its entirety.

The foregoing constitutes the decision and Order of this Court.

Dated: November 22, 2019

  
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**Hon. Chereé A. Buggs, JSC**

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COUNTY CLERK  
QUEENS COUNTY