Crenshaw v County of Suffolk

2020 NY Slip Op 32203(U)

March 11, 2020

Supreme Court, Suffolk County

Docket Number: 10323/2011

Judge: Joseph Farneti

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[* 1]

SHORT FORM ORDER

ORIGINAL

INDEX NO. 10323/2011

SUPREME COURT - STATE OF NEW YORK
I.A.S. TERM, PART 37 - SUFFOLK COUNTY

PRESENT:

HON. JOSEPH FARNETI
Acting Justice Supreme Court

SABRINA E. CRENSHAW as Administrator of the Estate of CALVIN CRENSHAW, SABRINA E. CRENSHAW, Individually, PATRICK O'ROURKE and RAMEL ROBINSON,

Plaintiffs,

-against-

COUNTY OF SUFFOLK, SUFFOLK COUNTY DEPARTMENT OF PUBLIC WORKS, SUFFOLK COUNTY TRANSIT BUS, SUFFOLK BUS CORP., JOHN BRAVATA, and THE PUBLIC ADMINISTRATOR OF SUFFOLK COUNTY as Administrator of the ESTATE OF MICHAEL BROWN,

Defendants.

ORIG. RETURN DATE: FEBRUARY 15, 2018
FINAL SUBMISSION DATE: MARCH 29, 2018
MTN. SEQ. #: 007
MOTION: MG

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Upon the following papers numbered 1 to 6 read on this motion TO RENEW. Notice of Motion and supporting papers 1-3; Affirmation in Opposition and supporting papers 4, 5; Reply Affirmation 6; it is,

ORDERED that this motion (seq. #007) by defendants COUNTY OF SUFFOLK, SUFFOLK COUNTY DEPARTMENT OF PUBLIC WORKS, SUFFOLK COUNTY TRANSIT BUS, SUFFOLK BUS CORP. and JOHN BRAVATA (collectively "County") for an Order:

(1) pursuant to CPLR 2221, granting renewal of the County's prior motion for summary judgment pursuant to the Order of this Court dated December 15, 2015, which denied the motion without prejudice and with leave to renew at the conclusion of the stay of this action imposed by the death of plaintiff CALVIN CRENSHAW; and

(2) upon renewal of the motion, pursuant to CPLR 3212, granting summary judgment to the County,

is hereby **GRANTED** for the reasons set forth hereinafter. The Court has received opposition to this application from plaintiffs SABRINA E. CRENSHAW as Administrator of the Estate of CALVIN CRENSHAW, SABRINA E. CRENSHAW, Individually, and PATRICK O'ROURKE (collectively "plaintiffs").

This is an action to recover damages for personal injuries allegedly sustained by plaintiffs as a result of a motor vehicle accident that occurred on February 2, 2010, at the intersection of County Route 51 and County Route 63, in Southampton, New York. Defendant MICHAEL BROWN ("Brown") was the operator of a vehicle that came into contact with a Suffolk County Transit bus operated by defendant JOHN BRAVATA ("Bravata"). At the intersection, Brown's vehicle was controlled by a stop sign on Route 63, while the County bus did not have any traffic control devices on Route 51. Brown was fatally injured in the accident.

The action was commenced by summons and verified complaint on or about March 29, 2011. The action was stayed following the death of plaintiff CALVIN CRENSHAW on April 20, 2015. By Order of this Court dated December 15, 2015, the County's prior motion for summary judgment was denied without prejudice and with leave to renew once the stay was lifted.

On August 15, 2016, the Surrogate's Court of Suffolk County appointed SABRINA E. CRENSHAW as Administrator of plaintiff CALVIN CRENSHAW's Estate. Pursuant to a Stipulation of the parties So-Ordered by this Court on November 29, 2017, the caption of this action was amended to reflect the substitution of "SABRINA E. CRENSHAW as Administrator of the Estate of CALVIN CRENSHAW" in place of CALVIN CRENSHAW.

The County now seeks to renew its prior motion for summary judgment, and upon renewal, an Order dismissing the complaint as asserted against the County defendants.

The County indicates that according to the deposition testimony of Bravata, he was operating the County bus northbound on County Route 51 and approached the subject intersection at a rate of speed of 55 mph or slower. He testified that he saw Brown's vehicle just before it reached the intersection and while it was approaching the stop sign. Bravata further testified that Brown's vehicle failed to slow down or stop at the stop sign and instead proceeded into the intersection in front of Bravata's vehicle, whereupon Bravata's vehicle collided with Brown's vehicle. Bravata testified that he applied the brakes and turned the steering wheel to the left, but was unable to avoid the collision. As such, the County argues that Brown's actions in failing to stop at the stop sign and yield the right-of-way to Bravata constitute negligence as a matter of law, and are the sole proximate cause of the accident.

In opposition, plaintiffs argue that the County has failed to meet its *prima facie* burden, and that triable issues of fact exist as to whether Bravata also caused the motor vehicle accident. Plaintiffs further argue that the County has failed to establish that Brown's vehicle was so close as to constitute an immediate hazard, or that his actions were the sole proximate cause of the accident.

On a motion for summary judgment the Court's function is to determine whether issues of fact exist not to resolve issues of fact or to determine matters of credibility (*see Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395 [1957]; *Tunison v D.J. Stapleton, Inc.*, 43 AD3d 910 [2007]; *Kolivas v Kirchoff*, 14 AD3d 493 [2005]). Therefore, in determining the motion for summary judgment, the facts alleged by the nonmoving party and all inferences that may be drawn are to be accepted as true (*see Doize v Holiday Inn Ronkonkoma*, 6 AD3d 573 [2004]; *Roth v Barreto*, 289 AD2d 557 [2001]; *Mosheyev v Pilevsky*, 283 AD2d 469 [2001]). The failure of the moving party to make such a *prima facie* showing requires denial of the motion regardless of the insufficiency of the

opposing papers (*see Dykeman v Heht*, 52 AD3d 767 [2008]; *Sheppard- Mobley v King*, 10 AD3d 70 [2004]; *Celardo v Bell*, 222 AD2d 547 [1995]). Once the movant's burden is met, the burden shifts to the opposing party to establish the existence of a material issue of fact (*see Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986]; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851 [1985]; *Zuckerman v New York*, 49 NYS2d 557 [1980]).

Vehicle and Traffic Law § 1141 provides that "[t]he driver of a vehicle intending to turn to the left within an intersection or into an alley, private road, or driveway 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." Vehicle and Traffic Law § 1172 (a) provides in relevant part that, except when directed to proceed by a police officer, every driver of a vehicle approaching a stop sign shall stop at a clearly marked stop line or at the point nearest the intersecting roadway where the driver has view of the approaching traffic on the intersecting roadway before entering the intersection and the right to proceed shall be subject to the provisions of section eleven hundred forty-two. Vehicle and Traffic Law § 1142 (a) provides in relevant part that, except when directed to proceed by a police officer, every driver of a vehicle approaching a stop sign shall stop as required by section eleven hundred seventy-two and after having stopped shall yield the right-of-way to any vehicle which has entered the intersection from another highway or which is approaching so closely on said highway as to constitute an immediate hazard during the time when such driver is moving across or within the intersection (*see* Vehicle and Traffic Law §§ 1141, 1142 [a], 1172 [a]). Moreover, a driver is obligated to see that which by proper use of his senses he should have seen, and a driver with the right-of-way is entitled to anticipate that the other driver will obey traffic laws that require him to yield. A violation of Vehicle and Traffic Law §§ 1141, 1142 (a) and 1172 (a) constitutes negligence as a matter of law (*see Watson v Narayanan*, 149 AD3d 1012 [2017]; *Zhubrak v Petro*, 122 AD3d 922 [2014]; *Johnson v Ahmed*, 63 AD3d 1108 [2009]; *Perez v Paljevic*, 31 AD3d 520 [2006]).

Here, the Court finds that the County has demonstrated through, among other things, Bravata's deposition testimony, its *prima facie* entitlement to judgment as a matter of law by establishing that Brown violated Vehicle and Traffic Law §§ 1141, 1142 (a), and 1172 (a) by failing to stop at a stop sign and proceeding directly into the path of Bravata's vehicle when it was not reasonably safe to do so, as Bravata's vehicle was legally proceeding along County Route 51 with the right-of-way (*see Ahern v Lanaia*, 85 AD3d 696 [2011]; *Thompson v Schmitt*, 74 AD3d 789 [2010]; *Berner v Koegel*, 31 AD3d 591 [2006]; *see e.g. Alvarez*, 68 NY2d 320; *Andre v Pomeroy*, 35 NY2d 361 [1974]; *Rodriguez v N.Y.*

City Transit Auth., 286 AD2d 680 [2001]). In opposition, plaintiffs do not proffer any evidence or factual allegations to defeat the County's *prima facie* showing. Plaintiffs have merely submitted an affirmation of their attorney. Counsel's affirmation, made without personal knowledge of the facts, is without any evidentiary value and is insufficient to defeat a motion for summary judgment (*see S. J. Capelin Associates, Inc. v Globe Mfg. Corp.*, 34 NY2d 338 [1974]; *Moran v Man-Dell Food Stores, Inc.*, 293 AD2d 723 [2002]; *Hoffman v Eastern Long Island Transp. Enter.*, 266 AD2d 509 [1999]; *Cataldo v Waldbaum, Inc.*, 244 AD2d 446 [1997]). In any event, the Court finds without merit counsel's argument that Bravata should be held to a higher standard because he testified that he was aware the subject intersection was dangerous and the location of multiple fatalities. Moreover, counsel's speculation and expressions of hope as to Bravata's possible comparative negligence are insufficient to defeat a motion for summary judgment (*see Zuckerman*, 49 NYS2d 557; *Blake v Guardino*, 35 AD2d 1022 [1970]).

Accordingly, the County's renewed motion for summary judgment is **GRANTED**, and the complaint is hereby dismissed as asserted against the County defendants.

The foregoing constitutes the decision and Order of the Court.

Dated: March 11, 2020

HON. JOSEPH FARNETI
Acting Justice Supreme Court

_____ FINAL DISPOSITION **__X__ NON-FINAL DISPOSITION**