

Dasilva v County of Orange
2020 NY Slip Op 34634(U)
June 15, 2020
Supreme Court, Orange County
Docket Number: Index No. EF007488-2018
Judge: Catherine M. Bartlett
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SUPREME COURT-STATE OF NEW YORK
IAS PART- ORANGE COUNTY

Present: HON. CATHERINE M. BARTLETT, A.J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

NICOLE A. DASILVA,

Plaintiffs,

-against-

THE COUNTY OF ORANGE and
WILLIAM J. MOLONEY,

Defendants.

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,

Index No. EF007488-2018
Motion Date: May 12, 2020

The following papers numbered 1 to 8 were read on Defendants' motion for an order
granting them summary judgment dismissing the Plaintiff's complaint in this action seeking
damages for personal injuries arising from an automobile accident:

Notice of Motion - Affirmation / Exhibits - Affidavit / Exhibit - Memorandum of Law. . . . 1-4
Affirmation in Opposition / Exhibits 5-6
Reply Affirmation - Reply Affidavit. 7-8

On July 21, 2017, the Plaintiff and defendant William J. Moloney ("Moloney") were
driving their vehicles in a westerly direction on Route 17M in the Town of Waywayanda. The
highway had two westbound lanes. Moloney was driving in the left lane and plaintiff in the right
lane. Moloney drove his vehicle from the left westbound lane into the right westbound lane of
the highway and sideswiped the Plaintiff's vehicle. Moloney claims that as he was proceeding
westbound, he saw the westbound vehicle directly in front of him veer to the right quickly. He

then saw another vehicle, traveling eastbound and crossing into his lane of travel. In order to avoid a head-on collision with this oncoming vehicle, Moloney moved his vehicle to the right and came into contact with the Plaintiff's vehicle. Prior to the accident, Moloney never saw the Plaintiff's vehicle and the Plaintiff never saw Moloney's vehicle. Plaintiff was driving in her lane and was looking ahead down the highway before the impact. She did not see the vehicle that Moloney said veered to the right in front of him and Plaintiff did not see the eastbound vehicle that Moloney said crossed over the double yellow line into his lane of travel. Plaintiff states that when they spoke at the accident scene, Moloney did not say anything to her about these two vehicles. Moloney did tell her that he did not see her vehicle as he was changing lanes. The parties spoke to the police at the scene after the accident and the certified police report does not mention either of the two vehicles or that Moloney was faced with a crossover emergency.

The Defendants move for summary judgment on the grounds that Moloney was faced with an emergency situation and as a result cannot be found negligent as a matter of law.

"The proponent of a summary judgment motion is required to make a prima facie showing of entitlement to judgment as a matter of law by tendering sufficient evidence to eliminate any material issues of fact from the case. Failure to do so required denial of the motion, regardless of the sufficiency of the opposing papers." *Winegrad v. New York University Medical Center*, 64 NY2d 851, 853 (1985). This standard requires that the proponent of the motion tender evidentiary proof in admissible form sufficient to eliminate any material issues of fact from the case. *See, Zuckerman v. New York*, 49 NY2d 557 (1980). Summary judgment is a drastic remedy, granted only where this burden is met and then only if the opposition to the motion fails to establish the existence of a material issue of fact requiring a trial. *See, Vega v.*

Restani Construction. Corp., 18 NY3d 499 (2012); *Alvarez v. Prospect Hosp.*, 68 NY2d 320 (1986).

One opposing a motion for summary judgment must produce evidentiary proof in admissible form sufficient to require the trial of a material question of fact on which she rests her claim or must demonstrate an acceptable excuse for her failure to meet the requirement.

See, Zuckerman v. New York, supra, 49 NY2d 557 (1980).

In deciding a motion for summary judgment, a Court's function is to identify material triable issues of fact, not to make credibility determinations or findings of fact. Issue-finding rather than issue-determination is required. *See, Vega v. Restani Construction. Corp., supra*, 18 NY3d 499 (2012). It is not for the court to assess credibility unless it clearly appears that the issues are feigned and not genuine, and any conflict in the testimony or evidence presented merely raises an issue of fact. *See, Brown v. Kass*, 91 AD3d 894 (2nd Dept 2012). Summary judgment is inappropriate where credibility issues are raised. *See, Zuckerman v New York, supra*.

On a motion for summary judgment, the evidence is to be viewed in the light most favorable to the nonmoving party, and the nonmoving party is given the benefit of all reasonable inferences that can be drawn from the evidence. *See, Negri v. Stop & Shop, Inc.*, 65 NY2d 625 (1985). Summary judgment should be granted where only one conclusion may be drawn from the established facts. *See, Kriz v. Schum*, 75 NY2d 25 (1989). If there is any doubt as to the existence of a triable issue, then the motion for summary judgment should be denied. *See, Rotuba Extruders, Inc. v. Ceppos*, 46 NY2d 223 (1978).

Defendants argue that they are not liable for Plaintiff's injuries because under the emergency doctrine Moloney was faced with a sudden and unexpected circumstance which left him little or no time for thought, deliberation or consideration, and that the actions he took were reasonable and prudent under the emergency circumstances. *See, Koenig v. Lee*, 53 AD3d 567 (2d Dept 2008). In support of the motion, Defendants met their burden of establishing the existence of an emergency and that Moloney's actions were reasonable under the circumstances.

However, in cases involving the emergency doctrine, 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. *See, Pavane v. Marte*, 109 AD3d 970 (2nd Dept 2013). The Plaintiff's opposition casts doubt on the existence of an emergency. She did not see the vehicles that caused the emergency and Moloney did not mention them to the Plaintiff at the scene. While Moloney claims to have told the investigating police officer about the crossover vehicle, it is not mentioned in the police accident report. There is a triable issue of fact as to whether Moloney's claim of emergency is credible.

It is therefore

ORDERED, that Defendants' motion for summary judgment is denied.

The foregoing constitutes the decision and order of the Court.

Dated: June 15, 2020
Goshen, New York

ENTER



HON. CATHERINE M. BARTLETT, A.J.S.C.

HON. C. M. BARTLETT
JUDGE NY STATE COURT OF CLAIMS
ACTING SUPREME COURT JUSTICE