

Lawrence v David

2020 NY Slip Op 34693(U)

August 3, 2020

Supreme Court, Westchester County

Docket Number: Index No. 70932/2018

Judge: Joan B. Lefkowitz

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT: STATE OF NEW YORK
IAS PART WESTCHESTER COUNTY
PRESENT: HON. JOAN B. LEFKOWITZ, J.S.C.

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, upon all parties.

-----X
SAM LAWRENCE,

Plaintiff,

-against-

NICHOLAS R. DAVID, SUSAN M. DAVID,
DEBORAH S. NEEDLE and HOWARD M.
NEEDLE,

Defendants.
-----X

DECISION & ORDER

Index No: 70932/2018

Motion Return Date:
July 31, 2020

Motion Sequence Nos. 1 and 2

The following papers (e-filed document nos. 32-43; 46-69) were read on: (1) the motion by the defendants, Deborah S. Needle and Howard M. Needle, for an order granting summary judgment dismissing the complaint insofar as asserts a cause of action against them, together with all cross-claims asserted against them (sequence no. 1); and (2) the cross-motion by the plaintiff for an order granting partial summary judgment on the issue of liability as against the defendants, Nicholas R. David and Susan M. David, and dismissing said defendants' third affirmative defense alleging comparative negligence, contributory negligence, and culpable conduct (sequence no. 2).

Motion Sequence No. 1

- Notice of Motion-Affirmation-Exhibits (A-G)
- Affirmation in Opposition (by defendants, Nicholas R. David and Susan M. David)
- Affirmation in Opposition (by plaintiff)-Exhibits (A-C)
- Reply Affirmation

Motion Sequence No. 2

- Notice of Cross-Motion-Affirmation-Exhibits (A-J)
- Affirmation in Opposition (by defendants, Nicholas R. David and Susan M. David)
- Reply Affirmation

Upon reading the foregoing papers, it is

ORDERED the motion by the defendants, Deborah S. Needle and Howard M. Needle, is granted (sequence no. 1), and so much of the complaint as asserts a cause of

action against said defendants is dismissed, together with all cross-claims asserted against them, and the action against the remaining parties is severed; and it is further

ORDERED the cross-motion by the plaintiff is granted (sequence no. 2), and plaintiff is awarded partial summary judgment on the issue of liability and the trial of this matter shall be on the issue of damages only; and it is further

ORDERED the David Defendants' third affirmative defense alleging comparative negligence, contributory negligence, and culpable conduct is dismissed; and it is further

ORDERED the parties to the severed action are hereby referred to the Settlement Conference Part for a settlement conference. Due to the COVID-19 public health emergency, the Clerk of the Settlement Conference Part shall notify the parties of a date, time, and method of the settlement conference.

Plaintiff sues to recover damages for injuries allegedly sustained in a three-vehicle collision that occurred on August 6, 2017, at the intersection of SR 120 and Airport Road in North Castle, New York. The accident allegedly occurred when a motor vehicle operated by the defendant, Nicholas R. David, and owned by the defendant, Susan M. David (David Defendants), collided with a motor vehicle operated by the plaintiff, propelling the plaintiff's motor vehicle into a motor vehicle operated by the defendant, Deborah S. Needle, and owned by the defendant, Howard M. Needle (Needle Defendants).

Following the completion of discovery, the Needle Defendants move for an order granting summary judgment dismissing so much of the complaint as asserts a cause of action against them, together with all cross-claims (sequence no. 1), and plaintiff cross-moves for an order granting partial summary judgment on the issue of liability as against the David Defendants and dismissing said defendants' third affirmative defense alleging comparative negligence, contributory negligence, and culpable conduct (sequence no. 2).

Motion by the Needle Defendants

Sequence No. 1

The Needle Defendants established their *prima facie* entitlement to judgment as a matter of law dismissing the complaint and all cross-claims asserted against them by demonstrating that they were not at fault in the happening of the subject collision (*see Thompson v Peacock*, 159 AD3d 995, 996 [2d Dept 2018]; *Victor v Daley*, 150 AD3d 1307, 1307-1308 [2d Dept 2017]). The evidence submitted demonstrated that the collision with the Needles' vehicle occurred when the vehicle operated by the plaintiff was propelled into the Needles' stopped vehicle after the former vehicle was struck by the vehicle operated by defendant David. The evidence further demonstrated that Needle was "in no position to take any steps to either reasonably foresee or avoid the collision between h[er] automobile and the plaintiff's [automobile]" (*Biddy v Vanmaltke*, 67 AD3d 845, 846 [2d Dept 2009])

[internal quotation marks and citations omitted]). Thus, the evidence established that Needle's actions were not a proximate cause of the collision (*see Victor*, 150 AD3d at 1308). Accordingly, the burden of going forward shifted to plaintiff and the David Defendants to raise a triable issue of material fact (*see Zuckerman v City of New York*, 49 NY2d 557, 560, 562 [1980]).

In opposition, plaintiff and the David Defendants failed to raise a triable issue of material fact (*see CPLR 3212 [b]*). Contrary to their contentions, the evidence did not demonstrate either that Needle operated her motor vehicle negligently or that she contributed to the collision between the plaintiff's vehicle and the Davids' vehicle (*see Victor*, 150 AD3d at 1308). Accordingly, the motion by the Needle Defendants is granted.

Cross-Motion by the Plaintiff

Sequence No. 2

Liability

Plaintiff established his *prima facie* entitlement to judgment as a matter of law on the issue of liability against the David Defendants by demonstrating that the subject collision occurred when the motor vehicle operated by David lost control and crossed over a double yellow line striking plaintiff's motor vehicle (*see VTL 1126 [a]*; *Ciraldo v County of Westchester*, 147 AD3d 813, 813-814 [2d Dept 2017]). Accordingly, the burden of going forward shifted to the David Defendants to raise a triable issue of material fact (*see Zuckerman v City of New York*, 49 NY2d 557, 560, 562 [1980]).

In opposition, the David Defendants failed to raise a triable issue of material fact (*see CPLR 3212 [b]*). Accordingly, plaintiff is awarded partial summary judgment on the issue of liability.

Comparative Negligence

The court next addresses the branch of plaintiff's cross-motion for an order dismissing the David Defendants' third affirmative defense alleging comparative negligence, contributory negligence, and culpable conduct. Although a plaintiff moving for partial summary judgment on the issue of a defendant's liability need no longer demonstrate the absence of her or his own comparative negligence (*see Xin Fang Xia*, 177 AD3d 823, 825 [2d Dept 2019]; *Rodriguez v City of New York*, 31 NY3d 312 [2018]), "the issue of a plaintiff's comparative negligence may be decided in the context of a summary judgment motion where, as here, the plaintiff moved for summary judgment dismissing a defendant's affirmative defense of comparative negligence" (*Poon v Nisanov*, 162 AD3d 804, 808 [2d Dept 2018]).

Here, plaintiff established his *prima facie* entitlement to judgment as a matter of law dismissing the David Defendants third affirmative defense relating to the comparative negligence of plaintiff. In opposition, the David Defendants failed to raise a triable issue of material fact. Accordingly, the David Defendants' third affirmative defense is dismissed.

ENTER,

Dated: White Plains, New York
August 3, 2020


HON. JOAN B. LEFKOWITZ, J.S.C.