

Santaniello v West

2020 NY Slip Op 34699(U)

January 6, 2020

Supreme Court, Putnam County

Docket Number: Index No. 500004/2019

Judge: Victor G. Grossman

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This opinion is uncorrected and not selected for official publication.

To commence the 30 day 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

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF PUTNAM**

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DOUGLAS SANTANIELLO,

Plaintiff,

-against-

DEVIN E. WEST and LEONARD T. WEST,

Defendants.

----- x

DECISION & ORDER

Index No. 500004/2019

Sequence No. 1

Motion Date: 11/27/19

GROSSMAN, J.S.C

The following papers, numbered 1 to 11, were considered in connection with Plaintiff's Notice of Motion, dated October 23, 2019, for an Order, granting partial summary judgment on the issues of liability against Defendants pursuant to CPLR §3212.

PAPERS

NUMBERED

Notice of Motion/Affirmation in Support/Exhs. A-H

1-10

Affirmation in Opposition

11

On May 7, 2017, at approximately 3:30 p.m., Plaintiff Douglas Santaniello was involved in an automobile accident with another vehicle, operated by Defendant Devin West, and owned by Defendant Leonard West. Plaintiff's vehicle was travelling at a consistent rate of speed on

Oregon Road in Putnam County when Plaintiff's vehicle was struck from the rear by Defendants' vehicle. As a result, Plaintiff was injured.

Plaintiff commenced this action on January 2, 2019. Defendants interposed an Answer on February 13, 2019.

Plaintiff moves for summary judgment on the issue of liability. In support of his motion, Plaintiff submitted: (1) the Summons and Verified Complaint; (2) Defendants' Answer; (3) Plaintiff's Verified Bill of Particulars; (4) the police accident report; (5) Plaintiff's EBT transcript; (6) Devin West's EBT transcript; (7) Douglas Santaniello's affidavit; and (8) photographs (Notice of Motion, Exhs. A-H).

In opposition, Defendants proffer an affirmation from their counsel.

It is axiomatic that summary judgment is a drastic remedy and should not be granted where triable issues of facts are raised and cannot be resolved on conflicting affidavits (*see Millerton Agway Coop. Inc. v Briarcliff Farms, Inc.*, 17 NY2d 57, 61 [1966]; *Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404 [1957]). Initially, "the proponent... 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 issue of fact." However, once a movant makes a sufficient showing, "the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action" (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). Where the moving papers are insufficient, the court need not consider the sufficiency of the opposing papers (*id.*; *see also Fabbriatore v Lindenhurst Union Free School Dist.*, 259 AD2d 659 [2d Dept 1999]).

“The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon and the condition of the highway” (*Pomerantsev v Kodinsky*, 156 AD3d 656 [2d Dept 2017]), quoting Vehicle and Traffic Law §1129[a)]. “Therefore, ‘a rear-end collision establishes a prima facie case of negligence on the part of the operator of the rear vehicle, thereby requiring that operator to rebut the inference of negligence by providing a nonnegligent explanation for the collision’” (*Strickland v Tirino*, 99 AD3d 888, 889 [2d Dept 2012], quoting *Martinez v Martinez*, 93 AD3d 767, 768 [2d Dept 2012]).

Here, Plaintiff submitted evidence in the form of his and Defendant Devin West’s deposition testimony. Plaintiff testified that when he was struck in the rear, he was traveling straight at a constant rate of speed with no traffic or distractions (Santaniello EBT at 10-12). The collision pushed the car forward, pushing him out of the seat only to be stopped by the seat belt (Santaniello EBT at 14). After the initial collision, it took Plaintiff about 100 feet before he was able to stop the car and to move in reverse in order to speak with Defendant at the scene (Santaniello EBT at 14-15). Upon speaking to Defendant, Plaintiff testified that Defendant “...had to be doing at least 60 when he hit [Plaintiff] because the impact was so hard and heavy that it just jolted [Plaintiff]...” (Santaniello EBT at 16). Furthermore, although Defendant testified he could not recall being cited for traveling too closely and speeding (West EBT at 52-53), the police report reflects a notation that Defendant violated VTL §§ 1129(a), 1180(a) (Notice of Motion, Exh. G).

In opposition to Plaintiff’s prima facie showing of their entitlement to judgment on liability as a matter of law, Defendants failed to demonstrate the existence of a triable issue of fact. There is no factual evidence proffered in support of their opposition. In fact, Defendants

did not even submit their own affidavits. Furthermore, defense counsel's affirmation is worthless and cannot be relied upon to meet Defendants' burden (*see Zuckerman v City of New York*, 49 NY2d 557, 560 [1980]).


Accordingly, it is hereby

ORDERED that Plaintiff's motion for partial summary judgment on the issue of liability is granted; and it is further

ORDERED that the parties are to appear before the undersigned on Monday, January 27, 2020 at 9:30 a.m. for a pretrial conference. No per diem counsel and no adjournments will be permitted unless good cause shown.

The foregoing constitutes the Decision and Order of the Court.

Dated: Carmel, New York
January 6, 2020


HON. VICTOR G. GROSSMAN, J.S.C.

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