Higgins v Haluda
2020 NY Slip Op 34702(U)
May 13, 2020
Supreme Court, Suffolk County
Docket Number: Index No. 601570/2017
Judge: Robert F. Quinlan

SHORT FORM ORDER

INDEX # 601570/2017

SUPREME COURT - STATE OF NEW YORK
PART 27 - SUFFOLK COUNTY

PRESENT:

Hon. ROBERT F. QUINLAN
Justice of the Supreme Court

Mot. Date: 10/31/19 (#001)
11/21/19 (#002)
Submit Date: 11/21/19 (#001& #002)
Mot. Seq.: #001-MG
#002 -MG

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THOMAS HIGGINS,

Plaintiff,

- against -

ARTUR HALUDA and CHRISTOPHER T. QUIGLEY a/k/a C.T. QUIGLEY, MICHAEL JOSEPH HIGGINS, and MICHAEL HIGGINS, COUNTY OF SUFFOLK and SUFFOLK COUNTY POLICE DEPARTMENT

Defendants.
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DAVID N. SLOAN, ESQ.
Attorneys for Plaintiff
600 Old Country Road Suite 450
Garden City, NY 11530

LEWIS JOHS AVALLONE AVILES, LLP
Attorney for Higgins Defendants
One CA Plaza, Suite 225
Islandia, New York 11749

PICCIANO & SCAHILL, P.C.
Attorney for Defendants Quigley and Haluda
1065 Stewart Avenue, Suite 210
Bethpage, New York 11714

DENNIS M. BROWN, ESQ.
Attorney for Defendants County of Suffolk and Suffolk County Police Department
100 Veterans Memorial Highway, P.O. Box 6100
Hauppauge, New York 11788-0099

Upon the following papers read on these motions for summary judgment seeking dismissal: (Mot. Seq. #001): Notice of Motion and supporting papers of defendants County of Suffolk and Suffolk County Police Department: NYSCEF Docs. # 27-50; Affirmation in opposition of defendants Haluda and Quigley: NYSCEF Doc. # 55; Affirmation in opposition of defendants Michael J Higgins and Michael Higgins: NYSCEF Doc.# 56; and Reply Affirmation: NYSCEF Doc. # 71; (Mot. Seq.#002): Notice of Motion and supporting papers of defendants Michael J and Michael Higgins: NYSCEF Doc. # 57-66; Affirmation in opposition of defendants Haluda and Quigley: NYSCEF Doc. # 67; Affirmation in opposition of plaintiff: NYSCEF Doc. # 68; Affirmation in opposition of defendants County of Suffolk and Suffolk County Police Department: NYSCEF Doc. # 69; Reply Affirmation: NYSCEF Doc. #70; it is,

ORDERED that the motions for summary judgment by defendants County of Suffolk and Suffolk County Police Department seeking dismissal of the action and all claims against them is granted for the reasons set forth below; and it is further,

ORDERED that the motion for summary judgment of co-defendants Michael Joseph Higgins and Michael Higgins for dismissal of the action and all claims against them is granted for the reasons set forth below.

Defendant Michael Joseph Higgins ("M. J. Higgins") commenced an action under Index # 618466/2016 against defendants Arthur Haluda ("Haluda") and Christopher T. Quigley a/k/a C. T. Quigley ("Quigley") by filing a summons and complaint with the Suffolk County Clerk on November 15, 2016 ("action #1). Thereafter, M. J. Higgins filed an amended summons and complaint on November 30, 2017 adding to action #1 defendants County of Suffolk ("County") and Suffolk County Police Department ("SCPD").

Prior to the filing of the amended complaint in action #1, on January 26, 2017, plaintiff Thomas Higgins ("plaintiff") filed this action under Index # 601570/2017 ("action # 2") against defendants Haluda, Quigley, M. J. Higgins, Michael Higgins ("Higgins"),the County and the SCPD. By motions submitted on November 21, 2019 defendants County, SCPD, M. J. Higgins and Higgins, moved for summary judgment dismissing plaintiff's calims against them.

This action seeks to recover damages for personal injuries sustained by plaintiff in a motor vehicle collision which occurred on October 21, 2016. At the time of the accident M. J. Higgins was operating a motor vehicle owned by Higgins in which plaintiff was a passenger, when it was contacted by a motor vehicle operated by Haluda and owned by Quigley at the intersection of East John Street and North Erie Avenue, Town of Babylon, Suffolk County, New York. The testimony and proof submitted in support of each motion includes the depositions of both plaintiff and M. J. Higgins taken pursuant to GML § 50-h, as well as their examinations before trial, and the examinations before trial of Haluda and a witness produced on behalf of the County and the SCPD, Police Officer Victoria Singh ("Singh")

The testimony of both plaintiff and M. J. Higgins showed that as a result of injuries they sustained in the accident, neither had any recollection of the events immediately before the happening of the accident as the Higgins vehicle approached the intersection.

In his examination before trial, Haluda testified that "[a]t the time of the accident, I was looking in the mirror because the police are behind me, so that's what I was focused on, you know, because, like, the sirens were on, the lights were on, and I was looking in the rearview mirror, and that's when I went through the intersection." He further stated that he never stopped at the intersection where the accident occurred and that he never saw the vehicle operated by plaintiff #1 before the accident. Additionally, in his testimony he admitted that he was charged with a number of offenses arising out of the accident and entered into a plea agreement where he plead guilty to Driving While Intoxicated, Vehicular Assault and Leaving the Scene of An Accident (EBT, p. 34, l.17 through p. 35, l. 16).

Singh testified that on the morning of October 21, 2016, she received a radio broadcast that a 911 caller had reported a male in a white van acting suspiciously by approaching a woman and child, and requesting to borrow a cell phone. Upon receiving that information Singh drove to the incident location and canvassed the area for a few minutes before spotting a white van, the Quigley vehicle operated by Haluda. After seeing the van she followed it at a distance of about one block, eventually losing sight of it but regaining contact a short time later. She continued following the vehicle which was still "a good block and some ahead" of the her as it traveled southbound on North Erie Avenue. As the van approached the intersection of Byrd Street and North Erie Avenue, which was controlled by a stop sign for vehicles traveling in the van's direction, Singh saw the van enter the intersection without stopping for the stop sign and flip over. At that point the officer activated her police vehicle's emergency lights and sirens. At no point prior to the van flipping over did she activate her vehicle's lights or sirens, nor was there evidence that she was

involved in a "high speed chase" of the vehicle operated by Haluda. The court notes that neither plaintiff, nor M. J. Higgins as plaintif in action #1, brought a claim against Singh personally for her actions on the morning of October 21, 2016.

CLAIMS AGAINST SCPD DISMISSED

The County and SCPD move to dismiss the claims against the SCPD as it is not an separate entity which can be sued on its own behalf, as it is merely an administrative arm of the County. That motion is granted and the claims as to the SCPD are dismissed. As an administrative arm of the County, the SCPD lacks the capacity to be sued as a separate entity (*see Young v. Suffolk County,* 920 2 F. Supp. 2nd 368 (EDNY 2013); *Guinta v. County of Suffolk, at al.*, Index number 64564/13 (Supreme Court, Suffolk County 2014 [Pitts, J]); *Carthew v. County of Suffolk*, 709 F. Sup. 2nd 188 (EDNY 2010); *Ceparano v. Suffolk County*, 2010 WL5437212 (EDNY 2010); *see also David v. Lynbrook Police Dept,* 224 F. Supp. 2nd 463, 277 (EDNY 2002); *Valle v Police Department*, 2010 WL 3958432 [E.D.N.Y. 2010]; *Murray v County of Suffolk*, 66 Misc.3d 1216 (A), 2020 NY Slip Op 501114 (U) (Sup.Ct., Suffolk Co., 2020, Berland, J.). Accordingly, the claims against defendant SCPD are dismissed.

COUNTY GRANTED SUMMARY JUDGMENT

The proponent of a motion for summary judgment must make a prima facie showing of entitlement to judgment as a mater of law, tendering sufficient evidence to eliminate any material issues of fact from the case (*see Sillman v Twentieth Century-Fox Film Corp.,* 3 NY2d 395 [1957]; *Gilbert Frank Corp. v Federal Insurance*, 70 NY2d 966[1988]; *Torres v Industrial Container*, 305 AD2d 136 [1st Dept 2003]). The movant has the initial burden of proving entitlement to summary judgment, failure to make such a showing requires denial of the motion regardless of the sufficiency of the opposition (*see Winegrad v New York University Medical Center*, 64 NY2d 851[1985]; *William J. Jenack Estate Appraiser and Auctioneers v Rabizadeh*, 22 NY3d 470 [2013]; *Jacobsen v New York City Health & Hospital Corp*, 22 NY3d 824 [2014]). Once such proof has been offered, the burden then shifts to the opposing party, who in order to defeat the motion, must proffer evidence in admissible form to establish a factual issue sufficient to require a trial (CPLR 3212 [b]; *see Zuckerman v City of New York*, 49 NY2d 557 [1980]; *Winegrad v New York Univ. Med. Center*). It has long been recognized as a general principle of summary judgment that a moving party, as well as an opponent, is required to assemble and lay bare all its proof in support, or opposition, of the motion (*see Maurice O'Meara Co. v National Park Bank of New York*, 239 NY 386 [1925]; *Dodwell & Co. Inc. v Silverman*, 234 AD 362 [1st Dept 1932]; *M&S Mercury Air Conditioning Corp. v Rodolitz*, 24 AD2d 873 [2d Dept 1965]). Failure to do so is done at the party's risk (*see Deleon v New York City Sanitation Dept.,* 25 NY3d 1102 [2015]). In deciding the motion the court is to determine whether there are bonafide issues of fact and generally is not to delve into or resolve issues of credibility (*see Vega v Restani Corp.*, 18 NY3d 499 [2012]), unless it clearly appears that the issues are not genuine, but feigned (*see Curry v MacKenzie,* 239 NY 267 [1925]; *Glick & Dolleck, Inc. v Tri Pack Export Co.*, 22 NY2d 439 [1968]; *Loughlin v City of New York*, 186 AD2d 176 [2d Dept 1992]; *Sullivan v Pilevsky*, 281 AD2d 410 [2d Dept 2001]; *Rodriguez v City of New York,* 295 AD2d 590 [2d Dept 2002]; *6243 Jericho Realty Corp. v AutoZone, Inc.*, 27 AD3d 447 [2d Dept 2006]; *Dorazio v Delbene*, 37 AD3d 645 [2d Dept 2007]; *Pryor & Mandelup, LLP v Sabbeth*, 82 AD3d 731 [2d Dept 2011]; *Carthen v Sherman*, 169 AD3d 416 [1st Dept 2019]).

To establish a prima facie case of negligence, a plaintiff must demonstrate first and foremost that a duty was owed by defendant to plaintiff (*see Solomon v City of New York*, 66 NY2d 1026 [1985]). Here, in an attempt to defeat County's summary judgment motion, plaintiff and the other defendants attempt to portray Singh's conduct as a potential high speed pursuit, but other than speculation, there is no evidence presented to support that assertion. If there had been evidence in admissible form presented of such conduct, then Singh's conduct would have been governed by the standard of reckless disregard for the safety of others (VTL § 1104), yet there is no indication of such conduct in the proof submitted. Neither Haluda or Singh describe a high speed car chase, at best Haluda alleges that he was distracted by what he claims were police lights and sirens to his rear. Assuming for the purposes of this motion that Haluda's recollection and testimony is accurate and truthful, and discounting Singh's account (*see Boston v Dunham*, 274 AD2d 708, [3rd Dept 2000]), the duty owed by Singh to the plaintiff, or co-defendants, was nevertheless circumscribed to the extent that Haluda's reaction was not foreseeable (*see generally, Holdampf v A.C. & S.*, [*In re New York City Asbestos Litig.*], 5 NY3d 486 [2005]).

A driver is entitled to anticipate that other motorists will obey traffic laws which require him/her to yield or stop (*see Williams v Hayes*, 103 AD3d 713 [2d Dept. 2013]). Thus, even viewing the evidence in the light most favorable to both plaintiff and moving defendants M.J. Higgins and Higgins, and Haluda, even if Singh had her vehicle's emergency lights and sirens activated under the circumstances as Haluda describes, the Second Department has said that a motor vehicle operator such as Haluda was obliged by the Vehicle and Traffic law to pull over and not take some other type of dangerous action such as entering an intersection without observing the traffic control device controlling his travel (VTL § 1144; *see Tobacco v North Babylon Fire Department*, 251 AD2d 398 [2d Dept 1998]). There is no reasonable view of the evidence presented that can form the basis for a trier of fact to conclude that any actions by Singh could be considered a competent producing cause of the accident. "If a rule of law were established so that liability would be imposed in an instance such as this, it is difficult to conceive of the bounds to which liability logically would flow" *Pulka v Edelman*, 40 NY2d 781 (1976).

Accordingly, the County's motions for summary judgment dismissing all claims against it are granted, and the actions dismissed as to the County.

CO-DEFENDANTS' MOTION FOR SUMMARY JUDGMENT GRANTED

Although the evidence before the court establishes that Haluda failed to observe traffic in and about the intersection before he entered it, that he entered the intersection in disregard of the traffic control device controlling it, that he failed to properly respond to an emergency vehicle he says he saw behind him, and that he was convicted of Driving While Intoxicated and Vehicular Assault arising out of the incident, there is no evidence presented by plaintiff concerning the negligence of M. J. Higgins in operating the Higgins vehiclee. Although a plaintiff who establishes that he/she has suffered amnesia for the events of an accident from injuries sustained in the accident may benefit from a more favorable charge applying "a lighter burden of persuasion" similar to those in death cases (PJI 1:62, see *Noseworthy v City of New York*, 298 NY 76 [1948]; *Sawyer v Dreis & Krump Manufacturing*, 67 NY2d 328 [1986]; *Baterna v Maimonides Medical Center*, 139 AD3d 653 [2d Dept 2016]), the application of that principle is not available to plaintiff to support his claims of negligence M. J. Higgins and Higgins. The law recognizes that when the parties are similarly situated as to knowledge of the facts, the *Noseworthy* Rule is not applicable (*see Gayle v City of*

New York, 256 AD2d 541 [2d Dept 1998]; *Varona v Brooks Shopping Center*, 151 AD3d 459 [1st Dept 2017]). Although most such cases deal with situations where plaintiff has established his/her amnesia from the accident and a defendant who was not there to observe the event, it is as equally applicable here where both plaintiff and M. J. Higgins both suffer from amnesia for the event.

Accordingly, as neither plaintiff, nor Haluda and Quigley, have provided any evidence that the negligence of M. J. Higgins and Higgins were proximate causes of the accident, and plaintiff cannot seek the benefit of the *Noseworthy* Rule, M. J. Higgins and Higgins' motion for summary judgment dismissing the claims against them must be granted and those claims dismissed.

The foregoing constitutes the decision and order of this court.

Dated: May 13, 2020

Hon. Robert F. Quinlan, J.S.C.

FINAL DISPOSITION X NON-FINAL DISPOSITION