

Mas v Giavsis

2020 NY Slip Op 34854(U)

March 11, 2020

Supreme Court, Westchester County

Docket Number: Index No. 69436/2017

Judge: Sam D. Walker

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This opinion is uncorrected and not selected for official publication.

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.

**SUPREME COURT OF THE STATE OF NEW YORK
WESTCHESTER COUNTY
P R E S E N T: HON. SAM D. WALKER, J.S.C.**

-----X
ANGEL MAS,

Plaintiff,

-against-

DECISION & ORDER
Index No. 69436/2017
Seq. 1

STEVEN GIAVVIS, VERA GOUCHEV, ANTHONY
VODOLA, and CS TAXI CORP.,

Defendants.
-----X

The following papers were read on a motion for summary judgment pursuant to

CPLR 3212, on the issue of liability:

Notice of Motion/Affirmation/Exhibits A-F	1-8
Affirmation in Opposition	9
Affirmation in Opposition	10
Reply Affirmation	11

Upon the foregoing papers it is ordered that the motion is GRANTED.

FACTUAL AND PROCEDURAL BACKGROUND

The plaintiff commenced this action to recover damages for alleged serious injuries sustained in a motor vehicle accident that occurred on September 14, 2017, on East Hartsdale Avenue in Greenburgh, Westchester County, New York.

The defendants, Steven Giavvis ("Giavvis") and Vera Gouchev ("Gouchev"), now file the instant motion for summary judgment pursuant to CPLR 3212, seeking dismissal of the complaint against them.. Giavvis and Gochev contend that, although there are

different versions of the accident from the plaintiff, the other defendant and the police report, none of the versions puts any liability on Giavsis and there is no factual or legal basis for the plaintiff's action against the Giavsis and Gouchev.

The plaintiff opposes the motion, arguing that it must be denied because Giavsis and Gouchev failed to demonstrate the absence of a genuine issue of material fact. The plaintiff asserts that neither Giavsis nor Gouchez submitted an affidavit in support of the motion and the deposition transcripts clearly establish that the plaintiff's injuries were caused by the negligence of Giavsis and Gouchev, arguing that it would be impossible for the Court to precisely determine that the defendants are completely free of negligence, based upon the deposition testimony and the police report.

The defendants, Anthony Vodola ("Vodola") and Taxi Corp., also oppose the motion, arguing that genuine issues of material fact exist. Those defendants contend that Viavsis was unable to determine whether his vehicle was struck by Vodola's vehicle or the plaintiff's vehicle and which direction his vehicle moved as a result of the accident, indicating that he was not giving all of his attention to the circumstances when the accident took place and his lack of attention is an issue for the jury.

Giavsis and Gouchev replied to the oppositions, arguing that the plaintiff's opposition failed to raise any triable issues of fact and assert that an affidavit is not necessary, since the deposition transcript of Giavsis was submitted in support. The movants further argue that Vodola's affirmation fails to put any liability on Giavsis and it is clear from the facts that Giavsis was traveling on his side of the road when his vehicle was struck by either Vodola vehicle or the plaintiff's vehicle. The movants argue that Vodola's assertion that Giavsis' testimony indicates that he was not giving all of his attention to the

circumstances when the accident occurred, is self-serving and conclusory and in fact, Giavsis testified that he was paying attention to the roadway at all times.

Discussion

"[T]he proponent of a summary judgment motion 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 issues of fact" (see *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). Only when such a showing has been made must the opposing party set forth evidentiary proof establishing the existence of a material issue of fact, *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]).

Vehicle and Traffic Law § 1126[a] provides in pertinent part that:

(a) When official markings are in place indicating those portions of any highway where overtaking and passing or driving to the left of such markings would be especially hazardous, no driver of a vehicle proceeding along such highway shall at any time drive on the left side of such markings.

"Crossing a double yellow line into the opposing lane of traffic, in violation of Vehicle and Traffic Law § 1126[a], constitutes negligence as a matter of law, unless justified by an emergency situation not of the driver's own making" (*Snemyr v Morales-Aparicio*, 47 AD3d 702 [2d Dept 2008]). Further, a driver is "not required to anticipate that a vehicle traveling in the opposite direction [would] cross over into oncoming traffic" (*Id.*).

Here, there is no dispute that the collision occurred when Vodola's vehicle crossed the double yellow line and Giavsis testified that he was crossing the bridge and saw the light of headlights coming around a sharp corner and suddenly saw two cars at the same time coming toward him. Giavsis also testified that he could not tell which car hit him at the time of the accident because of the headlights; that he was paying attention to the roadway

at all time; and that it was very sudden when he observed the vehicles because it was a blind turn. he did not have time to take evasive action. Giavsis and Gouchev have, therefore, established their entitlement to judgment as a matter of law by submitting evidence demonstrating, prima facie, that Vodola violated Vehicle and Traffic Law § 1126(a) by crossing over a double yellow line into an opposing lane of traffic, thereby causing the collision (*Scott v. Kass*, 48 A.D.3d 785, 851 NYS2d 649 [2d Dept 2008]) and the plaintiff and Vodola have failed to raise any triable issues of fact in opposition.

Therefore, based on all the foregoing, it is

ORDERED that the motion for summary judgment is GRANTED; and it is further

ORDERED that the complaint and all cross-claims against Steven Giavsis and Vera Gouchev are dismissed.

The remaining parties are directed to appear before the Settlement Conference Part on April 21, 2020 at 9:15 a.m. in courtroom 1600.

The foregoing shall constitute the Decision and Order of the Court.

Dated: White Plains, New York
March 11, 2020



HON. SAM D. WALKER, J.S.C.