

Kreig v Darling

2020 NY Slip Op 34873(U)

April 28, 2020

Supreme Court, Dutchess County

Docket Number: Index No. 51892/2018

Judge: Maria G. Rosa

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

Present:

Hon. Maria G. Rosa, Justice

GARY D. KREIG and KATHLEEN KREIG,

Plaintiffs,

DECISION AND ORDER

Index No. 51892/2018

-against-

STEVEN TYLER DARLING, LORI S. DARLING
Individually, and Doing Business as
DARLING PAINTING, DARLCOM, LLC. and
MATTHEW H. SHEFFER,

Defendants.

MATTHEW H. SHEFFER,

Plaintiff,

-against-

STEVEN TYLER DARLING, LORI S. DARLING
Individually, and Doing Business as
DARLING PAINTING, and DARLCOM, LLC,

Defendants.

The following papers were read on Plaintiff's motion for summary judgment:

NOTICE OF MOTION
AFFIRMATION IN SUPPORT
EXHIBITS A - L

NOTICE OF MOTION
AFFIRMATION IN SUPPORT
EXHIBITS A-H

AFFIRMATION IN OPPOSITION
AFFIRMATION IN OPPOSITION

EXHIBITS A - B

REPLY AFFIRMATION

This is a consolidated negligence action in which the plaintiffs seek damages for injuries allegedly sustained in a three-car motor vehicle accident. The accident occurred on May 10, 2018 at approximately 2 p.m. on Route 9 in Livingston, New York. Plaintiffs Gary and Kathleen Kreig move for summary judgment on the issue of liability on their claims against defendants Steven Darling, Lori Darling and Darlcom, LLC ("the Darling defendants") Plaintiff/defendant Matthew Sheffer moves for summary judgment dismissing the Kreig plaintiffs' claims against him and on his negligence claims against the Darling defendants.

The proponent of a motion for summary judgment carries the initial burden of tendering sufficient admissible evidence to demonstrate the absence of a material issue of fact as a matter of law. Alvarez v. Prospect Hospital, 68 NY2d 320, 324 (1986). If a movant has met this threshold burden, to defeat the motion the opposing party must present the existence of triable issues of fact. See Zuckerman v. New York, 49 NY2d 557, 562 (1980). In deciding a motion for summary judgment, the court is required to view the evidence presented "in the light most favorable to the party opposing the motion and to draw every reasonable inference from the pleadings and the proof submitted by the parties in favor of the opponent to the motion." Yelder v. Walters, 64 AD3d 762, 767 (2nd Dept 2009).

Both motions for summary judgment are premised on deposition testimony that defendant Steven Darling ("defendant") rear-ended Sheffer's vehicle causing the accident. Sheffer testified that just prior to the accident his vehicle was stopped in the northbound lane with his left turn signal activated to make a left turn across the southbound lane of Route 9 onto Cold Spring Road. He stated that he was stopped for approximately twenty to thirty seconds waiting for oncoming southbound vehicles to pass when Darling's vehicle struck his vehicle in the rear. The force of the impact pushed his vehicle into the southbound lane of travel where a second collision occurred with Gary Kreig's vehicle. Gary Kreig's testimony corroborated Sheffer's version of the accident. Kreig testified that he was traveling southbound and first saw Sheffer's vehicle stopped in the northbound lane with its turn signal on when he was approximately 1000 feet away. He stated that when he was just about to pass the vehicle something propelled it into his lane of travel. Later in the deposition he clarified that he saw another vehicle hit Sheffer's vehicle moments before his vehicle was struck. Defendant Steven Darling testified at his deposition that he was traveling northbound on Route 9 and did not see Sheffer's vehicle until moments before the accident and was unable to avoid the rear-end collision.

The foregoing in conjunction with the certified police accident report and photographs is sufficient to demonstrate both movants' *prima facie* entitlement to summary judgment on the issue of liability. A rear-end collision with a stopped or stopping vehicle establishes a *prima facie* case of negligence on the part of the driver of the rear vehicle, and imposes a duty on the part of the

operator of the moving vehicle to come forward with an adequate, nonnegligent explanation for the accident. Matos v. Sanchez, 147 A.D.3d 585, 586 (1st Dept. 2017). The unrefuted evidence in the record is that Sheffer's vehicle was at a complete stop when it was struck in the rear by Darling's vehicle. Sheffer has further established his *prima facie* entitlement to summary judgment on the Kreigs' negligence claims by establishing he did not breach any duty owed to the Kreigs that caused the second impact. The impact from Darling's vehicle striking his lawfully stopped vehicle in the rear was the sole proximate cause of the second collision. The court rejects contentions that the position of Sheffer's car or the angling of his tires to the left was a causal factor in that accident. See Murphy v. Spencer, 224 AD2d 814 (3rd Dept. 1996). Nor is there any competent evidence in the record that Sheffer had any opportunity or ability to avoid either the first or second collision. As neither the Kreig plaintiffs nor the Darling defendants have offered any evidence sufficient to create a material issue of fact on the issue of liability, it is

ORDERED that Gary and Kathleen Kreig's motion for summary judgment on the issue of the Darling defendants' liability is granted. It is further

ORDERED that Matthew Sheffer's motion for summary judgment dismissing the Kreigs' negligence claim against him and on his liability claim against the Darling defendants is granted.

A pre-trial conference shall be held July 1, 2020 at 9:15 a.m.

The foregoing constitutes the decision and order of the court.

Dated: April 28, 2020
Poughkeepsie, New York

ENTER:

Maria G. Rosa

MARIA G. ROSA, J.S.C.

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Pursuant to CPLR §5513, an appeal as of right must be taken within thirty days after service by a party upon the appellant of a copy of the judgment or order appealed from and written notice of its entry, except that when the appellant has served a copy of the judgment or order and written notice of its entry, the appeal must be taken within thirty days thereof.

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