

Warren v McHugh

2020 NY Slip Op 35129(U)

September 10, 2020

Supreme Court, Orange County

Docket Number: Index No. EF003679-2019

Judge: Catherine M. Bartlett

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

To commence the statutory time for appeals as of right (CPLR 5513 [a]), you are advised to serve a copy of this order, with notice of entry, on all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

KWAMEESHA WARREN,

Plaintiff,

-against-

Index No. EF003679-2019
Motion date: 08/27/2020
Motion Seq. #1

STEVEN McHUGH and RICHARD CALLIPARI,

Defendants.

BARTLETT, J.

The following papers numbered 1 - 5 were read on the application of plaintiff Kwameesha Warren for partial summary judgment on the issue of liability, and to strike the first affirmative defense of defendants Steven McHugh and Richard Callipari:

Notice of Motion - Affirmation / Exhibits - Affidavit	1 -3
Affirmation in Opposition / Exhibits	4
Reply Affirmation	5

Upon the foregoing, it is ORDERED that plaintiff's motion is disposed of as follows:

Background and Procedural History

This personal injury action arises out of a motor vehicle accident that took place on January 29, 2019, on William Street at the intersection of Benkard Avenue in the City of Newburgh, County of Orange, State of New York. Plaintiff was the operator of a 2006 Hyundai Sonata that was

involved in a motor vehicle accident with a 2012 Honda Accord, being operated by defendant Steven McHugh, and owned by co-defendant Richard Callipari.

Plaintiff commenced this action by filing a Summons and Complaint on May 07, 2019. Issue was joined by service of Defendants' Verified Answer with Affirmative Defenses on July 16, 2019. Plaintiff and Defendant McHugh were both deposed on December 27, 2019. Plaintiff filed her Note of Issue on July 06, 2020.

By Notice of Motion filed August 05, 2020, plaintiff moved for partial summary judgment on the issue of liability on the grounds that Defendant McHugh failed to yield the right-of-way in violation of VTL§1141, by turning left across the path of her oncoming vehicle, thus causing the parties' vehicles to collide. Additionally, plaintiff moved to dismiss defendants' first affirmative defense alleging plaintiff's injuries and/or damages were caused in whole or in part by her own culpable conduct, want of care, and assumption of the risk. In opposition, defendants argue that triable issues of fact exist that preclude the granting of summary judgment. These issues center on the speed at which plaintiff was traveling prior to the collision, and Defendant McHugh's own assertions that he had his turn signal activated, and had slowed and/or stopped in anticipation of turning left at the intersection he had already entered.

Discussion

Summary judgment is a drastic remedy, and is appropriate only when there is a clear demonstration of the absence of any triable issue of fact. *See, Piccirillo v. Piccirillo*, 156 AD2d 748 (2d Dept. 1989) (citing *Andre v. Pomeroy*, 35 NY2d 361 [1974]). The function of the Court on such a motion is issue finding, and not issue determination. *See, Sillman v. Twentieth Century-Fox Film Corp.*, 3 NY2d 395 (1957). The Court is not to engage in the weighing of evidence; rather, the

Court's function is to determine whether "by no rational process could the trier of facts find for the non-moving party." *Jastrzebski v. N. Shore Sch. Dist.*, 232 AD2d 677, 678 (2d Dept. 1996).

The Court is obliged to draw all reasonable inferences in favor of the non-moving party. *See, Rizzo v. Lincoln Diner Corp.*, 215 AD2d 546 (2d Dept. 1995). Where there is any doubt about the existence of a material and triable issue of fact, summary judgment must not be granted. *See, Anyanwu v. Johnson*, 276 AD2d 572 (2d Dept. 2000). Where facts are in dispute, where conflicting inferences may be drawn from the evidence, or where there are issues of credibility, summary judgment must not be granted. *See, Jastrzebski, supra*, 223 AD2d at 678.

Plaintiff Warren testified that after stopping for a red light a block before the intersection of William Street and Benkard Avenue, she proceeded up William Street at the rate of about 22 miles per hour. She was one-half car length into the intersection of William and Benkard when defendant McHugh turned left in front of her vehicle. The front of her vehicle impacted the front of defendant's vehicle. Plaintiff never saw defendant McHugh signal the left turn.

Defendant McHugh testified that approximately 600 to 700 feet separated his and plaintiff's vehicles when he first observed plaintiff's vehicle as they approached each other from opposite directions, each traveling straight ahead. He was approximately 200 feet away, and plaintiff 400-500 feet away, from the intersection of William and Benkard when he activated his left turn signal. He kept plaintiff's vehicle under continual observation, and stated that she was going at a higher rate of speed than she should be. He stopped in the intersection, and then began to turn left onto Benkard when plaintiff's vehicle was only 60 feet away. The front of plaintiff's vehicle struck the front passenger-side wheel well of defendant's vehicle in the middle of the intersection.

Vehicle and Traffic Law (“VTL”) §1141 requires the driver of a vehicle intending to turn left within an intersection to yield the right-of-way to any vehicle approaching from the opposite direction which is so close as to constitute an immediate hazard. The evidence indisputably establishes that the defendant violated VTL §1141 when he made a left-hand turn directly into the path of plaintiff's oncoming vehicle, and was therefore negligent as a matter of law. *See, Moreback v. Mesquita*, 17 AD3d 420, 421 (2d Dept. 2005); *Torro v. Schiller*, 8AD3d 364, 365 (2d Dept.2004); *Casaregola v. Farkouh*, 1 AD3d 306 (2d Dept. 2003); *Rieman v. Smith*, 302 AD2d 510 (2d Dept. 2003). Plaintiff testified that she was already in the intersection when defendant commenced his left turn, and defendant testified that plaintiff's vehicle was only 60 feet away. Moreover, the ensuing collision involved the front portion of both vehicles. Under either party's account, then, plaintiff approaching the intersection with the right-of-way was as a matter of law so close as to constitute an immediate hazard.

Plaintiff also demonstrated *prima facie* that the accident was not the result of any negligence on her part, testifying that she was traveling at just 22 miles per hour when defendant suddenly and without warning turned directly into her path. Defendants in opposition have failed to demonstrate the existence of any triable issue of fact. Although defendant McHugh testified that he signaled his left turn, plaintiff would reasonably and justifiably have expected him to wait until it was safe for him to turn. His conclusory assertion that plaintiff was traveling faster than she should have been is speculative and insufficient to raise a question of fact as to whether plaintiff was actually speeding. In any event, defendant's acknowledgment that plaintiff's vehicle was just 60 feet away when he commenced his left turn precludes any question as to whether plaintiff's alleged speeding contributed to the accident: whether traveling above or below the speed limit, plaintiff would have

traversed that 60 feet in less than two seconds, and hence as a matter of law cannot be found contributorily negligent for having failed to avoid the accident.

It is therefore


ORDERED, that plaintiff's motion for partial summary judgement on the issue of liability is granted, and it is further

ORDERED, that plaintiff's motion to strike defendants' first affirmative defense is granted.

The foregoing constitutes the decision and order of the Court

Dated: September 10, 2020
Goshen, New York

ENTER



HON. CATHERINE M. BARTLETT, A.J.S.C.

HON. C. M. BARTLETT
JUDGE NY STATE COURT OF CLAIMS
ACTING SUPREME COURT JUSTICE