

Stiefeld v Loria

2020 NY Slip Op 35207(U)

May 22, 2020

Supreme Court, Putnam County

Docket Number: Index No. 500598/2019

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**

-----X
MARIA F. STIEFELD ,

Plaintiff,

-against -

ALFRED LORIA and JONATHAN LORIA,

Defendants.
-----X

DECISION & ORDER

Index No. 500598/2019
Sequence No. 1
Motion Date: 5/20/2020

GROSSMAN, J.S.C.

The following papers, numbered 1 to 12, were considered in connection with Plaintiff's Notice of Motion, dated February 18, 2020, seeking summary judgment on the issue of liability.

PAPERS	NUMBERED
Plaintiff's Notice of Motion/Plaintiff's Affidavit/Affirmation/Exhs. A-F	
Memorandum of Law	1-9
Affidavit in Opposition/Affirmation in Opposition/Exh. A	10-11
Reply Affirmation	12

This is an action to recover damages for personal injuries, stemming from a 2-car rear-end collision near 60 Gleneida Avenue, also known as Route 52, in the vicinity of Fowler Avenue in the Town of Carmel, Putnam County on May 2, 2016. At the time of the accident, Plaintiff claims she was stopped at a red light and Defendant Jonathan Loria while driving a vehicle owned by Defendant Alfred Loria rear-ended Plaintiff's vehicle.

Plaintiff commenced this action on April 23, 2019 with a Summons and Verified Complaint. Defendants interposed their Verified Answer on May 7, 2019.

On March 27, 2019, Plaintiff filed this motion for summary judgment on the issue of liability. In support of his motion, Plaintiff submitted, inter alia: (1) Plaintiff's affidavit; (2) the police accident reports; (3) Counsel's Affirmation, (4) the Summons and Verified Complaint; (5) Defendants' Answer; and (6) a Memorandum of Law (Notice of Motion, Exhs. A-F). Defendants' opposition includes the Affidavit of Jonathan Loria, and the Affirmation of his counsel. In opposition, Defendants argue that the motion is premature because there has been no discovery, and that the parties' conflicting affidavits should preclude summary judgment at this time.

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. v. Briarcliff Farms, 17 N.Y.2d 57, 61 (1966); Sillman v. Twentieth Century-Fox Film Corp., 3 N.Y.2d 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 N.Y.2d 320, 324 (1986). Where the moving papers are insufficient, the court need not consider the sufficiency of the opposing papers. Id.; see also Fabbricatore v. Lindenhurst Union Free School Dist., 259 A.D.2d 659 (2d Dept. 1999).

"The function of the court on a motion for summary judgment is not to resolve issues of fact or determine matters of credibility, but merely to determine whether such issues exist."

Bank of New York Mellon v. Gordon, 171 A.D.3d 197, 201 (2d Dept. 2019), quoting Kolivas v. Kirchoff, 14 A.D.3d 493 (2d Dept. 2005). “Accordingly, “[t]he court may not weigh the credibility of the affiants on a motion for summary judgment unless it clearly appears that the issues are not genuine, but feigned.” Bank of New York Mellon v. Gordon, *supra*, quoting Glick & Dolleck v. Tri-Pac Export Corp., 22 N.Y.2d 439, 441 (1968). “[W]here credibility determinations are required, summary judgment must be denied.” Bank of New York Mellon v. Gordon, *supra* at 201-02, quoting People ex rel. Cuomo v. Greenberg, 95 A.D.3d 474, 483 (1st Dept. 2012), *aff’d* 21 N.Y.3d 439 (2013).

“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 A.D.3d 656 (2d Dept. 2017), quoting Vehicle and Traffic Law §1129(a). “Hence, “[a] rear-end collision with a stopped vehicle creates a prima facie case of negligence against the operator of the moving vehicle, thereby requiring that operator to rebut the inference of negligence by providing a non-negligent explanation for the collision.” Pomerantsev, *supra*, quoting Hauser v. Adamov, 74 A.D.3d 1024, 1025 (2d Dept. 2010).

Here, Plaintiff states that at the time of the accident, she was at a complete stop due to the red traffic light when she was rear-ended by Defendant Jonathan Loria. According to Defendant Jonathan Loria, the accident was caused after the traffic light changed and Plaintiff began to proceed, but stopped short causing Defendant to collide with Plaintiff. However, Mr. Jonathan Loria stated to the police on the scene that he “looked away from the roadway for a second and did not notice V1 [Plaintiff] stop in traffic at traffic light” (Exhibit E., p. 3)

In light of this evidence, the Court finds that Jonathan Loria's affidavit is insufficient to raise a triable issue of fact. Based on the fact that he initially admitted to the police at the scene to striking Plaintiff's vehicle (see Scott v. Kass, 48 A.D.3d 785 [2d Dept. 2008][statements made to police officer who prepared report was acting in scope of his duty in recording defendant's statement and statement admissible as admission of party]), the Court views his affidavit, in which he now claims Plaintiff stopped short causing the collision, as one that was generated to raise a disingenuous issues of fact. See Prunty v. Keltie's Bum Steer, 163 A.D.2d 595, 596 (2d Dept. 1990) ("If the issue claimed to exist is not genuine, but is feigned and there is nothing to be tried, then summary judgment should be granted").

And to the extent Defendants argue that this motion should be denied as premature, it is well-settled that "[t]o defeat a motion for summary judgment based on outstanding discovery, it is incumbent upon the opposing party to provide an evidentiary basis to suggest that discovery might lead to relevant evidence or that the facts essential to justify opposition to the motion were in the exclusive knowledge and control of the moving party." Rodriguez v. Gutierrez, 138 A.D.3d 964, 968 (2d Dept. 2016). "The mere 'hope or speculation that evidence sufficient to defeat a motion for summary judgment may be uncovered during the discovery process is an insufficient basis for denying the motion.'" Rodriguez v. Gutierrez, *supra*, quoting Suero-Sosa v. Cardona, 112 A.D.3d 706, 708 (2d Dept. 2013)(internal quotation marks omitted). Here, Defendants failed to demonstrate how further discovery may reveal or lead to additional relevant evidence.

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 and counsel are to appear before the undersigned on Tuesday, July 2, 2020 at 9:30 a.m. for a preliminary conference on the issue of damages; counsel are advised to confirm the scheduling with the court due to interruptions that may persist due to the COVID-19 pandemic..

The foregoing constitutes the Decision and Order of the Court.

Dated: Carmel, New York
May 22, 2020



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

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

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