

Calabrese v City of Albany
2020 NY Slip Op 35799(U)
July 2, 2020
Supreme Court, Schenectady County
Docket Number: Index No. 900844-20
Judge: Christina L. Ryba
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STATE OF NEW YORK
SUPREME COURT

COUNTY OF SCHENECTADY

HENRY E. CALABRESE,

Plaintiff,

-against-

THE CITY OF ALBANY,

Defendant,

-against-

JANET L. MARANO,

Third-Party Defendant.

DECISION/ORDER

Index No. 900844-20

RJI No. 01-20-134905

APPEARANCES:

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RYBA, J.,

On July 6, 2019, plaintiff sustained personal injuries when the motorcycle he was operating on Lark Street in the City of Albany struck a pothole, tipped over and slid across the roadway with plaintiff's leg pinned underneath it. Alleging that the pothole constituted a dangerous condition and was concealed from his view by repairs performed on a nearby portion of the roadway, plaintiff commenced this action against defendant City of Albany (hereinafter the City) seeking to recover damages for his injuries. Defendant in turn commenced a third-party action against the motorcycle.

owner, third-party defendant Janet L. Marano, alleging a cause of action under the permissive use provisions of Vehicle and Traffic Law § 388 (1) and a cause of action sounding in negligence based upon the allegation that Marano failed to properly maintain the motorcycle. Marano now moves to dismiss the third-party complaint, arguing that the claim asserted pursuant to Vehicle and Traffic Law § 388 (1) fails to state a cause of action, and that summary judgment dismissing the negligence cause of action is warranted because the record is devoid of proof that she was negligent. The City opposes the motion, while plaintiff takes no position.

The Court will first address Marano's motion insofar as it seeks dismissal of the City's Vehicle and Traffic Law § 388 (1) claim for failure to state a cause of action under CPLR 3211 (a) (7). Plaintiff's cause of action against the City seeks to impose liability under the theory that the motorcycle accident and plaintiff's resulting injuries were caused by the City's failure to maintain the roadway in a reasonably safe condition. In its answer, the City counters that plaintiff's damages are attributable in whole or in part to his contributory negligence in operating the motorcycle. In its third-party complaint against Marano, the City alleges that in the event that the City is held liable to plaintiff for failure to maintain the roadway, the permissive use provisions of Vehicle and Traffic Law § 388 (1) will shift any liability for such damages to Marano as the owner. This cause of action further alleges that, in the event that plaintiff recovers damages against the City, it may invoke the permissive use provisions of Vehicle and Traffic Law § 388 (1) to recoup from Marano any portion of such damages attributable to her culpable conduct. In support of the motion to dismiss this cause of action, Marano contends that the City's allegations fail to state any cognizable claim under Vehicle and Traffic Law § 388 (1).

It is well settled that on a motion to dismiss pursuant to CPLR 3211 (a) (7) for failure to

state a cause of action, the Court must ascertain whether ““from its four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law”” (Fourth Branch Assoc. Mechanicville v Niagara Mohawk Power Corp., 235 AD2d 962, 964 [1997], quoting Guggenheimer v Ginzberg, 43 NY2d 268, 275 [1977]). When deciding whether the facts alleged fit within any cognizable legal theory, the Court is required to liberally construe the claim in the City’s favor, afford the City the benefit of every favorable inference and accept the facts alleged as true (see, Heslin v Metropolitan Life Ins. Co., 9 AD3d 581, 582 [2004]; Venditti v Liberty Mut. Ins. Co., 6 AD3d 961, 962 [2004]). If the cause of action alleged is not recognized by the State of New York, dismissal pursuant to CPLR 3211 (a) (7) is appropriate (see, e.g., Wells Fargo Bank NA v Wine, 90 AD3d 1216 [2011]; Dobies v Brefka, 263 AD2d 721 [1999]).

Vehicle and Traffic Law § 388 (1) provides in relevant part that “[e]very owner of a vehicle used or operated in this state shall be liable and responsible for death or injuries to person or property resulting from negligence in the use or operation of such vehicle, * * * by any person using or operating the same with the permission, express or implied, of such owner.” Stated differently, Vehicle and Traffic Law 388 (1) allows a party injured through the negligent use or operation of a motor vehicle to seek recovery for such injuries from the owner of that vehicle, regardless of fault, provided that the negligent driver was operating the vehicle with the owner’s permission (see, Williams v J. Luke Constr. LLC, 172 AD3d 1509 [2019]; New York Cent. Mut. Fire Ins. Co. v Nationwide Mut. Ins. Co., 307 AD2d 449, 451 [1999]). The statute expresses a policy of broadened liability in order to give injured parties greater “access to a financially responsible insured entity that might provide for a more realistic recovery of damages” (Mowczan v Bacon, 92 NY2d 281, 284 [1998]; see, Morris v Snappy Car Rental, 84 NY2d 21, 27 [1994]; Continental Auto Lease Corp. v

Campbell, 19 NY2d 350, 352-353 [1967]). Inasmuch as Vehicle and Traffic Law § 388 (1) may only be invoked where this underlying statutory intent is served, it may not be utilized to impute negligence to a vehicle owner in every case (see, Schuyler v Perry, 69 AD3d 33, 38 [2009]; Mills v Gabriel, 259 App Div 60, 62 [1940]). For instance, Vehicle and Traffic Law § 388 (1) may not be used to impute the comparative negligence of a plaintiff to the vehicle owner, as the effect of imputed comparative negligence is to narrow liability, rather than broaden it (see, Continental Auto Lease Corp. v Campbell, 19 NY2d at 352-353 [1967] Schuyler v Perry, 69 AD3d at 38 [2009]). Nor may Vehicle and Traffic Law § 388 (1) be invoked to impute to the vehicle owner the negligence of an active tortfeasor other than the vehicle driver (see, ER Furniture Delivery v Budget Rent A Car Sys., 62 AD3d 939, 940 [2009]). Thus, the imputed negligence provisions of the statute are applicable to shift liability to the vehicle owner “only in actions brought by third persons against the owner” for liability arising out of the operation of the owner’s vehicle (Mills v Gabriel, 259 App Div at 62 [1940]).

Here, the allegations set forth in the third-party complaint assert no scenario under which Vehicle and Traffic Law § 388 (1) could possibly apply, and thus the City fails to state a cause of action under the statute. In the event that the City is found liable to plaintiff for his injuries, such liability will be premised upon its independent negligence in failing to maintain the roadway, rather from the negligent use or operation of the motorcycle owned by Marano. Under these circumstances, Vehicle and Traffic Law § 388 (1) has no applicability. Moreover, in the event that all or a portion of plaintiff’s damages are found to result from his own comparative negligence, the City will not be forced to pay plaintiff for such damages and will have no need to recoup any damages from Marano. In any event, any comparative negligence of plaintiff for his own injuries cannot be imputed to

Marano, the vehicle owner, under Vehicle and Traffic Law § 388 (1). Inasmuch as the City fails to state a cognizable claim under Vehicle and Traffic Law § 388 (1), the first cause of action in the third-party complaint is dismissed for failure to state a cause of action.

Turning to that portion of Marano's motion that seeks summary judgment dismissing the City's second cause of action sounding in negligence, as the proponent of the motion, Marano must establish entitlement to judgment as a matter of law by tendering sufficient evidence to eliminate any material issues of fact from the case (see, Winegrad v New York Univ. Med. Ctr., 64 NY2d 851 [1985]; Ware v Baxter Health Care Corp., 25 AD3d 863, 864 [2006]). Upon such a showing, the burden shifts to the City to produce evidentiary proof in admissible form to establish the existence of material issues of fact which require a trial of the action (see, Zuckerman v City of N.Y., 49 NY2d 557, 562 [1980]; Spiratos v County of Chenango, 28 AD3d 863, 863 [2006]). Although summary judgment is a drastic remedy, such relief should be granted where opposition to the motion consists solely of sheer speculation without supporting proof (see, 2 North Street Corp. v Getty Saugerties Corp., 68 AD3d 1392 [2009], lv denied 14 NY3d 706 [2010]).

The City's negligence cause of action against Marano alleges that plaintiff's injuries were caused by Marano's negligence in failing to properly maintain the motorcycle in a reasonably safe condition. In support of her motion for summary judgment dismissing this claim, Marano submits her own affidavit in which she avers that the motorcycle was in good working order and bore a valid state inspection sticker. Marano further relies upon the absence of any reference to mechanical problems with the motorcycle in either plaintiff's § 50-h hearing testimony or the police report prepared in connection with the accident. Rather, both plaintiff's testimony and the police report indicate that the accident occurred when the motorcycle struck a pothole in the roadway. In the

Court's view, this evidence is sufficient to sustain Marano's initial burden to demonstrate her entitlement to summary judgment dismissing the negligence cause of action against her.

In opposition, the City fails to specify the manner in which it claims that the motorcycle was not adequately maintained, and does not otherwise submit any evidence to suggest that any mechanical deficiency with the motorcycle contributed to the accident. Contrary to the City's contention, the mere fact that plaintiff lost control of the motorcycle when it struck the pothole does not, without more, warrant the conclusion that the motorcycle was not properly maintained. Notably, the City does not contend that the summary judgment motion is premature or that further discovery may lead to the disclosure of evidence that a mechanical problem with the motorcycle contributed to the accident. Under these circumstances, Marano is entitled to summary judgment dismissing the second cause of action in the third-party complaint sounding in negligence.

For the foregoing reasons, it is

ORDERED that the motion is granted, without costs, and the third-party complaint is dismissed.

This constitutes the Decision & Order of the Court, the original of which is being transmitted to the Albany County Clerk for electronic filing and entry. Upon such entry, counsel for third-party defendant shall promptly serve notice of entry on all other parties (see, Uniform Rules for Trial Courts [22 NYCRR] § 202.5-b [h] [1], [2]).

ENTER

Dated: July 2, 2020



HON. CHRISTINA L. RYBA
Supreme Court Justice

