

Bullock v Singleton

2021 NY Slip Op 33479(U)

September 3, 2021

Supreme Court, Suffolk County

Docket Number: Index No. 621496/2018

Judge: Joseph A. Santorelli

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SHORT FORM ORDER

ORIGINAL

INDEX No. 621496/2018
CAL. No. 202100250MV

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 10 - SUFFOLK COUNTY

PRESENT:

Hon. JOSEPH A. SANTORELLI
Justice of the Supreme Court

MOTION DATE 5/27/21
ADJ. DATE 7/29/21
Mot. Seq. # 003 MG

VANESSA BULLOCK,

Plaintiff,

- against -

ROBERT L. SINGLETON, ROBERT L.
SINGLETON, JR., DANIEL SUMMUS and
WINTER BROS. OF LI, LLC,

Defendants.

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Upon the following papers read on this motion for summary judgment: Notice of Motion/ Order to Show Cause and supporting papers by defendants Daniel Summus and Winter Bros of LI, dated, May 17, 2021; Notice of Cross Motion and supporting papers ___; Answering Affidavits and supporting papers by defendants Robert Singleton and Robert Singleton, Jr., dated July 15, 2021, and by plaintiff, dated July 26, 2021; Replying Affidavits and supporting papers by defendants Daniel Summus and Winter Bros of LI, dated July 28, 2021; Other ___; it is

ORDERED that the motion by defendants Daniel Summus and Winter Bros. of LI, LLC for summary judgment dismissing plaintiff's complaint and the cross claim for contribution is granted.

This is an action to recover damages for injuries allegedly sustained by plaintiff Vanessa Bullock as a result of a motor vehicle accident that occurred on March 19, 2018, at 595 Old Willets Path, approximately 20 feet north of Oser Avenue, in Smithtown, New York. The accident allegedly occurred when a sanitation truck owned by defendant Winter Bros. of LI, LLC and operated by defendant Daniel Summus collided with defendant Robert L. Singleton's vehicle, in which plaintiff was a passenger, while attempting to make a right turn into the driveway of 595 Old Willets Path.

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Defendants Summus and Winter Bros. of LI, LLC now move for summary judgment, arguing that Mr. Singleton's negligence was the sole proximate cause of the accident. They argue that Mr. Singleton attempted to pass Mr. Summus' truck on the right in violation of Vehicle and Traffic Law § 1123 and that Mr. Singleton was speeding in violation of Vehicle and Traffic Law §1180 (d). In support of their motion, moving defendants submit the parties' deposition testimony, photographs of the accident site, a certified police report, and the report of Scott Kline, defendants' accident reconstruction expert. In opposition, plaintiff and Mr. Singleton argue that Mr. Summus was at fault for the happening of the accident because he moved his vehicle to the left of the roadway, indicating that he was turning left, and that there is conflicting testimony regarding whether Mr. Summus activated his right turn signal prior to turning right.

At his examination before trial, Mr. Summus testified that at the time of the collision he was traveling north on Old Willets Road at no more than thirty miles per hour. The road was one lane in each direction. He testified that although his lane did not expand into two lanes, a driver could make a left turn at the traffic light at Oser Avenue, which was located at least twenty feet before where the accident happened. He testified that Old Willets Path was a wide roadway which narrowed after its intersection with Oser Avenue, and that the driveway he was entering was located beyond Oser Avenue. Mr. Summus stated that he did not have to move his truck to the left side of the road to make the right turn into the driveway. Mr. Summus testified that he had his right turn signal on as he approached the driveway where he would turn right, and that he did not see the Singleton car before the accident. When questioned again as to whether he had his right signal on, Mr. Summus replied that he "should have" had his right signal on and that he was able to hear a turn signal blinking when he watched the video of the accident captured by his dash cam following the accident. He testified that when he was making the right turn, he looked around and had a clear path to the driveway with nothing on his right until the Singleton vehicle "came quick." He stated that he heard tires screeching before the Singleton vehicle made contact with his truck.

At his examination before trial, Mr. Singleton testified that on the day of the accident he was traveling north on Old Willets Path with his girlfriend and son. His vehicle was approximately three car lengths behind the sanitation truck as they approached a traffic light. According to Mr. Singleton's testimony, before reaching the traffic light, the truck moved over to the left and his vehicle continued straight, and then suddenly the sanitation truck turned right. Mr. Singleton does not recall if the driver signaled that he was making a right turn. He believes both vehicles were traveling at approximately 30 miles per hour. Mr. Singleton slammed on his brakes before the collision.

At her examination before trial, plaintiff Vanessa Bullock testified that she is Mr. Singleton's girlfriend and that she was a front seat passenger in the Singleton vehicle on the day of the accident along with their son. She testified the Singleton vehicle was traveling north on Old Willets Path on a two way street, that there was one northbound lane and one southbound lane with a solid yellow line separating the lanes, and that Oser Avenue was located north of the accident site. Plaintiff further testified that she saw the sanitation truck move out of the northbound lane to the left, "not into the southbound lane but off from where we were." She then stated that Mr. Summus' truck went over the yellow line. Plaintiff testified that she does not remember if the truck used a signal prior to turning. Plaintiff further testified

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that when the truck moved left, she was looking in her bag so she never saw the truck complete its left turn onto Oser Avenue.

In support of their motion, defendants have provided the Court with the report of Scott Kline, a mechanical engineer and expert in accident reconstruction. Mr. Kline's opinion is based on his analysis of the available photographs, testimony, dash camera video, historical overhead imagery and a site inspection. Mr. Kline opines that the sanitation truck was making a right turn from the right lane into the driveway at 595 Old Willets Path when the accident occurred. He opines that the truck remained in the right lane of travel ahead of the Singleton vehicle, and that as the truck was turning right, Mr. Singleton's vehicle contacted the right side of the truck. He finds, based on the position of the truck in the dash cam imagery and the measurements of the truck, that the truck never entered any portion of the oncoming lane and never vacated the northbound lane of travel, maintaining the right of way throughout the turning maneuver. Mr. Kline further finds that the video evidence is incongruent with plaintiff's testimony as, based on historical imagery, there was no yellow line where the accident occurred and only one lane in the area of impact despite plaintiff's testimony. He states that it was consistent with normal commercial vehicle operations to situate the truck as left as reasonable while remaining in the same lane. He opines that had Mr. Summus intended to turn left on Oser Avenue, the turn would have been completed prior to the location where the accident occurred. He states that, geographically, the truck could not have turned left onto Oser from the area of impact and that there was no other place to turn left. He opines that tire marks left by Mr. Singleton's vehicle indicate that Mr. Singleton was traveling at a minimum speed of 35 to 38 miles per hour, which was above the 30 mile per hour speed limit, and that he engaged in panic braking for a minimum distance of 60 to 70 feet prior to the collision. This expert concludes that Mr. Singleton was negligent in reacting to Mr. Summus' right turn, and that Mr. Singleton attempted to pass the Summus truck on the right, in violation of the Vehicle and Traffic Law.

Defendants also submit the certified police accident report, which states that the accident occurred on March 19, 2018, at 9:05 a.m., in front of 595 Old Willets Path, 20 feet north of Oser Avenue. "[T]he diagram and other entries in the police accident report showing where the vehicles struck each other and the position and path of travel of each vehicle is admissible since the reporting officer could make these determinations himself when he arrived on the scene" (*Scott v Kass*, 48 AD3d 785, 785-786, 851 NYS2d 649 [2d Dept 2008]; see *Boereau v Scott*, 140 AD3d 687, 688, 33 NYS3d 340 [2d Dept 2016]). The diagram of the subject police accident report demonstrates that the sanitation truck was executing a right turn into 595 Old Willets Path, beyond the intersection of Old Willets Path and Oser Avenue, when the left front portion of plaintiff's vehicle collided with the right side of the sanitation truck.

The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law by tendering evidence in admissible form sufficient to eliminate any material issues of fact from the case (see *Alvarez v Prospect Hosp.*, 68 NY2d 320, 508 NYS2d 923 [1986]; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 87 NYS2d 316 [1985]). The moving party has the initial burden of proving entitlement to summary judgment (*id.*). Once the moving party demonstrates a prima facie entitlement to judgment as a matter of law, the burden shifts to the party opposing the motion to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action (see *Vega v Restani Constr. Corp.*, 18 NY3d 499, 942 NYS2d 13 [2012]; *Alvarez v Prospect Hosp.*, *supra*; *Zuckerman v City of New York*, 49 NY2d 557; 427

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NYS2d 595 [1980]; *see also* CPLR 3212 [b]). The failure to make such showing requires a denial of the motion, regardless of the sufficiency of the opposing papers (*see Winegrad v New York Univ. Med. Ctr., supra*). In deciding the motion, the Court must view all evidence in the light most favorable to the nonmoving party (*see New York City Asbestos Litig. v Chevron Corp.*, 33 NY3d 20, 99 NYS3d 734 [2019]; *Stonehill Capital Mgt., LLC v Bank of the West*, 28 NY3d 439, 45 NYS3d 864 [2016])

A violation of the Vehicle and Traffic Law constitutes negligence as a matter of law (*see Marks v Rieckhoff*, 172 AD3d 847, 101 NYS3d 63 [2d Dept 2019]; *Charlery v Allied Tr. Corp.*, 163 AD3d 914, 81 NYS3d 523 [2d Dept 2018]). Furthermore, an operator of a motor vehicle has a duty to always be aware of the potential hazards created by prevailing traffic conditions (*see* Vehicle and Traffic Law § 1129; *see generally Cascio v Metz*, 305 AD2d 354, 759 NYS2d 502 [2d Dept 2003]), and to observe that which he can clearly see (*see Stiles v County of Dutchess*, 278 AD2d 304, 717 NYS2d 325 [2d Dept 2000]; *Pawlukiewicz v Boisson*, 275 AD2d 446, 712 NYS2d 634 [2d Dept 2000]; *Mohamed v Frische*, 223 AD2d 628, 636 NYS2d 859 [2d Dept 1996]). Vehicle and Traffic Law § 1123 provides, in relevant part, that overtaking another vehicle on the right is permitted “only under conditions permitting such movement in safety.”

Moving defendants have established, *prima facie*, that Mr. Singleton was negligent as a matter of law by trying to overtake the sanitation truck from the right lane when it was not safe to do so and that Mr. Singleton was speeding in violation of Vehicle and Traffic Law §§ 1123 and 1180. As defendants have met their *prima facie* burden, the burden now shifts to the parties opposing the motion to raise a triable issue of fact (*see Alvarez v Prospect Hosp., supra*). In opposition, plaintiff submits her affidavit in which she avers that while she was in the Singleton car behind the sanitation truck, the truck moved to the left side of the roadway as if to turn left onto Oser Avenue and Mr. Singleton continued straight, passing the truck on its right side. She further avers that as they were passing the sanitation truck, it swerved back into the north lane of travel and the vehicles collided. She avers that there was nothing obstructing her view of the rear of the truck and that she never saw the truck activate its right turn directional signal.

Plaintiff has failed to create an issue of fact sufficient to defeat summary judgment. Plaintiff has failed to address the expert opinion of Mr. Kline that Mr. Singleton is solely responsible for this accident. Furthermore, plaintiff has changed her description of the events from her deposition testimony. She now avers that she did not see the sanitation truck activate its right turn signal whereas she earlier testified that she did not remember if the truck activated its signal before turning. Furthermore, plaintiff offers no explanation for her ability to recall events now whereas she previously testified that she was looking in her bag when the truck moved left and continued looking in her bag so that she never saw the truck complete its turn onto Oser Avenue. Plaintiff's affidavit creates a mere feigned issue of fact designed to avoid the consequences of her earlier deposition testimony and is insufficient to defeat the motion (*see Laniox v City of New York*, 170 AD3d 519, 96 NYS3d 202 [1st Dept 2019]; *Bloch v RT Long Is. Franchise, LLC*, 70 AD3d 993 [2d Dept 2010]). Additionally, plaintiff herein has failed to provide a counter statement of material facts so that each numbered paragraph in moving defendants' statement of material facts is deemed admitted (*see* 22 NYCRR 202.8-g). Thus, plaintiff's submissions have failed to rebut defendants *prima facie* showing that Mr. Singleton's negligence was the sole proximate cause of the accident (*see Zuckerman v City of New York, supra*).

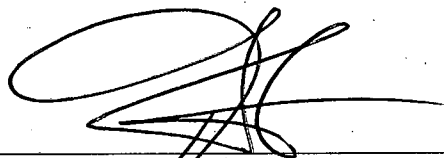
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Defendant Robert Singleton has also failed to raise an issue of fact sufficient to defeat summary judgment herein. The Court notes that in a separate action brought by Mr. Singleton against these defendants under index number 612426/2019, this Court granted the defendants' motion for summary judgment against Robert Singleton. In that decision, the Court noted that Mr. Singleton failed to submit a counter statement of material facts as required by 22 NYCRR 202.8-g. Although Mr. Singleton has provided such a counter statement in opposition to the instant motion, the Court again finds that Mr. Singleton's affidavit in opposition contradicts his prior testimony that he did not recall if the sanitation truck engaged its right turn signal and creates a feigned issue of fact insufficient to defeat defendants' properly supported motion for summary judgment (*see Laniox v City of New York, supra*).

Accordingly, moving defendants' motion for summary judgment dismissing plaintiff's complaint and the cross claim against them is granted.

SEP 03 2021

Dated: _____



HON. JOSEPH A. SANTORELLI
J.S.C.

_____ FINAL DISPOSITION X NON-FINAL DISPOSITION