

Tuske v Day-Davis

2021 NY Slip Op 33494(U)

May 12, 2021

Supreme Court, Orange County

Docket Number: Index No. EF001808-2019

Judge: Maria S. Vazquez-Doles

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This opinion is uncorrected and not selected for official publication.

At a term of the IAS Part of the Supreme Court of the State of New York,
held in and for the County of Orange, at the 285 Main Street,
Goshen, New York 10924 on the 12th day of May, 2021.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

ASHLEY TUSKE,

PLAINTIFF,

-AGAINST-

SHERYL DAY-DAVIS and ANDREW VITALE,

DEFENDANTS.

VAZQUEZ-DOLES, J.S.C.

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

DECISION & ORDER

Index No.: EF001808-2019

Motion Date: 2/1/2021

Motion Seq. #1 & 2

The following papers numbered 1 to 14 were read on defendant Andrew Vitale’s motion for summary judgment, dismissing plaintiff’s complaint and co-defendant Sheryl Day-Davis’ cross-claim for indemnification, and on plaintiff’s cross-motion for summary judgment against Day-Davis and striking it’s first affirmative defense for plaintiff’s failure to wear a seatbelt:

Notice of Motion/Affirmation in Support/Exhibits A-E attached thereto.....	1-7
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Notice of Cross-Motion/Affirmation/Affirmation in Opposition/Affirmation in Reply . . .	11 - 14

Plaintiff alleges that he was injured as a result of a motor vehicle accident on March 3, 2018 at the intersection of Route 208 and Hudson Road controlled by a traffic light at all four sides. Plaintiff was a front passenger in the vehicle driven by defendant Vitale who was driving eastbound from Hudson Road to Mountain Lodge Road when struck by defendant Day-Davis who was traveling northbound on State Route 208 and had driven through a red light. Plaintiff commenced this action with the filing of a Summons and Complaint on March 7, 2019. Defendant Day-Davis filed a Third-Party Summons and Complaint on April 12, 2019. A

Verified Amended Complaint was filed on May 9, 2019. Defendant Vitale filed an Answer With Cross-claim to Amended Complaint on May 20, 2019. A Verified Answer to Amended Complaint was filed by Day-Davis on June 4, 2019.

In its motion for summary judgment, Vitale argues that Day-Davis was issued a summons for Traffic Law 1111-D1 for running a steady red light by Police Officer Anthony Altero on the date of the accident (Exhibit A and E). Officer Altero testified that “. . . I saw the Mazda traveling northbound pursue through a steady red light, and collide into the Ford sedan traveling eastbound towards Mountain Lodge Road” (Exhibit E, p 13). In plaintiff’s cross-motion for summary judgment against Day-Davis, she argues that Day-Davis was negligent in driving through a red light and that plaintiff was wearing a seatbelt at the time (Exhibit B, p 15). Day-Davis argues there are material issues of fact on who was responsible for the accident and whether Vitale used reasonable care to avoid the accident when he did not observe Day-Davis’ vehicle approach once the light turned green. Day-Davis does not oppose striking the affirmative defense for plaintiff’s failure to wear a seatbelt.

“A defendant moving for summary judgment in a negligence action has the burden of establishing, prima facie, that he or she was not at fault in the happening of the subject accident . . . the court must view the evidence in the light most favorable to the nonmoving party” (*Gobin v. Delgado*, 142 AD3d 1134 [2d Dept 2016]). “A driver who enters an intersection against a red light in violation of Vehicle and Traffic Law § 1111(d) is negligent as a matter of law” (*White v. Adom Rental Transp., Inc.*, 150 AD3d 938 [2d Dept 2017]). This Court finds that there is no dispute that Day-Davis had “failed to stop at a red traffic light, and hit the side of plaintiff’s vehicle as he was driving through the intersection with a green light in his favor . . . [Plaintiff] who had the right-of-way, was entitled to anticipate that other vehicles would stop at the red

lights against them, and he had no duty to watch for and avoid one that failed to do so” (*Uribe v. Pronto Gas Heating Supplies, Inc.*, 129 AD3d 509 [1st Dept 2015]). According to the police report, “Vehicle 1 [Day-Davis] was traveling northbound on State Route 208. Vehicle 2 [Vitale] traveling eastbound on Mountain Lodge Rd. Vehicle 1 failed to stop at the red light at the intersection of State Route 208 and Mountain Lodge Rd causing a right angle collision with Vehicle 2” (Exhibit A). Vitale testified to the following (Exhibit C, p 19-20):

Q. Did you stop at the red light?

A. I did.

Q. Did the light change colors before the accident happened?

A. Yes. . .

Q. When you were sitting at the red light were you able to see which side of the intersection had a green light, if any?

A. Yes.

Q. Which side of the intersection had a green light while you sat and waited?

A. Perpendicular to where I was travel.

Q. So Route 208?

A. Yes.

Q. And both sides of it?

A. Yes. . .

Q. What did you do when your light turned green?

A. I went through the light.

According to Day-Davis at her deposition, after the accident occurred, “I was not able to make it out, but I remember the officer tending to -- I believe it’s Mr. Vitale. And he shouted over to me, he said, what direction were you coming from? And I said I was coming from Greenwood Lake straight down 208. And he said I went through the light. And I said I didn't see a light” (Exhibit D, p 19). This Court finds that there is no triable issue of fact that Day-Davis drove through the red light which resulted in the subject accident.

Upon view of the foregoing,

ORDERED that defendant Andrew Vitale’s motion for summary judgment, dismissing plaintiff’s complaint and co-defendant Sheryl Day-Davis’ cross-claim for indemnification is

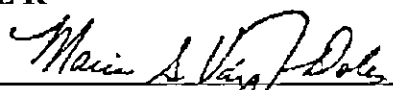
GRANTED, and

ORDERED that plaintiff's cross-motion for summary judgment against defendant Day-Davis and striking the first affirmative defense from defendant Day-Davis' Answer for plaintiff's failure to wear a seatbelt is **GRANTED**.

The foregoing constitutes the Decision and Order of this Court.

Dated: May 12th, 2021
Goshen, New York

E N T E R



HON. MARIA S. VAZQUEZ-DOLES, J.S.C.

TO: Counsel of Record via NYSCEF