

Miecznikowski v Guarrasi
2021 NY Slip Op 33629(U)
March 18, 2021
Supreme Court, Suffolk County
Docket Number: Index No. 613111/2016
Judge: William J. Condon
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SHORT FORM ORDER

INDEX No. 613111/2016
CAL. No. 202000508MV

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 41 - SUFFOLK COUNTY

PRESENT:

Hon. WILLIAM J. CONDON
Justice of the Supreme Court

MOTION DATE 7/2/20
ADJ. DATE 8/27/20
Mot. Seq. # 005 MD

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THERESA MIECNIKOWSKI,

Plaintiff,

CHARLES N. PIZZOLO, ESQ.
Attorney for Plaintiff
394 Old Country Road
Garden City, New York 11530

- against -

JOHN GUARRASI and AVALON FUEL
CORPORATION,

MARSHALL DENNEHY WARNER, ESQS.
Attorney for Defendants/Third-Party Plaintiffs
105 Maxess Road, Suite 303
Melville, New York 11747

Defendants.

DAVID J. SOBEL, ESQ.
Attorney for Third-Party Defendant
811 West Jericho Turnpike #105W
Smithtown, New York 11787

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JOHN GUARRASI and AVALON FUEL
CORPORATION,

Third-Party Plaintiffs,

- against -

JOSEPH T. MURRAY,

Third-Party Defendant.

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Upon the following papers read on this e-filed motion for summary judgment : Notice of Motion/ Order to Show Cause and supporting papers filed by defendants John Guarrasi and Avalon Fuel Corporation, on May 15, 2020 ; Notice of Cross Motion and supporting papers ; Answering Affidavits and supporting papers filed by plaintiff, on July 23, 2020 ; Replying Affidavits and supporting papers filed by defendants John Guarrasi and Avalon Fuel Corporation, on August 14, 2020; Other ; it is

Miecznikowski v Guarrasi

Index No. 613111/2016

Page 2

ORDERED that the motion by defendants John Guarrasi and Avalon Fuel Corporation for summary judgment dismissing the complaint as asserted against them is denied.

This is an action to recover damages for injuries allegedly sustained by plaintiff Theresa Miecznikowski as a result of a motor vehicle accident, which occurred on August 13, 2015, at approximately 5:00 p.m., on Montauk Highway, at or near its intersection with North Quarter Court, in Westhampton, New York. Plaintiff was a passenger on a motorcycle, which was owned and operated by third-party defendant Joseph T. Murray. Plaintiff alleges that the accident occurred when an oil truck owned by defendant Avalon Fuel Corporation, and operated by defendant John Guarrasi, turned left from North Quarter Court onto eastbound Montauk Highway, into Mr. Murray's lane of travel, when it was not safe to do so, in violation of the Vehicle and Traffic Law.

Plaintiff testified that she was the passenger on a motorcycle operated by Mr. Murray. She testified that Mr. Murray was operating the vehicle on eastbound Montauk Highway in Westhampton, and that the traffic conditions were light. She testified that as they approached the intersection of North Quarter Court on the left, she saw defendant driver make a left turn onto Montauk Highway, in front of the motorcycle. She testified that she heard the "screeching" brakes of the motorcycle, and that the motorcycle collided with the rear of defendants' vehicle.

Mr. Murray testified that he was operating his motorcycle on the date of the accident, and that plaintiff was his passenger. He testified that he was operating his motorcycle eastbound on Montauk Highway in Westhampton, that the weather conditions were clear and sunny, and that the traffic was light. Mr. Murray testified that he did not see the defendants' truck in front of him on Montauk Highway, and that he only observed the truck when defendant driver attempted to turn left onto Montauk Highway in front of him. Mr. Murray testified that when he saw the truck, he took his hand off the accelerator, and that he then applied his brakes and swerved to the right in an attempt to avoid colliding with the rear of the truck. Mr. Murray testified that he was unable to avoid the collision despite these evasive maneuvers.

Mr. Guarrasi testified that he was operating his fuel truck on the date of the accident and that he was making deliveries in Westhampton. He testified that immediately prior to the accident, he was operating his vehicle on eastbound Montauk Highway, and that it was his intention to make his next delivery at 23 Quarter Court. Mr. Guarrasi testified that after traveling on Montauk Highway for approximately one-quarter mile, he illuminated his left turn signal, brought his vehicle to a complete stop on Montauk Highway, and waited for westbound traffic to clear before making a left turn onto Quarter Court. Mr. Guarrasi testified that his truck was stopped for approximately 15 seconds when he saw Mr. Murray's motorcycle approaching from 1,000 feet behind. He testified that he did not feel, hear, or see any contact between the motorcycle and his truck, but that he observed Mr. Murray's motorcycle "slide off the road" to the right behind him. He testified that he pulled his truck to the right shoulder, and rendered assistance to plaintiff and Mr. Murray.

Defendants now move for summary judgment dismissing the complaint as asserted against them, arguing that the action of Mr. Murray were the sole proximate cause of the accident, and that Mr. Guarrasi was not at all at fault as he was completely stopped on Montauk Highway, waiting to turn left.

Miecznikowski v Guarrasi
Index No. 613111/2016
Page 3

In support of their motion, defendants submit, inter alia, the uncertified police accident report, the affidavit of Robert Genna, and the transcripts of the deposition testimony of the parties and of Southampton Town Police Officer, Herbert Loper. Plaintiff opposes the motion, arguing that questions of fact exist as to the happening of the accident. Plaintiff submits, inter alia, an internet printout of Google maps.

Initially, the Court notes that the uncertified police accident report submitted by plaintiff is not in admissible form and will not be considered in the determination of the motion (*see* CPLR 4518 [a]; *Yassin v Blackman*, __ AD3d __, 2020 NY Slip Op 05090 [2d Dept 2020]; *Han Hao Huang v "John Doe"*, 169 AD3d 1014, 94 NYS3d 572 [2d Dept 2019]; *Adobea v Junel*, 114 AD3d 818, 980 NYS2d 564 [2d Dept 2014]).

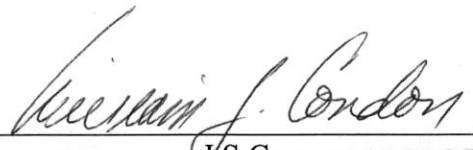
The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law by tendering evidence in admissible form sufficient to eliminate any material issues of fact from the case (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 508 NYS2d 923 [1986]; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 487 NYS2d 316 [1985]). The moving party has the initial burden of proving entitlement to summary judgment (*id.*). Failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers (*id.*). Once such proof has been offered, the burden then shifts to the opposing party who must proffer evidence in admissible form and must show facts sufficient to require a trial of any issue of fact to defeat the motion for summary judgment (CPLR 3212 [b]; *Alvarez v Prospect Hosp.*, *supra*; *Zuckerman v City of New York*, *supra*). On such motion, the court is charged with determining whether issues of fact exist while viewing any evidence in a light most favorable to the non-moving party; the court is not responsible for resolving issues of fact or determining issues of credibility (*see Chimbo v Bolivar*, 142 AD3d 944, 37 NYS3d 339 [2d Dept 2016]; *Pearson v Dix McBride, LLC*, 63 AD3d 895, 883 NYS2d 53 [2d Dept 2009]; *Kolivas v Kirchoff*, 14 AD3d 493, 787 NYS2d 392 [2d Dept 2005]). A motion for summary judgment should be denied where the facts are in dispute, where conflicting inferences may be drawn from the evidence, or where there are issues of credibility (*see Chimbo v Bolivar*, *supra*; *Benetatos v Comerford*, 78 AD3d 750, 911 NYS2d 155 [2d Dept 2010]).

Defendants have failed to establish, prima facie, entitlement to summary judgment dismissing the complaint, as triable issues of fact remain as to how the accident occurred (*see Matias v Bello*, 165 AD3d 642, 84 NYS3d 551 [2d Dept 2018]; *Searless v Karczewski*, 153 AD3d 957, 60 NYS3d 431 [2d Dept 2017]; *see generally Calderon-Scotti v Rosenstein*, 119 AD3d 722, 989 NYS2d 514 [2d Dept 2014]; *Gause v Martinez*, 91 AD3d 595, 936 NYS2d 272 [2d Dept 2012]). Plaintiff, Mr. Murray and Mr. Guarrasi offer different accounts as to how and where the accident occurred. Further, all three have offered different accounts with respect to whether plaintiff's vehicle came into contact with defendants' vehicle, whether defendants' vehicle was in motion at the time of the accident, and whether Mr. Guarrasi was stopped on Montauk Highway turning onto Quarter Court, or whether he was turning from Quarter Court onto Montauk Highway. Here, the differing deposition testimony submitted by defendants support different conclusions as to fault and contributory negligence (*see Goulet v Anastasio*, 148 AD3d 783, 48 NYS3d 731 [2d Dept 2017]).

Miecznikowski v Guarrasi
Index No. 613111/2016
Page 4

As defendants have failed to meet their prima facie burden, it is unnecessary to consider whether the papers in opposition are sufficient to raise a triable issue of fact (*see Winegrad v New York Univ. Med. Ctr., supra*). Accordingly, the motion by defendants John Guarrasi and Avalon Fuel Corporation for summary judgment dismissing the complaint is denied.

Dated: 3/18/21



HON. WILLIAM J. CONDON

____ FINAL DISPOSITION X NON-FINAL DISPOSITION