

Sicignano v Leonard
2022 NY Slip Op 34461(U)
March 15, 2022
Supreme Court, Westchester County
Docket Number: Index No. 70702/19
Judge: James W. Hubert
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

To commence the statutory time 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 WESTCHESTER

-----X
AMANDA E. SICIGNANO,

Plaintiff,

Index No.: 70702 / 19

Motion Date: 10 / 29 / 21

-against-

Motion Sequence Nos. 1, 2 and 3
DECISION AND ORDER

SIDNEY LEONARD; CYNTHIA LEONARD; DAVID I. WEISS, and; AMANDA M. WEISS,

Defendants.

-----X
HUBERT, J.

The following documents were read on,

(A) this motion (Sequence No. 1) by Defendants, Sidney Leonard and Cynthia Leonard (collectively hereafter, "the Leonards"), pursuant to rule 3212 of the Civil Practice Law and Rules for an order granting summary judgment dismissing as against them the complaint in the above-captioned action,

(B) this motion (Sequence No. 2) by Defendants, David I. Weiss and Amanda M. Weiss (collectively hereafter, "the Weisses"), pursuant to CPLR 3212 for an order granting summary judgment dismissing as against them the complaint in the above-captioned action, and

(C) this motion (Sequence No. 3) by the Leonards pursuant to CPLR 3212 for an order granting summary judgment dismissing as against them the complaint in the above-captioned action,

Notice of Motion (Sequence No. 1) - Affirmation - Exhibits -
Memorandum of Law
Affirmation in Opposition - Exhibit
Reply Affirmation in Further Support

Notice of Motion (Sequence No. 2) - Statement of Material Facts -
Affirmation - Exhibits
Affirmation in Opposition - Statement of Material Facts -
Exhibits
Reply Affirmation in Further Support - Exhibit

Notice of Motion (Sequence No. 3) - Statement of Material Facts -
Affirmation - Exhibits
Affirmation in Opposition - Statement of Material Facts -
Exhibits
Reply Affirmation - Answering Affidavit - Exhibits
Reply Affirmation in Further Support - Exhibit

Upon consideration of all of the foregoing, and for the following reasons, the Leonards' first motion for summary judgment (Sequence No. 1) is granted and the Leonards' second motion for summary judgment (Sequence No. 3) is denied as academic, and the Weisses' motion for summary judgment (Sequence No. 2) is denied.

Factual and Procedural Background

In this action Plaintiff seeks damages for injuries she allegedly sustained on March 13, 2019, when her vehicle, which she was driving, was struck from the rear while she was preparing to make a left turn from East Main Street onto Byram Lake Road. The vehicle that struck Plaintiff's vehicle was owned by Defendant, David I. Weiss (hereafter, "D Weiss"), and being operated by his daughter, Defendant, Amanda M. Weiss (hereafter, "A Weiss"). The force from that impact allegedly caused Plaintiff's vehicle to cross a solid double yellow line into the opposing lane of traffic where it collided with a third vehicle owned by the Leonards and being operated by Defendant, Sidney Leonard (hereafter, "S Leonard"), which was traveling in the opposite direction on East Main Street.

Plaintiff commenced the above-captioned action by filing a Summons and Verified Complaint via the New York State Courts E-Filing system (hereafter, "NYSCEF") on December 27, 2019, in which Verified Complaint she pleads a single cause of action for negligence against all Defendants.

On January 28, 2020, the Leonards filed via NYSCEF an Answer, which pleads a general denial, seven separately stated and numbered affirmative defenses, and a cross-claim against the Weisses.

On July 28, 2020, the Weisses filed via NYSCEF a Verified Answer, which pleads a general denial, seven separately stated and numbered affirmative defenses, and a cross-claim against the

Leonards.

The Leonards made their first motion for summary judgment (Sequence No. 1) by filing via NYSCEF on January 27, 2021. Plaintiff filed papers in opposition via NYSCEF on February 18, 2021. The Leonards filed reply papers in further support of their motion via NYSCEF on February 24, 2021.

On August 5, 2021, Plaintiff filed via NYSCEF a Note Of Issue and Certificate Of Readiness For Trial, with proof of service.

The Weisses made their motion for summary judgment (Sequence No. 2) by filing via NYSCEF on October 4, 2021. Plaintiff filed papers in opposition via NYSCEF on October 22, 2021. The Weisses filed reply papers in further support of their motion via NYSCEF on October 25, 2021.

The Leonards made their second motion for summary judgment (Sequence No. 3) by filing via NYSCEF on October 4, 2021. Plaintiff filed papers in opposition via NYSCEF on October 22, 2021. The Leonards filed reply papers in further support of their motion via NYSCEF on October 28, 2021.

All three motions were deemed fully submitted on October 29, 2021, the original return date for Motion Sequence Nos. 2 and 3.

Discussion

Pursuant to CPLR 3212(b) a motion for summary judgment “shall be granted if, upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party[, and] the motion shall be denied if any party shall show facts sufficient to require a trial of any issue of fact.” Thus, the movant must submit evidentiary proof in admissible form which establishes that he is entitled to judgment as a matter of law, and one opposing the motion “must produce evidentiary proof in admissible form sufficient to require a trial of material questions of fact on which he rests his claim” (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). “[I]n determining a motion for summary judgment, evidence must be viewed in the light most favorable to the nonmovant (internal quotation marks and citations omitted)” (*Dorival v DePass*, 74 AD3d 729, 730 [2d Dept 2010]).

The papers and proof submitted in support of and in opposition to the instant motions include the transcripts of the examinations before trial of Plaintiff, A Weiss, and S Leonard, medical records supplied by Plaintiff, and the reports of two independent medical examinations.

The Leonards' first motion for summary judgment (Sequence No. 1) dismissing as against them the complaint in the above-captioned action is granted. In their first motion, the Leonards seek dismissal on the ground that S Leonard was not negligent and his actions were not the proximate cause of the accident that produced Plaintiff's injuries.

It is undisputed that Plaintiff's vehicle crossed a double yellow line into the lane in which the Leonards' vehicle was traveling. "[A] driver who crosses over a double yellow line into opposing traffic, unless justified by an emergency situation not of the driver's own making, violates [section 1126(a) of] the Vehicle and Traffic Law and is guilty of negligence as a matter of law (internal citations omitted)" (*Hodnett v Westchester County Dept. of Pub. Works & Transp.*, 181 AD3d 655, 658 [2d Dept 2020]). The fact that the offending vehicle was struck in the rear and forced into the oncoming traffic does not necessarily constitute justification (*see Foster v Sanchez*, 17 AD3d 312, 313 [2d Dept 2005]).

It is also undisputed that at the time of the impact with Plaintiff's vehicle, S Leonard was traveling in the proper lane of traffic within the posted speed limit, and there is no evidence that he was driving in a negligent, reckless or careless manner or that he was otherwise distracted. "A driver is not required to anticipate that a vehicle traveling in the opposite direction will cross over into oncoming traffic[, and] such a scenario presents an emergency situation, and the actions of the driver presented with [such] a situation must be judged in that context (internal quotation marks and citation omitted)" (*Rodriguez v Gutierrez*, 138 AD3d 964, 967 [2d Dept 2016]).

Here, the evidence establishes that S Leonard, faced with that emergency situation not of his own making, could not have avoided the collision. S Leonard testified that he did not see Plaintiff's vehicle prior to the moment of impact (*see* Transcript of Examination Before Trial of Sidney Leonard, a copy of which is annexed to the Affirmation in support of the Leonards' first summary judgment motion as Exhibit F [NYSCEF DOC. NO. 25] at page 18, lines 11-14), and that he first saw it "[a]fter the impact" (*id.* at page 32, lines 20-23). Plaintiff testified that the time period from when her vehicle was struck by the Weisses' vehicle to the impact with the Leonards' vehicle "felt

like a few seconds” (Transcript of Examination Before Trial of Amanda E. Sicignano, a copy of which is annexed to the Affirmation in support of the Leonards’ first summary judgment motion as Exhibit E [NYSCEF DOC. NO. 24] at page 38, lines 9-10). Even assuming arguendo that at least some of those few seconds had not elapsed prior to Plaintiff’s vehicle crossing over into the opposing traffic, as a matter of law whatever remained was not sufficient for S Leonard to react and avoid the collision (*see Lopez v Wook Ko Young*, 96 AD3d 724, 725 [2d Dept 2012] [holding that evidence that driver of oncoming vehicle had “no more than a few seconds to react and virtually no opportunity to avoid the collision,” established her prima facie entitlement to summary judgment]). Thus, the Leonards have established that they are entitled to judgment on the issue of liability as a matter of law.

Plaintiff fails to submit evidentiary proof sufficient to require a trial of material questions of fact on the issue of the Leonards’ liability.

Therefore, the Leonards’ first motion for summary judgment (Sequence No. 1) dismissing the above-captioned action as against them is granted. The Weisses’ cross-claim against the Leonards is also dismissed (*see CPLR 3212[b]*).

In light of the determination of their first motion, the Leonards’ second motion for summary judgment (Sequence No. 3) is denied as academic.

The Weisses’ motion for summary judgment (Sequence No. 2) dismissing as against them the complaint in the above-captioned action is denied. The Weisses seek dismissal on the ground that Plaintiff’s claim is barred by section 5104(a) of the Insurance Law because Plaintiff did not sustain a serious injury as defined by Insurance Law § 5102(d).

Plaintiff alleges that as a result of the accident she sustained, among other things, multiple traumatic brain injuries, and multiple injuries to her cervical, thoracic and lumbar spine. The conclusions drawn by the medical professionals who examined Plaintiff as to the cause, seriousness and permanency of her alleged injuries are conflicting, and in some instances diametrically opposed. Thus, while the reports submitted by the Weisses are sufficient to satisfy their initial burden to make a prime facie showing that Plaintiff’s alleged injuries did not meet the serious injury threshold, Plaintiff’s submissions raise issues of material fact requiring trial (*see Toure v Avis Rent A Car Systems, Inc.*, 98 N.Y.2d 345 (2002); *Rogers v Aquino*, 70 A.D.3d 667, 668 (2d Dept 2010).

Therefore, the Weisses' motion for summary judgment (Sequence No. 2) dismissing the above-captioned action as against them is denied.

Accordingly, for the foregoing reasons, it is hereby

ORDERED that the first motion (Sequence No. 1) of Defendants, Sidney Leonard and Cynthia Leonard, for summary judgment dismissing the complaint in the above-captioned action as against them is granted, and it is further

ORDERED that the cross-claim of Defendants, David I. Weiss and Amanda M. Weiss, against Defendants, Sidney Leonard and Cynthia Leonard, is dismissed, and it is further

ORDERED that the second motion (Sequence No. 3) of Defendants, Sidney Leonard and Cynthia Leonard, for summary judgment dismissing the complaint in the above-captioned action as against them is denied as academic, and it is further

ORDERED that the motion (Sequence No. 2) of Defendants, David I. Weiss and Amanda M. Weiss, for summary judgment dismissing the complaint in the above-captioned action as against them is denied, and it is further

ORDERED that Defendants, Sidney Leonard and Cynthia Leonard, shall within ten days of entry of this decision and order serve Plaintiff, Amanda E. Sicignano, and Defendants, David I. Weiss and Amanda M. Weiss, with notice of entry, and it is further

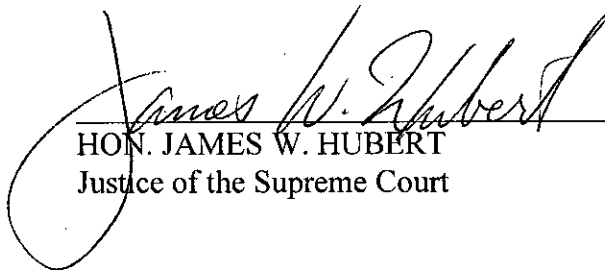
ORDERED that Plaintiff, Amanda E. Sicignano, shall within ten days of entry of this decision and order serve all Defendants with notice of entry, and it is further

ORDERED that Plaintiff, Amanda E. Sicignano, and Defendants, Sidney Leonard and Cynthia Leonard, shall each within ten days after service as aforesaid file proof of service by uploading to the New York State Courts E-Filing system.

The foregoing constitutes the decision and order of the Court.

Dated: White Plains, New York
March 15, 2022

ENTER,


HON. JAMES W. HUBERT
Justice of the Supreme Court