

Teitelbaum v Teitelbaum
2024 NY Slip Op 35290(U)
March 4, 2024
Supreme Court, Rockland County
Docket Number: Index No. 031017/2022
Judge: Thomas P. Zugibe
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.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

-----X

YEHUDIS S. TEITELBAUM,

Plaintiff,

DECISION & ORDER

-against-

Index No.: 031017/2022

Motion Seq. 1

LEO TEITELBAUM and UNLIMITED ISRAEL, LLC,

Defendants.

-----X

ZUGIBE, J.

Plaintiff YEHUDIS S. TEITELBAUM (“Plaintiff” or “Yehudis”) has filed a motion seeking an Order of this Court granting summary judgment pursuant to N.Y. CIV. PRAC. L&R (“CPLR”) 3212 on the issue of liability as against Defendants LEO TEITELBAUM (“Leo”) and UNLIMITED ISRAEL, LLC (“Unlimited Israel”) (collectively referred to as “Defendants”). The motion is opposed by Defendants. In connection with Plaintiff’s motion, the Court has reviewed and considered NYSCEF documents 17-29, and hereby determines the motion as follows:

The Summons and Complaint in this matter were filed with the Rockland County Clerk on March 15, 2022. NYSCEF Doc. 1. According the allegations as set forth in the Complaint, this action stems from a motor vehicle accident that occurred on December 19, 2019. *Id.* Plaintiff was the passenger in the vehicle Defendant Leo was driving at the time of the accident. The vehicle was owned by Defendant Unlimited Israel. Apparently, the vehicle was involved in a collision with “structures near the roadway.” *Id.* There were no other vehicles involved in this accident. Plaintiff contends in her Complaint that the collision was caused by the negligence of the Defendants, and that she sustained personal injuries as a result of same. *Id.*

Issue was joined by the filing of an Answer on June 10, 2022. NYCSEF Doc. 4. During the course of discovery, Plaintiff filed the instant motion. As per Plaintiff, the record evidence establishes that there were no other vehicles involved in the subject accident, Defendant’s conduct in making an unsafe lane change directly led to the collision with a structure on the roadway, Plaintiff is entitled to summary judgment on the issue of liability as a matter of law. NYSCEF Doc. 19.

Plaintiff testified at her deposition that at the time of the accident, she was a passenger in the front passenger size seat of a vehicle driven by her husband Leo, and that the vehicle was headed over the Governor Cuomo Bridge (f/k/a Tappan Zee Bridge) towards Rockland County. NYSCEF Doc. 21, pp. 36, 37. Plaintiff’s two children were riding in the backseat of the vehicle. *Id.* The vehicle is, as per Plaintiff, owned by Leo’s company. *Id.* As per Plaintiff, at the time of the accident, it was nighttime and it had been raining for a quite some time. *Id.* at 44. The headlights and windshield wipers were on. *Id.* at 45. The Plaintiff testified that she kept telling

Leo to slow down (once they reached the bridge) because of the rain. *Id.* at 46. Plaintiff did not recall if Defendant's speed was over the speed limit, she just remembered "it felt like [they] were going very fast." *Id.* at 47. The Plaintiff indicated that as they approached the middle of the bridge, Leo switched lanes from the left lane to the middle lane and as he changed lanes, Plaintiff said "slow down, slow down." *Id.* at 48. After the lane change, Plaintiff testified that Leo said he could not stop because of the puddles on the bridge. *Id.* at 49. Defendant then hit a large puddle in front of them and hydroplaned straight down the bridge and "smashed" into the left barrier, then made a 360° turn, skidded across four lanes of traffic, and hit the right barrier, did another 360° turn back towards the left lane "leaving the car backwards with the trunk on the left barrier" at which point the car went dead. *Id.* at 49-50. At that time when the accident was over, it looked like the car was "drowning in water." *Id.* at 51.

The Defendant, Leo, testified that on the date of the accident, the vehicle he was operating (that was owned by his employer) that he drove every day had no mechanical difficulties. NYSCEF Doc. 22, p. 9. Leo testified that it had started to rain heavily at some point before he drove onto the bridge where the accident occurred, and that the road condition was therefore slippery. *Id.* at 14-15. Leo did not recall the rate of speed at which he was traveling, but he recalls entering the bridge in the far-left lane. *Id.* at 16-17. Leo further testified that when trying to move into the middle lane from the left lane, his car started to skid and slide, ultimately "bouncing from one side to the other side...like four or five times, then it came to a stop." *Id.* at 18-19. Leo does not recall which divider he hit first, because the car was essentially "circling." *Id.* at 20. Leo indicated that the damage to his vehicle was the direct result of hitting the median, as no other vehicles were involved in the accident. *Id.* at 22. Leo testified that he received a speeding ticket as a result of the accident, which was ultimately resolved in court with a plea of guilty to a lesser offense. *Id.* at 22-23.

Based on their motion and the above referenced deposition testimony, Plaintiff contends that the evidence is clear that Defendant Leo's conduct was the direct cause of her accident, and that therefore, she has established a *prima facie* case of Defendant's negligence as a matter of law.

In opposition, Defendants contend that the motion is procedurally defective because it is not supported by an affidavit of the Plaintiff, and because the transcript of Defendant Leo was not signed. In addition, Defendants argue that Plaintiff has failed to establish that the unsafe lane change cause by slippery road conditions was the cause of the accident at issue, in light of the fact that Leo was not ticketed for an unsafe lane change, nor was proof presented that the roads were slippery before the accident.

In reply, the Plaintiff indicates that Defendant Leo did sign his deposition transcript before a notary public and return same to counsel for Plaintiff. NYSCEF Doc. 28. Somehow, apparently, an unsigned copy was attached to the original motion papers. Moreover, counsel for Plaintiff argues that it is irrelevant that the motion is not accompanied by a sworn affidavit from the Plaintiff, as the Plaintiff's sworn deposition transcript was attached. Plaintiff is correct in this assertion. "[T]he failure to submit an affidavit by a person with knowledge of the facts is not necessarily fatal to a motion where, as here, the moving party submits other proof, such as depositions testimony with an attorney's affirmation[.]" *Vetrano v. Kokolakis Contracting, Inc.*,

100 A.D.3d 984, 986, 954 N.Y.S.2d 646 (2d Dept. 2012). In the instant matter, Plaintiff has submitted other proof in the form of her sworn deposition testimony. The Court, therefore, does not find that the motion is procedurally defective.

In deciding a motion for summary judgment, the Court's role is solely to determine whether triable issues of fact exist, not to decide those issues. *F. Garofalo Electric Co. v. New York Univ.*, 300 A.D.2d 186, 754 N.Y.S.2d 227 (1st Dept. 2002). This is because the remedy of summary judgment is a drastic one and it should only be granted when it is clear that no triable issue of material fact exists. *Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 508 N.Y.S.2d 923 (1986); *Andre v. Pomeroy*, 35 N.Y.2d 361, 362 N.Y.S.2d 131 (1974). On a motion for summary judgment, the proponent "must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case." *Winegrad v. New York Univ. Med. Center*, 64 N.Y.2d 851, 852, 487 N.Y.S.2d 316, 317 (1985); *Zuckerman v. City of New York*, 49 N.Y.2d 557, 427 N.Y.S.2d 595 (1980).

Once such a showing has been made, the burden of proof shifts such that an opponent to a motion for summary judgment must demonstrate the existence of a genuine triable issue of fact. *Alvarez, supra*. The papers submitted in support of and in opposition to a summary judgment motion should be scrutinized in a light most favorable to the party opposing the motion. *Dowsey v. Megerlan*, 121 A.D.2d 497, 503 N.Y.S.2d 591 (2d Dept. 1986); *Gitlin v. Chirkin*, 98 A.D.3d 561, 949 N.Y.S.2d 712 (2d Dept. 2012). As summary judgment is the procedural equivalent of a trial, if there is any doubt as to the existence of a triable issue of fact, or where a material issue of fact is even "arguable", the motion *must* be denied. *Phillips v. Kantok & Co.*, 31 N.Y.2d 307, 338 N.Y.S.2d 882 (1982); *Andre, supra*.

Based on the foregoing, upon review of Plaintiff's motion and accompanying exhibits, specifically the deposition transcripts, this Court determines that Plaintiff has met her *prima facie* burden on summary judgment. The Court need not address the admissibility of the police report, as renders the instant decision based on the other documentation supporting the motion. The Plaintiff testified about the cause of this one-car accident. Simply stated, the Defendant was traveling too fast in poor weather conditions. The Plaintiff testified that she continuously had to tell Leo to slow down due to the poor road conditions.

The Defendant did not refute the Plaintiff's testimony, and although he conveniently could not recall the rate of speed at which he was traveling, he did recall the poor road conditions, the lane change, the huge puddles, and the skidding in rain until such time as his car collided with the median multiple times. Further, Defendant Leo testified that he was issued a speeding ticket at the scene of the accident. The Court acknowledges that the ticket is not, standing alone, evidence of negligence, however the guilty plea, albeit to a reduced charge, is "some evidence of negligence[.]" *Feeley v. St. Lawrence Univ.*, 13 A.D.3d 782, 783, 788 N.Y.S.2d 179 (3d Dept. 2004). In addition, it is without dispute the vehicle was in well working order with no reported mechanical difficulties. The Defendant did not address the cause of the accident in his deposition. Plaintiff's sworn testimony is, therefore, unrefuted.

Simply stated, there has been absolutely no non-negligent explanation proffered in opposition by Defendant Leo with respect to the collision. The opposition is insufficient to rebut

the presumption of negligence. Based on all the foregoing, this Court determines this case is appropriate for summary judgment in favor of the Plaintiff as against Defendants on the issue of liability.

Now, therefore, it is hereby

ORDERED, that Plaintiff's motion for summary judgment on the issue of liability is granted in its entirety; and it is further

ORDERED, that within ten (10) days of the date of entry of this Decision and Order, Plaintiff is directed to serve a copy of same upon counsel via NYSCEF; and it is further

ORDERED, that the parties are directed to appear in person before the Court for purposes of a settlement conference on ***Tuesday, March 26, 2024, at 9:30 a.m.*** The Clerk of the Court shall send out links via Microsoft Teams to all counsel of record.

The foregoing shall constitute the Decision and Order of this Court.

Dated: New City, New York
March 4, 2024



Hon. Thomas P. Zugibe, J.S.C.