

Winters v Hilmi
2024 NY Slip Op 35688(U)
March 18, 2024
Supreme Court, Ulster County
Docket Number: Index No. EF2022-1373
Judge: Sharon Graff
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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ULSTER**

AMY K. WINTERS,

Plaintiff,

-against-

ANTHONY D. HILMI,

Defendant.

DECISION & ORDER

Index No. EF2022-1373

APPEARANCES:

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GRAFF, SHARON, J.S.C.

By motion dated November 1, 2023, the Plaintiff moves for an Order pursuant to CPLR 3212 (e) granting her partial summary judgment on the issue of liability as against the Defendant. The Defendant has submitted opposition to the Plaintiff's motion.

This action arises out of a car accident involving multiple vehicles, that occurred on April 25, 2022, on Route 209 in the Town of Rochester, Ulster County, New York.

In her verified complaint, the Plaintiff alleges that the Defendant breached the duty of care he owed to her "by failing to operate his vehicle in a reasonably safe manner," in that...the Defendant...negligently caused the Plaintiff...to become involved in a two-vehicle motor vehicle accident." *Plaintiff's Verified Complaint*, paragraphs 8-9.

On May 25, 2023, the Plaintiff testified at a deposition regarding this matter. The Plaintiff testified that on April 25, 2022, she was proceeding on Route 209 in her 2016 Toyota Highlander in “a long string of traffic”. *Examination Before Trial of Amy K. Winters*, pp. 28-29, 31, 35. As she was at an elevated spot before a “dip” in the road she noticed a truck and trailer at an elevated spot opposite her on the other side of the “dip” and “...saw the trailer start to swerve and start crossing the double yellow line coming in my direction.” *Examination Before Trial of Amy K. Winters*, pp. 36, 37. After observing the trailer “come further into my lane,” the plaintiff “slammed on my brakes and got off the road as far as I could,” to an area where “(t)here was a little bit of a shoulder.” *Examination Before Trial of Amy K. Winters*, p. 37. At that point Plaintiff testified that she “...saw another car get hit and go off the road” then “saw the truck straighten out and come straight at me,” and that next “I felt the impact and my glasses flew off my head. I opened my eyes and was covered with glass...” *Examination Before Trial of Amy K. Winters*, pp. 37-38, 39.

The Defendant also testified at a deposition regarding this matter on May 25, 2023. The Defendant testified that on April 25, 2022, he was driving a 2003 F-250 pickup truck and was towing a 1997 Interstate trailer. *Examination Before Trial of Anthony R. Hilmi*, p. 5,6. On the trailer, which was 16 feet long, with two axels, the Defendant was transporting a grapple bucket and a T-550 Bobcat (aka a skid steer). *Examination Before Trial of Anthony R. Hilmi*, p. 6,7. The grapple bucket weighed approximately 700 pounds, while the T-550 Bobcat weighed approximately 7,500 pounds. *Examination Before Trial of Anthony R. Hilmi*, p. 14. The Defendant testified that he believed he had secured both implements to the trailer via a ratchet strip. *Examination Before Trial of Anthony R. Hilmi*, pp. 17-18. As the Defendant was proceeding northbound on Route 209 in perfect weather, he hit a “pretty severe bump,” that

“took the weight off the rear end of the truck a little bit and it made the trailer fishtail a little bit and that’s what started it.” *Examination Before Trial of Anthony R. Hilmi*, pp. 24-25. The Defendant, who was proceeding at a speed of between 50 to 55 miles per hour, stated that the trailer began to move, and he applied the brakes, “but I really didn’t have enough time regain complete control. *Examination Before Trial of Anthony R. Hilmi*, pp. 27, 27-28. As the Defendant continued to apply the brakes the trailer began “...fish-tailing and then the truck turned to the left...and then the force from that made the trailer turn extremely fast...” such that the trailer “...pushed the right end of the truck to the right so that...it kind of like almost lifted it up off the ground...it took a lot of weight off it so that the rear end of the truck moved to the right thus making it turn around, I mean, I think I was facing the southbound...by the time it settled I believe.” *Examination Before Trial of Anthony R. Hilmi*, pp. 28-29. The Defendant acknowledged that the front end of his truck contacted another vehicle, whereupon the truck abruptly stopped, the trailer continued swinging around, the T-550 Bobcat came off the trailer, and his truck came to rest facing in a southerly direction. *Examination Before Trial of Anthony R. Hilmi*, pp. 31-33. When asked to describe the experience the Defendant stated “...once it first started fish-tailing I thought I might be able to regain control, and then when it fishtailed more severely, I was like...I’m not going to be able to regain control...with just the truck...it probably wouldn’t have happened...but with the truck and the trailer, it’s just too much weight, too many moving parts.” *Examination Before Trial of Anthony R. Hilmi*, pp. 34-35. The Defendant acknowledged that he was ticketed by law enforcement after the accident, one ticket which “...was for improperly secured equipment because obviously I should have used chains or heavier straps because mine broke.” *Examination Before Trial of Anthony R. Hilmi*, pp. 37, 38.

Three non-party witnesses were also deposed in this matter.

Matthew Koch, a non-party witness to the events of April 25, 2022, was deposed on April 20, 2023. Koch testified that on April 25, 2022, he was traveling south on Route 209 on a clear day on dry roads. *Examination Before Trial of Matthew Koch*, pp. 7-8, 8-9. He was in light traffic with two vehicles behind him, when he witnessed a truck traveling north on Route 209 descending into a valley opposite him that "...appeared to be travelling at a high rate of speed...the trailer was swapping back and forth and a dust cloud was coming off as the trailer wheels went off the side of the road." *Examination Before Trial of Matthew Koch*, pp. 9, 10, 11, 12. The truck continued to come toward Koch, failed to maintain its lane, and passed him, whereupon "...the trailer and the truck really start to get out of shape. And it headed straight across the road and toward the vehicle behind me...I witnessed it hit that van. The van spun sideways and rolled over...striking a telephone pole...(a)nd then, the truck and trailer continued on and struck the minivan behind it." *Examination Before Trial of Matthew Koch*, p. 13, 14. Koch testified that both vehicles struck by the truck and trailer were in the southbound lane of Route 209 when they were struck. *Examination Before Trial of Matthew Koch*, p. 15. After the accident Koch testified that he walked up to the truck and trailer "...and there was no straps, no chain. The implement—the skid steer—was not chained to the trailer whatsoever. I surmised...that he had the load wrong and was driving way too fast over his head." *Examination Before Trial of Matthew Koch*, p. 19. Koch also stated in reference to the driver of the truck and trailer that "...I would bet the house on he was traveling...higher than the speed limit." *Examination Before Trial of Matthew Koch*, p. 22.

Samir Ramic, a non-party witness to the events of April 25, 2022, was also deposed on April 20, 2023. Ramic testified that he was heading south on Route 209 on April 25, 2022, following three other vehicles, "...when I saw the red truck with the trailer coming toward us."

Examination Before Trial of Samir Ramic, pp. 8-9, 11. Ramic testified that "...I saw that he swerve a little bit...because he had a big machine on top of his trailer...I saw that he had difficulties staying in his lane. He tried to go left and right just to control the trailer."

Examination Before Trial of Samir Ramic, pp. 11-12. Ramic then saw the truck and trailer as it "...lost control...and...started moving toward our lane. And he struck the first vehicle...(a)nd that vehicle went like a missile straight in the ditch and hit a pole...(a)nd he bounce off that vehicle and hit the second vehicle...(a)nd he strike that vehicle...in the front corner on the left side of the vehicle...almost direct hit." *Examination Before Trial of Samir Ramic*, p. 12. Later in his testimony Ramic stated that the truck "...went left and right little bit to go to left because that trailer was pulling him back and forth...when trailer start more to the right-hand side, that's when the truck started going to southbound lane. That's when it happened." *Examination Before Trial of Samir Ramic*, pp. 17-18. Ramic testified that after impact with the second vehicle the truck ended up turned around almost 180 degrees, the trailer was turned around approximately 270 degrees, and that the "...machine catapult off the trailer and went to a rest." *Examination Before Trial of Samir Ramic*, pp. 12, 21, 13. Ramic testified that both vehicles that were hit by the truck were impacted while within the southbound lane of Route 209. *Examination Before Trial of Samir Ramic*, pp. 17, 18-19. Ramic did not think the truck was driving over the speed limit and testified that the T-550 Bobcat was tied to the trailer in some manner, "...I could see that something was tied...the machine was tied." *Examination Before Trial of Samir Ramic*, pp. 26, 31.

Justin Whritenour, a New York State Trooper, was deposed on July 21, 2023, as a non-party witness to the events of April 25, 2022.

Trooper Whritenour testified that he responded to the accident of April 25, 2022, in a capacity as a New York State Trooper. *Examination Before Trial of Justin Whritenour*, p. 6. He identified the accident site as being on Route 209 near its intersection with Old King's Highway. *Examination Before Trial of Justin Whritenour*, p. 10. At the accident scene he observed that the Plaintiff's car was found in the southbound lane, and that he discovered a divot in the southbound lane that indicated where the Defendant's vehicle impacted with the Plaintiff's vehicle. *Examination Before Trial of Justin Whritenour*, pp. 14,16. Trooper Whritenour issued three tickets to the Defendant, charging him with failing to have the equipment on his trailer properly secured (Vehicle and Traffic Law § 375 [29-a]), unsafe lane change (Vehicle and Traffic Law § 1128-a), and driving at unreasonable speed. Vehicle and Traffic Law § 1180 (a). *Examination Before Trial of Justin Whritenour*, p. 12. Trooper Whritenour testified that he believed that if the defendant "...wasn't operating in excessive speed he wouldn't have lost control of the vehicle," and that the equipment he was transporting on the trailer was not properly secured. *Examination Before Trial of Justin Whritenour*, p. 20, 21.

As summary judgment is the "procedural equivalent of a trial" (Andre v. Pomeroy, 35 N.Y.2d 361, 362 [1974], and a "drastic remedy and should not be granted where there is any doubt as to the existence of a triable issue" (Rotuba Extruders, Inc. v. Ceppos, 46 N.Y.2d 223, 231 [1978] *citations omitted*), courts are charged to proceed circumspectly in determining a motion for summary judgment, and are bound in the course of making that determination by clearly defined procedural rules. Thus, in considering a motion for summary judgment "(t)he function of the court . . . is issue finding, rather than issue determination." White-Barnes v. New York State Dept. of Corr. & Cmty. Supervision, 214 A.D.3d 1230, 1231 (3rd Dept. 2023), *citations omitted*. Further, "the court should accept as true the evidence submitted by the

opposing party” (O’Sullivan v. New York Presbyterian Hosp., 217 A.D.2d 98, 101 [1st Dept. 1995]), “and grant (them) every favorable inference.” Weller v. College of the Senecas, 217 A.D.2d 280, 284 (4th Dept. 1995); see, Forrest v. Jewish Guild for the Blind, 3 N.Y.3d 295, 315 (2004). Finally, the party moving for summary judgment has the burden of making “...a prima facie showing of entitlement to judgment as a matter of law, (by) tendering sufficient evidence...in support thereof.” Winegrad v. New York University Medical Center, 64 N.Y.2d 851, 853 (1985), *citing*; Zuckerman v. City of New York, 49 N.Y.2d 557, 562 (1980); Sillman v. Twentieth Century-Fox Film Corp., 3 N.Y.2d 395, 404 (1957).

Pursuant to CPLR 3212 (e), “...summary judgment may be granted as to one or more causes of action, or part thereof, in favor of any one or more parties, to the extent warranted, on such terms as may be just.” CPLR 3212 (e).

The Plaintiff has established her prima facie entitlement to judgment relative to the issue of liability by demonstrating that the Defendant was negligent as a matter of law by striking her vehicle after “(c)rossing a double yellow line into the opposing lane of traffic, in violation of Vehicle and Traffic Law 1126 (a),” (Browne v. Logan Bus Co., Inc., 156 A.D.3d 856, 857, [2nd Dept. 2017], internal quotation marks and citations omitted; see, Barbaruolo v. DiFede, 73 A.D.3d 957, 957 [2nd Dept. 2010]; Sullivan v. Mandato, 58 A.D.3d 714, 715 [2nd Dept. 2009]), and that the Defendant’s act of crossing over the double yellow line “and entering the opposite lane of traffic in which the...plaintiff’s vehicle had been traffic, was a proximate cause of ...this multivehicle accident.” Gute v. Grease Kleeners, Inc., 170 A.D.3d 676, 677 (2nd Dept. 2019), citations omitted.

Moreover, the submissions by the Plaintiff also demonstrate that her actions on April 25, 2022, were not such to support an argument that she was comparatively negligent in any respect.

Indeed, “(a) driver in (her) proper lane of travel is not required to anticipate that a car going in the opposite direction will cross over into that lane.” Laney v. County of Courtland, 285 A.D.3d 885, 886 (3rd Dept. 2001), internal quotation marks and citations omitted. Moreover, as set forth in her deposition testimony, the Plaintiff anticipated the Defendant entering her lane of traffic and took evasive action to the extent she was able under the circumstances.

Inasmuch as the Plaintiff has met her initial burden by demonstrating, prima facie, her “cause of action...sufficiently to warrant the court as a matter of law in directing judgment,” (Friends of Animals, Inc. v. Associated Fur Mfrs., Inc., 46 N.Y.2d 1065, 1067 [1979]), “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.” Alvarez v. Prospect Hosp., 68 N.Y.2d 320, 324 (1986).

Upon review, it is apparent that the Defendant has failed to meet his burden in opposition to the Plaintiff’s motion. In this regard, the Defendant asserts that on the day in question he hit a bump in in the road and “...the unique circumstances of the presence of the bump and that he was operating a pickup truck towing a trailer that was carrying a skid steer and grapple bucket, are what combined to cause the loss of control.” *Memorandum of Law in Opposition to Plaintiff’s Motion for Summary Judgment*, by Brian D. Casey, Esq., p. 4. Furthermore, the Defendant asserts that the fact that he had traveled that area of Route 209 without incident in the past caused him to “...reasonably (believe), based on his prior use of the road...that he could safely travel the road on the date of the accident while adhering to the speed limit. A jury could find, therefore, that it was not foreseeable that carrying a skid steer and grapple bucket would produce a loss of control, given that such an incident had not previously occurred when the

defendant had travelled the same road under similar circumstances.” *Memorandum of Law in Opposition to Plaintiff’s Motion for Summary Judgment*,” by Brian D. Casey, Esq. p. 5.

While the act of a given driver entering an opposing lane of traffic is not negligent if “justified by an emergency not of the driver’s own making,” (Barbaruolo v. DiFede, id), the Defendant has not demonstrated that the situation he faced on April 25, 2022, was not of his own making. The Defendant acknowledged during his deposition testimony that he lost control of his vehicle after hitting a bump in the road and when the equipment he himself had loaded onto the trailer shifted; and he had insufficient time to regain control of his vehicle. While the Court is obligated to resolve all inferences in the Defendant’s favor in the context of this motion (Weller v. College of the Senecas, id), the evidence presented does not suggest an inference that an emergency outside of the Defendant’s own making justified his entry into the Plaintiff’s line of traffic. While the act of hitting a bump in the road is arguably not of the Defendant’s own making, the Defendant in his deposition acknowledged that was not the only factor that caused him to lose control of the vehicle. The other factors, principally the manner in which the equipment was secured on the trailer, and the speed at which he was proceeding under the circumstances, were indisputably of the Defendant’s own making.

Based on the aforesaid, the Plaintiffs motion for an Order pursuant to CPLR 3212e granting summary judgment on the issue of liability in favor of the Plaintiff as against the Defendant, Anthony D. Hilmi, is **Granted**.

This constitutes the Decision and Order of the Court, the original of which is being uploaded to NYSEF for electronic entry and filing by the Ulster County Clerk. Upon such entry, counsel for the Plaintiff shall promptly serve notice of entry on all other parties entitled to such notice and is not relieved from the applicable provisions of CPLR 2220 and 202.5b(h)(2) of the

Uniform Rules of Supreme and County Courts insofar as they relate to service and notice of entry of the filed document upon all other parties to the proceeding, whether accomplished by mailing or electronic means.

SO ORDERED AND AJUDGED.

ENTER

Dated: March 16, 2024.

Kingston, New York.



HON. SHARON GRAFF

Supreme Court Justice

Papers Considered:

1. "Notice of Motion" of Plaintiff dated November 21, 2023.
2. "Affidavit in Support" by John A. DeGasperis, Esq., dated November 1, 2023, together with annexed Exhibits A-I.
3. "Statement of Material Facts" by John A. DeGasperis, Esq., dated November 1, 2023.
4. "Memorandum of Law" by John A. DeGasperis, Esq., dated November 1, 2023.
5. "Attorney Affirmation in Opposition to Plaintiff's Motion for Summary Judgment" by Brian D. Casey, Esq., dated December 21, 2023.
6. "Affidavit of Defendant Hilmi in Opposition to Plaintiff's Motion for Summary Judgment," by Defendant dated December 21, 2023, together with annexed Exhibit A.
7. "Memorandum of Law in Opposition to Plaintiff's Motion for Summary Judgment," by Brian D. Casey, Esq., dated December 21, 2023.
8. "Defendant's Response to Plaintiff's Statement of Material Facts," by Brian D. Casey, Esq., dated December 21, 2023.