

Riley v County of Nassau
2024 NY Slip Op 35705(U)
April 4, 2024
Supreme Court, Nassau County
Docket Number: Index No. 610031/2019
Judge: Francis Ricigliano
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SUPREME COURT - STATE OF NEW YORK
COUNTY OF NASSAU

Present: HON. FRANCIS RICIGLIANO
Supreme Court Justice

X

SANDY RILEY,

Plaintiff,

-against-

COUNTY OF NASSAU, NASSAU COUNTY POLICE
DEPARTMENT, CHRISTOPHER MURTHA, MARCO
HERRERA and LILLIANA V. HERRERA,

Defendants;

X

DECISION and ORDER

PART 26

INDEX NO.: 610031/2019

Motion Seq. 1, 2

The following papers were read on this motion.

NYSCEF DOCS

Notice of Motion, Affirmation, Exhibits, etc. 32-43, 45-57, 64

Opposition to Motion 60, 69, 58;

Reply 71, 73.

By Notice of Motion, Motion Sequence #1, plaintiff SANDY RILEY moves for (a) summary judgment on the issue of liability against defendants COUNTY OF NASSAU, NASSAU COUNTY POLICE DEPARTMENT and CHRISTOPHER MURTHA pursuant to CPLR 3212.

By Notice of Motion, Motion Sequence #2, defendants MARCO HERRERA and LILLIANA V. HERRERA move for (a) summary judgment on the issue of liability pursuant to CPLR 3212.

This action arises out of a motor vehicle accident that occurred on August 30, 2018, on Hempstead Turnpike at or near its intersection with Jerusalem Avenue, County of Nassau. Plaintiff SANDY RILEY was sitting in the front right passenger seat of a vehicle owned by defendant LILLIANA V. HERRERA and operated by defendant MARCO HERRERA. Movant asserts they were getting ready to make a right-hand turn into a parking lot when their vehicle was struck in the rear by the front of the vehicle operated by defendant CHRISTOPHER MURTHA, an on duty police officer.

In support of Motion Sequence #1, plaintiff submits her own deposition testimony wherein she testified she was a passenger in defendant MARCO HERREA'S vehicle, and that they were stopped and getting ready to make a right hand turn when they were struck in the rear by defendant MURTHA'S vehicle. Based upon the same, plaintiff argues she has demonstrated prima facie entitlement to summary judgment on liability as she was a passenger traveling in a car that was rear-ended, and that the burden shifts to defendants to demonstrate a non-negligent explanation for the accident. Plaintiff also points to her testimony that defendant MURTHA did not have any flashing lights or sirens on at the time of the accident.

In opposition to plaintiff's motion, defendants COUNTY OF NASSAU, NASSAU COUNTY POLICE DEPARTMENT and CHRISTOPHER MURTHA argue that plaintiff's motion should be denied because there are questions of fact, that defendant MURTHA was engaged in privileged conduct under Vehicle and Traffic Law §1104 at the time of the accident as he was in the process of responding to a domestic disturbance call with his emergency lights and sirens activated, and that plaintiff has failed to demonstrate he acted with reckless disregard to the safety and welfare of others.

In reply on the motion, plaintiff argues that the defendants have not come forth with a nonnegligent explanation for the accident, and that Vehicle and Traffic Law §1104 does not apply to the uncontroverted facts of this case, as it only applies when a driver of an authorized emergency vehicle engages in the specific conduct exempted from the rules of the road by Vehicle and Traffic Law §1104.

In support of Motion Sequence #2, defendants MARCO HERRERA and LILLIANA V. HERRERA argue that liability cannot be imposed upon them as their vehicle was struck in the rear by codefendant MURTHA'S vehicle when making a right turn to into the entrance of a parking lot by codefendant MURTHA'S vehicle. In support of that argument, defendants point to defendant MARCO HERRERA'S deposition testimony and co-defendant MURTHA'S deposition testimony. Thus, pursuant to Vehicle and Traffic Law §1129 (a), they argue they have come forward with evidentiary facts sufficient to establish their entitlement to judgment based on VTL 1129 (a).

In opposition to defendants MARCO HERRERA and LILLIANA V. HERRERA'S motion for summary judgment, defendants COUNTY OF NASSAU, NASSAU COUNTY POLICE DEPARTMENT and CHRISTOPHER MURTHA again argue that defendant CHRISTOPHER MURTHA was engaged in privileged conduct afforded under Vehicle and Traffic Law §1104 at the time of the accident and co-defendants MARCO HERRERA and LILLIANA V. HERRERA have failed to demonstrate that defendant MURTHA acted with reckless disregard to the safety and welfare of others. Additionally, defendants further argue that in order for the COUNTY defendants to be found liable, it must be determined that defendant MURTHA'S actions exceeded the level of vehicle operation which would be considered reckless.

In reply on the motion, defendants MARCO HERRERA and LILLIANA V. HERRERA argue that co-defendants' singular argument that defendant MURTHA was engaged in privileged conduct afforded under Vehicle and Traffic Law §1104 is misplaced and does not change the undisputed fact that he rear ended co-defendants HERRERAS' vehicle, which was making a right turn into the entrance of a parking lot. Based upon the same, they argue there is no evidence that they were negligent, or could have done anything to avoid the accident, and that the complaint should therefore be dismissed as to them.

The motions are decided as follows:

VTL 1104 (a) provides "[t]he driver of an authorized vehicle may: (1) Stop, stand or park irrespective of the provisions of this title; (2) Proceed past a steady red signal, a flashing red signal or a stop sign, but only after slowing down as may be necessary for safe operation; (3) Exceed the maximum speed limits so long as he does not endanger life or property; and (4) Disregard regulations governing directions of movement or turning in specified directions." Thus, The Court of Appeals held that "the reckless disregard standard of care in Vehicle and Traffic Law §1104 (e) only applies when a driver of an authorized emergency vehicle involved in an emergency operations engages in the specific conduct exempted from the rules of the road by Vehicle and Traffic Law §1104 (b) and any other injury-causing conduct of such a driver is governed by the principles of ordinary negligence." *Kabir v. City of Monroe*, 16 N.Y.3d 217, 945 N.E.2d 461 (2011). In *Kabir*, the defendant was on routine patrol in a marked police vehicle when he received a radio dispatch, he did not activate his lights or sirens on his vehicle and was traveling at a speed of 25-30 miles per hour when he rear ended the vehicle in front of him. In that case, the Court held that defendant's injury causing conduct was not exempt under this

provision, that the applicable standard for determining liability was the standard of ordinary negligence, and that plaintiff's motion for summary judgment on liability should be granted.

Here, the defendant CHRISTOPHER MURTHA testified he was operating his Nassau County Police Vehicle when he received a radio call about a domestic disturbance and driving five to ten miles per hour when he rear-ended defendants HERRERAS' and plaintiff's vehicle. Although defendant MURTHA was operating an emergency vehicle and responding to an emergency situation at the time of the instant action, his conduct was not the conduct that falls within Vehicle and Traffic Law §1104. Thus, the applicable standard for determining liability for both motions is the standard of ordinary negligence.

For a summary judgment motion to be granted, the movant must demonstrate a prima facie entitlement to judgment as a matter of law. *Zuckerman v. New York*, 49 NY2d 557 (1980). Once a movant has shown a prima facie right to summary judgment, the burden shifts to the opposing party to show that a factual dispute exists requiring a trial, and such facts presented by the opposing party must be presented by evidentiary proof in admissible form. *Id.*

Here, the plaintiff has established her prima facie entitlement to judgment as a matter of law on the issue of liability by submission of her own deposition testimony demonstrating the vehicle she was a passenger in was struck in the rear. *Rodriguez v. Farrell*, 115 A.D.3d 929, (2d Dept 2014); *see also Mulhern v. Gregory*, 161 A.D.3d 881, (2d Dept 2018). Additionally, defendants MARCO HERRERA and LILLIANA V. HERRERA established their prima facie entitlement to judgment as a matter of law on the issue of liability by submission of evidence that their vehicle was struck in the rear while they were slowing down to make a right turn (*see Vehicle and Traffic Law §1129 (a); Quinones v. Grace Indus., LLC*, 219 A.D.3d 765, (2d Dept 2023)

As such, for both motions, the burden shifted to the defendants to rebut the inference of negligence by providing a non-negligent explanation for the collision. See *Staton v. Ilic*, 69 A.D.3d 606, (2d Dept 2010), *Sokolowska v. Song*, 123 A.D.3d 1004, (2d Dept 2014). Defendants COUNTY OF NASSAU, NASSAU COUNTY POLICE DEPARTMENT and CHRISTOPHER MURTHA in turn, have failed to submit evidence offering a non-negligent explanation for the accident. *Kabir v. City of Monroe*, 16 N.Y.3d 217, (2011).

Accordingly, it is hereby:

ORDERED, that plaintiff's motion for an Order granting summary judgment on the issue of liability against defendants COUNTY OF NASSAU, NASSAU COUNTY POLICE DEPARTMENT and CHRISTOPHER MURTHA pursuant to CPLR 3212 is GRANTED; and it is further

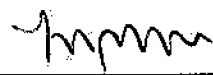
ORDERED, that defendants' HERRERA'S motion for an Order granting summary judgment on the issue of liability pursuant to CPLR 3212, and dismissing plaintiff's Complaint and all cross claims against defendants MARCO HERRERA and LILLIAN V. HERRERA is GRANTED; and it is further

ORDERED, that all other issues are reserved for trial.

This constitutes the Decision and Order of this Court. Any and all applications not specifically addressed herein are denied.

Dated: April 4, 2024

ENTER:


Hon. Francis Ricigliano,
Supreme Court Justice

ENTERED

Apr 11 2024

NASSAU COUNTY
COUNTY CLERK'S OFFICE