Andreone v Johanne
2014 NY Slip Op 32064(U)
January 31, 2014
Supreme Court, Richmond County
Docket Number: 101011/2011
Judge: Thomas P. Aliotta
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

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ANTHONY ANDREONE, PART C-2

Plaintiff,

Present:

- *against* - Hon. Thomas P. Aliotta

DECISION & ORDER

JEROME JOHANNE, WILLIAM LOUIS and THE CITY OF NEW YORK,

Index No. 101011/2011
Motion No. 1563 - 004

Defendants.

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The following papers numbered 1 to 4 were fully submitted on the 4th day June, 2014.

	Papers Numbered
Notice of Motion for Summary Judgment Dismissing the Complaint by Defendants Johanne Jerome, s/h/a Jerome Johanne, and William Louis, with Supporting Papers (dated April 28, 2014)..	1
Plaintiff's Affirmation and Memorandum of Law in Opposition to Motion for Summary Judgment (dated May 27, 2014)..	2, 3
Defendants' Reply Affirmation (dated June 3, 2014)..	4

Upon the foregoing papers, the motion of defendants Johanne Jerome, s/h/a Jerome Johanne, and William Louis for summary judgment dismissing the complaint and all cross claims as against them is granted.

In this personal injury action, plaintiff Anthony Andreone alleges that on September 26, 2010, while acting within the scope of his duties as a New York City police officer, he slid and fell on "loose gravel" on the shoulder of the West Shore Expressway in Staten Island as he stepped

out of his police vehicle to issue a summons to defendant William Louis for operating a vehicle (owned by defendant Johanne Jerome) at an excessive rate of speed in violation of Vehicle and Traffic Law §1180 (a), (b) and §1212. The summons was subsequently dismissed. In the complaint, plaintiff asserts a cause of action (the first) against these defendants for common-law negligence and a second cause of action against these defendants under General Municipal Law §205-e. The third cause of action as against The City of New York has been settled.

In moving for summary judgment, defendants Johanne Jerome and William Louis (hereinafter, "defendants") maintain that (1) there is no evidence that plaintiff's injuries were caused by the breach of any duty owed to the plaintiff/police officer, and (2) the defendant/driver's alleged failure to comply with certain sections of the Vehicle and Traffic Law as set forth in the complaint and bill of particulars in no way contributed "directly or indirectly" to plaintiff's injury, which occurred after the former had pulled-over onto the shoulder of the roadway and both vehicles were "stopped". With regard to the allegations of violations of Vehicle and Traffic Law §§1212 (reckless driving), 1192 (operating a vehicle while under the influence of alcohol or drugs) and 375 (improper equipment), defendants correctly point out that plaintiff's deposition testimony is wholly unsupportive of these claims.

Turning, first, to the cause of action for common-law negligence, it is the Court's opinion that under no interpretation of the facts did the defendant/driver's operation of the codefendant's vehicle at the time in question proximately cause plaintiff's injury (*see* Sheehan v City of New York, 40 NY2d 496). Stated otherwise, the alleged act of, *e.g.*, driving at an excessive rate of speed in violation of Vehicle and Traffic Law §§1180(a) and (b) "merely furnished the condition

or occasion for the occurrence of the event rather than [being] one of its causes" (Sheehan v City of New York, 40 NY2d at 503; *see* Jablonski v Jakaitis, 85 AD3d 969, 970; Cuccio v Ciotkosz, 43 AD3d 850, 851). In opposition to defendants' prima facie showing, plaintiff has failed to raise a triable issue of fact (*see* Daley v Pelzer, 100 AD3d 949, 950- 951).

As for the second cause of action, "[a] valid claim under [General Municipal Law §205-e] requires the plaintiff to identify the statute or ordinance which the defendant violated, describe the manner in which the police officer was injured, and set forth facts creating the inference that the defendant's actions directly or indirectly caused the harm to the officer" (Aldrich v Sampier, 2 AD3d 1101, 1103; *see* Giuffrida v Citibank Corp., 100 NY2d 72, 79). Moreover, while it is well settled that "[p]roving that the defendant's [statutory] violation was an 'indirect cause' [of, *e.g.*, an officer's injury] does not require the same amount of proof as [would be required to demonstrate] proximate cause in common-law negligence, [it nevertheless] requires [that] a practical or reasonable connection between the statutory or regulatory violation and the injury" be shown (Aldrich v Sampier, 2 AD3d at 1103; *see* Giuffrida v Citibank Corp., 100 NY2d at 81).

Consonant with the foregoing, in the case at bar, the moving defendants have established their prima facie entitlement to judgment as a matter of law by demonstrating the lack of any "practical or reasonable" connection between the alleged statutory violation and plaintiff's injuries since it cannot be inferred from the undisputed facts that the defendant/driver's alleged speeding directly or indirectly caused the police officer to slip-and-fall on the "loose gravel" on the shoulder of the subject roadway, for which he was not responsible (*see* Kenavan v City of New York,

[* 4]

267 AD2d at 355-356; *cf*. Alcalde v Riley, 73 AD3d 1101, 1103; Aldrich v Sampier, 2 AD3d at 1103).

In opposition to defendants' prima facie showing, plaintiff has failed to raise a triable issue of fact as to whether there was a practical or reasonable connection between the alleged violations of the Vehicle and Traffic Law and the injuries alleged (*see* Driscoll v Tower Assoc., 16 AD3d 311, 313).

Accordingly, it is

ORDERED, that the motion of defendants of Johanne Jerome, s/h/a Jerome Johanne, and William Louis for summary judgment is granted; and it further

ORDERED, that the complaint and any cross claims against these defendants are hereby dismissed; and it is further

ORDERED, that the Clerk enter judgment accordingly.

E N T E R,

Dated: July 31, 2014

/s/ ____________________
Hon. Thomas P. Aliotta
J.S.C.