Hotchkiss v Strojny
2017 NY Slip Op 33180(U)
December 4, 2017
Supreme Court, Broome County
Docket Number: 2017-0152
Judge: Jeffrey A. Tait

At a Term of the Supreme Court of the State of New York, held in and for the Sixth Judicial District, at the Broome County Courthouse, in the City of Binghamton, New York on the 4th day of August 2017.

PRESENT: HONORABLE JEFFREY A. TAIT
JUSTICE PRESIDING

STATE OF NEW YORK
SUPREME COURT : COUNTY OF BROOME

WILLIAM HOTCHKISS AND KELLY HOTCHKISS,

Plaintiffs,

vs.

ALISSA STROJNY AND BRUCE STROJNY,

Defendants.

DECISION AND ORDER

Index No. 2017-0152
RJI No. 2017-0451-C

APPEARANCES:

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HON. JEFFREY A. TAIT, J.S.C.

This personal injury action is before the Court on the motion of the plaintiffs William and Kelly Hotchkiss for an Order granting them partial summary judgment against the defendants Alissa and Bruce Strojny on the issue of liability and scheduling an assessment of damages pursuant to CPLR § 3212. The defendants oppose the motion, asserting that discovery is not complete and thus the motion is premature.

Arguments of the Parties

On this motion, the plaintiffs submit their individual affidavits and the affirmation of their attorney, with exhibits. The plaintiffs assert that on May 23, 2016 the car driven by Mr. Hotchkiss, with Ms. Hotchkiss as the passenger, was stopped at a red traffic light for 5-10 seconds when it was struck from behind by a car driven by Ms. Strojny and owned by Mr. Strojny. The plaintiffs assert they were both injured as a result of the accident. Based on this and applicable case law, they argue they are entitled to partial summary judgment against the defendants on the issue of liability and request that the Court set a date for an assessment of damages pursuant to CPLR § 3212.

In opposition, the defendants submit the affirmation of their attorney, who asserts that discovery is not complete and thus the motion is premature and should be denied. He points out that the defendants' Verified Answer contains an affirmative defense premised on the culpable conduct of the plaintiffs and argues that the defendants are entitled to conduct discovery as to that issue. He states that even if the Court were to grant the plaintiffs' motion on the issue of negligence, they would not be entitled to an assessment of damages at this point.

Law

Summary judgment is a drastic remedy which should be granted only when it is clear that there is no material issue of fact for resolution by a jury (*see Sillman v. Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404 [1957]; *Redcross v. Aetna Cas. & Sur. Co.*, 260 AD2d 908, 913 [3d Dept 1999]). It is well established that the function of the court on a motion for summary judgment is issue finding, not issue determination, and if a genuine issue of fact is found, summary judgment must be denied (*see Sillman*, 3 NY2d at 404; *see also Salvador v. Uncle Sam's Auctions & Realty, Inc.*, 307 AD2d 609, 611 [3d Dept 2003]; *Schaufler v. Mengel, Metzger, Barr & Co., LLP*, 296 AD2d 742, 743 [3d Dept 2002]; *Encotech, Inc. v. Cotton Fact, Inc.*, 280 AD2d 748, 749 [3d Dept 2001]). The moving party on such a motion bears the initial burden to establish a prima facie case of entitlement to judgment as a matter of law (*see Encotech*, 280 AD2d at 749). Once this initial burden is met, the opposing party must come forward with proof in admissible form which establishes the existence of a triable issue of fact (*see id.* at 749-750).

"As a general rule, a rear-end collision with a stopped vehicle creates a prima facie case of negligence against the operator of the following vehicle, imposing a duty of explanation" (*Pampris v. Egnasher*, 20 AD3d 746 [3d Dept 2005] [internal quotation marks and citations omitted]; *Woods v. Johnson*, 44 AD3d 1201, 1202 [3d Dept 2007]). Upon such a showing by the plaintiff, the defendant operator must "rebut the inference of negligence by coming forward with evidence of some other reasonable cause" or the plaintiff will be entitled to judgment on that issue as a matter of law (*see Tripp v. GELCO Corp.*, 260 AD2d 925, 926 [3d Dept 1999]).

Analysis

Through their affidavits, the plaintiffs have established that Ms. Strojny rear-ended their vehicle while it was stopped at a stop light. This establishes a prima facie case of negligence, shifting the burden to the defendants to provide a non-negligent explanation for the accident or otherwise raise an issue of fact in that regard.

In opposition, the defendants assert that further discovery is needed to determine whether the plaintiffs engaged in any culpable conduct with respect to the accident, but they do not suggest or set forth what that conduct might be. Further, the defendants did not submit an affidavit from Ms. Strojny or anyone else with personal knowledge of the accident which sets forth their version of events or calls into question the plaintiffs' version of events.

"A party opposing summary judgment on the basis that further discovery is necessary 'must demonstrate how further discovery might reveal material facts in the movant's exclusive knowledge; [and] mere speculation will be insufficient'" (*Pampris*, 20 AD3d at 746-747, citing *Scofield v. Trustees of Union Coll.*, 267 AD2d 651, 652 [3d Dept 1999]). As in *Pampris*, the defendants "failed to proffer any facts within plaintiffs' exclusive knowledge which might provide an alternate explanation for the accident, [and thus] plaintiffs are entitled to summary judgment on the issue of fault for any injury arising from the accident" (*id.*).

In light of the foregoing, the plaintiffs' motion for partial summary judgment is granted on the issue of negligence. The issues of proximate cause, serious injury, and damages remain open and will be resolved at trial following completion of discovery and the filing of a trial note of issue.

This Decision shall also constitute the Order of the Court pursuant to rule 202.8(g) of

the Uniform Rules for the New York State Trial Courts and it is deemed entered as of the date below. To commence the statutory time period for appeals as of right (CPLR 5513[a]), a copy of this Decision and Order, together with notice of entry, must be served upon all parties.

Dated: December 4, 2017
Binghamton, New York

HON. JEFFREY A. TAIT
Supreme Court Justice

Most or all of the documents upon which this Decision and Order is based were received by Chambers in a scanned electronic format from the Broome County Clerk's Office and the originals remain filed with the Broome County Clerk. Therefore, except as noted below, now documents have been forwarded to the Broome County Clerk with this Decision and Order.

Documents forwarded to the Broome County Clerk with this Decision and Order:

None