

Macquaye v Giordano
2018 NY Slip Op 34229(U)
August 30, 2018
Supreme Court, Westchester County
Docket Number: Index No. 59206/17
Judge: David F. Everett
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To commence the 30-day statutory time period for appeals as of right under CPLR 5513 (a), you are advised to serve a copy of this order; with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
WINIFRED MACQUAYE,

Plaintiff,

-against-

Index No. 59206/17
Motion Sequence No. 001
Decision and Order

CHRISTINA GIORDANO and MARK A. GIORDANO,

Defendants.

-----X
EVERETT, J.

The following papers were read on the motion:

- Notice of Motion/Affirmation in Supp/Exhibits A-E (docs 22-28)
- Affirmation in Opp (doc 32)

Plaintiff Winifred Macquaye (Macquaye) moves for an order, pursuant to CPLR 3212, granting summary judgment as to liability. Upon the foregoing papers, the opposed motion is granted.

The following facts are taken from the pleadings, motion papers, affidavits, documentary evidence and the record, and are undisputed unless otherwise indicated.

Macquaye commenced the instant action to recover damages for injuries she allegedly sustained when the motor vehicle she owned together with her husband, and was operating on the morning of March 9, 2017, was struck on the driver's side by a motor vehicle owned by defendant Mark A. Giordano and operated by defendant Christina Giordano (Giordano). The accident occurred at approximately 7:30 a.m., on Route 9A, which is a four lane roadway with two lanes running in each direction. Macquaye was driving southbound in the right hand lane of Route 9A, and was near the intersection of Route 9A and Pleasantville Road in Briarcliff Manor,

New York, when the accident occurred. Issue was joined by service of defendants' joint answer, with affirmative defenses, on or about July 28, 2018. The parties conducted discovery pursuant to the preliminary conference and follow-up compliance conferences, and the note of issue and certificate of readiness were filed on April 6, 2018. Currently before the Court is plaintiff's timely motion in which she asserts that the accident was caused solely as a result of Giordano's negligence and violation of Vehicle and Traffic Law §§ 1128 (a) and 1129 (a).

As the proponent of the motion for summary judgment, Macquaye must tender evidentiary proof in admissible form sufficient to warrant the Court to direct judgment in her favor as a matter of law. Upon making this showing the burden shifts to the parties opposing the motion to produce "evidentiary proof in admissible form sufficient to require a trial of material questions of fact on which [they rest their] claim or must demonstrate acceptable excuse for [their] failure to meet the requirement of tender in admissible form; mere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient." (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980] [internal quotation marks and citations omitted]; CPLR 3212 [b]).

In support of her motion, Macquaye submits, among other things, copies of the pleadings and the party deposition transcripts. According to Macquaye, she was operating her vehicle in slow moving morning traffic and was driving within the confines of the right lane. She testified that without any prior warning, she felt an impact to the front driver's side of her vehicle, and that the impact was so heavy that she lost control of her vehicle, which swerved off the road and into a tree (plaintiff tr at 18-24). Macquaye recalls that, while she was waiting for an ambulance to arrive, the driver of the offending vehicle, Giordano, came over to apologize (*id.* at 33-34).

During Giordano's deposition, she testified that, on the morning of the accident, she was driving southbound traffic in the left hand lane of route 9A, and that Macquaye's vehicle was in the right hand lane (Giordano tr at 22, 23, 25). When asked how the accident occurred, Giordano stated that, just prior to impact, her own vehicle was riding in both the left and right hand lanes, that she moved left to avoid hitting a car that had stopped directly in front of her, and that in doing so, the right passenger side of her vehicle came into contact with the left passenger side of Macquaye's vehicle (*id.* at 26-27). She acknowledges that she did not notice Macquaye's vehicle before hitting it and that she did not try to swerve her vehicle leftward to avoid contact with Macquaye's vehicle (*id.* at 24, 29-30).

For the following reasons, Macquaye's motion is granted.

Vehicle and Traffic Law § 1128 states, in pertinent part:

“[w]henver any roadway has been divided into two or more clearly marked lanes for traffic the following rules in addition to all others consistent herewith shall apply:

(a) A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety.”

Vehicle and Traffic Law § 1129 (a) states: “[t]he driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon and the condition of the highway.”

Here, Macquaye establishes entitlement to summary judgment on liability based on her testimony that Giordano's vehicle struck and/or sideswiped the left side of her vehicle when it suddenly tried to enter her lane of traffic, which is conceded by Giordano. Not only did Giordano have “a duty not to enter a lane of moving traffic until it was safe to do so” (*see Davis*

v Turner, 132 AD3d 603, 603 [1st Dept 2015]; Vehicle and Traffic Law § 1128 [a]), but her explanation for her action, that she did so to avoid hitting a stopped vehicle, demonstrates that, she was following the vehicle in front of her more closely than was “reasonable and prudent” under the prevailing traffic conditions (*see Robayo v Aghaabdul*, 109 AD3d 892, 893 [2d Dept 2013]; Vehicle and Traffic Law § 1129 [a]).

Defendants, who do not meaningfully oppose the motion, seek an opportunity to conduct discovery on the question of damages. However, it clear from the trial readiness stipulation executed by both parties and filed on March 19, 2018, that all previously ordered discovery has been completed or waived, and that the matter is ready for trial.

It appearing to the Court that plaintiff is entitled to judgment on liability, it is

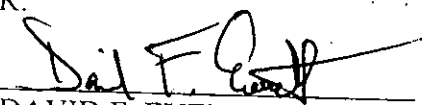
ORDERED that the motion for summary judgment is granted as to liability; and it is further

ORDERED that counsel shall appear at the Settlement Conference Part, courtroom 1600, of the Westchester County Courthouse, 111 Dr. Martin Luther King, Jr. Blvd., White Plains, New York, on Tuesday, October 9, 2018, to schedule a trial on damages.

This constitutes the decision and order of the Court.

Dated: White Plains, New York
August 30, 2018

ENTER:


HON. DAVID F. EVERETT, A.J.S.C.

Filed via NYSCEF

Steven Adam Rubin & Associates, PLLC

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