

Hargrove v Els

2018 NY Slip Op 34309(U)

September 24, 2018

Supreme Court, Suffolk County

Docket Number: Index No. 617226/2016E

Judge: William B. Rebolini

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Short Form Order

SUPREME COURT - STATE OF NEW YORK

I.A.S. PART 7 - SUFFOLK COUNTY

PRESENT:

WILLIAM B. REBOLINI
Justice

Davanisha D. Hargrove, Datasia N. Hargrove
and Malina Stevens,

Plaintiffs,

-against-

Daniel Els and Douglas M. Els,

Defendants.

Motion Sequence No.: 001; MG
Motion Date: 6/27/18
Submitted: 7/25/18

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Attorney for Plaintiffs:

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Attorney for Plaintiff

Datasia N. Hargrove (on Counterclaim):

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Attorney for Defendants:

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Clerk of the Court

Upon the **E-file document list numbered** 11 to 25 read on this application by plaintiff Datasia N. Hargrove for an order granting her summary judgment on liability pursuant to CPLR 3212; it is

ORDERED that the motion by plaintiff Datasia N. Hargrove for summary judgment in her favor on liability pursuant to CPLR 3212, is granted, without opposition.

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This is a personal injury action arising from a motor vehicle accident that occurred on September 25, 2015 at the intersection of Dogwood Road and Hackensack Road, Town of Brookhaven, State of New York. The action was commenced by the filing of a summons and complaint on October 26, 2016. Issue was joined on December 6, 2016 by the service of an answer with counterclaims. A reply was served on behalf of plaintiff Datasia N. Hargrove (“Hargrove”) on May 16, 2017. Plaintiff Hargrove served defendants with her verified bill of particulars dated January 4, 2017. The examinations before trial of the plaintiffs were held on October 27, 2017 and the defendants’ depositions were conducted on February 27, 2018. Plaintiff Hargrove now moves for summary judgment in her favor on liability pursuant to CPLR 3212. In support of her motion, Hargrove submits a copy of the pleadings, her verified bill of particulars, an uncertified copy of the police report, her deposition transcript, the unsigned deposition transcripts of plaintiffs Davanisha D. Hargrove and Malina Stevens (“Stevens”), and the unsigned deposition transcripts of defendants Douglas Els and Daniel Els. Defendants do not oppose the within motion.

Plaintiff Hargrove testified at her examination before trial on October 27, 2017 that the accident occurred at the intersection of Dogwood Road and Hackensack Road, that prior to the accident she was traveling westbound on Dogwood Road, which is a two-way road with one lane in either direction, when defendants’ vehicle struck her vehicle as she entered the intersection. Plaintiff Hargrove further testified that there is a stop sign controlling traffic on Hackensack Road but no traffic control devices for Dogwood Road. Plaintiff Hargrove further testified that she first observed defendants’ vehicle a “split second” prior to the impact. Plaintiff Davanisha Hargrove testified that she was a passenger in the vehicle being operated by plaintiff Hargrove. Davanisha Hargrove further testified that there were no traffic control devices for Dogwood Road, that she never saw defendants’ vehicle prior to impact, and she did not hear the sounds of any horns or screeching brakes. The testimony of plaintiff Stevens is in accord with the testimony of the other plaintiffs. Defendant Douglas Els testified that plaintiff Hargrove’s vehicle was traveling west on Dogwood Road and he was traveling south on Hackensack Road. Defendant Douglas Els further testified that there is a stop sign controlling traffic for vehicles on Hackensack Road at its intersection with Dogwood Road but that there are no traffic control devices for vehicles traveling on Dogwood Road at its intersection with Hackensack Road. Defendant Douglas Els testified that he never saw plaintiff Hargrove’s vehicle prior to impact. Defendant Douglas Els further testified that he could not recall if he was wearing his prescription contacts on the date of the accident and that he cannot see when he is not wearing them.

As to the admissibility of the unsigned deposition transcripts, the Second Department has ruled that transcripts that are certified by the stenographer yet unsigned by the deponent are admissible on a motion for summary judgment where their accuracy has not been challenged. Here, defendants do not oppose plaintiff Hargrove’s motion and the transcripts are thus properly before the court. Moreover, the deposition transcripts of the non-moving parties were sent to the deponents for review and they failed to sign and return same within 60 days. Under these circumstances, pursuant to CPLR 3116, the deposition transcripts are treated as though they were signed (*see David v. Sung Lee*, 106 AD3d 1044, 967 NYS2d 80 [2d Dept. 2013]). Accordingly, the respective transcripts of the non-moving parties are admissible herein (*see Thomas v City of New York*, 124

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AD3d 872, 2 NYS3d 578 [2d Dept 2015]). However, the Court finds that the uncertified MV-104 police accident report submitted by plaintiff Hargrove constitutes hearsay and is inadmissible (see CPLR 4518 [c]; *Nationwide General Insurance Co. v. Bates*, 130 AD3d 795, 14 NYS2d 84 [2d Dept. 2015]; *Stemucha v. Garrison*, 111 AD3d 1398, 1399, 975 NYS2d 518 [4th Dept. 2013]; see also *Lacagnino v. Gonzalez*, 306 AD2d 250, 760 NYS2d 533 [2d Dept. 2003]; *Hegy v. Collier*, 262 AD2d 606, 692 NYS2d 463 [2d Dept. 1999]).

Regarding the merits of plaintiff Hargrove's within application, she alleges that the negligence of defendant Douglas Els was the sole and proximate cause of the accident. Vehicle and Traffic Law §1172 (a) provides, in relevant part, that an operator of any vehicle approaching a stop sign shall stop "at the point nearest the intersecting roadway where the driver has a view of the approaching traffic on the intersecting roadway," and that the driver must comply with Vehicle and Traffic Law § 1142 before proceeding into the intersection. Further, Vehicle and Traffic Law §1142 (a) requires a driver of a motor vehicle approaching a stop sign to stop and yield the right of way to any vehicle that has entered the intersection or is approaching so closely as to constitute an immediate hazard (see *Willis v Finks*, 7 AD3d 519, 775 NYS2d 587 [2d Dept. 2004]; *Szczotka v Adler*, 291 AD2d 444, 737 NYS2d 121 [2d Dept. 2002]). A driver who fails to yield the right of way in violation of Vehicle and Traffic Law § 1142 (a) is negligent as a matter of law (see *Czarnecki v Corso*, 81 AD3d 774, 775, 916 NYS2d 828 [2d Dept. 2011], quoting *Thompson v Schmitt*, 74 AD3d 789, 789, 902 NYS2d 606); *Goemans v County of Suffolk*, 57 AD3d 478, 868 NYS2d 753 [2d Dept. 2008]; *Maliza v Puerto-Rican Transp. Corp.*, 50 AD3d 650, 854 NYS2d 763 [2d Dept. 2008]; *Exime v Williams*, 45 AD3d 633, 845 NYS2d 450 [2d Dept. 2007]). Moreover, "a driver is required to see what is there to be seen . . . and a driver who has the right of way is entitled to anticipate that the other motorist will obey the traffic law requiring him or her to yield" (*Duran v Simon*, 83 AD3d 654, 919 NYS2d 895 [2d Dept. 2011], citing *Laino v Lucchese*, 35 AD3d 672, 827 NYS2d 249 [2d Dept. 2006]).

Here, plaintiff Hargrove established prima facie her entitlement to summary judgment on the issue of liability, where the evidence shows that defendant Douglas Els, who had a stop sign, negligently drove into the intersection without yielding the right of way to plaintiff Hargrove and proceeded into the intersection without observing plaintiff Hargrove's vehicle (see *Fuertes v. City of New York*, 146 AD3d 936, 45 NYS3d 562 [2d Dept. 2017]; *Hatton v. Lara*, 142 AD3d 1047, 37 NYS3d 604 [2d Dept. 2016]; *Briggs v. Russo*, 98 AD3d 547, 949 NYS2d 719 [2d Dept. 2012]; *Batts v Page*, 51 AD3d 833, 858 NYS2d 748 [2d Dept. 2008]; *Exime v. Williams*, 45 AD3d 633, 845 NYS2d 450 [2d Dept. 2007]; *Hull v. Spagnoli*, 44 AD3d 1007, 844 NYS2d 416 [2d Dept. 2007]; *McCain v. Larosa*, 41 AD3d 792, 838 NYS2d 663 [2d Dept. 2007]; *Morgan v. Hachmann*, 9 AD3d 400, 780 NYS2d 33 [2d Dept. 2004]; *McKeaveney v Reiffert*, 268 AD2d 411, 702 NYS2d 318 [2d Dept. 2000]). The question of whether the defendant driver stopped at the stop sign is not dispositive, as the evidence firmly establishes that the defendant driver failed to yield the right of way even if he did stop (*Fuentes v. City of New York*, 146 AD3d 936, 45 NYS3d 562 [2d Dept. 2017]). Thus, the testimony and evidence presented on plaintiff Hargrove's motion for summary judgment establishes that defendant Douglas Els was not operating the vehicle with due care and caution, as required of a prudent person under similar circumstances and conditions (*Maida v.*

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Veleva, 124 AD2d 561, 507 NYS2d 706 [2d Dept. 1986] *aff'd as modified* 69 NY2d 1026, 517 NYS2d 912 [1987]). Being that defendants have not opposed this motion, the facts alleged in the moving papers may be deemed admitted by the Court (*Kuehne & Nagel, Inc. v. Baiden*, 36 NY2d 539, 369 NYS2d 667 [1975]; *Madeline D'Anthony Enter., Inc. v. Sokolowsky*, 101 AD3d 606, 957 NYS2d 88 [1st Dept. 2012]; *Argent Mtge. Co., LLC v. Mentasana*, 79 AD3d 1079, 915 NYS2d 591 [2d Dept. 2010]). Based upon the foregoing, defendant Douglas Els' negligence was the sole proximate cause of the accident.

Accordingly, plaintiff Hargrove's motion for summary judgment in her favor on the issue of liability is granted.

Dated: 9/24/2018


HON. WILLIAM B. REBOLINI, J.S.C.

_____ FINAL DISPOSITION ___ X ___ NON-FINAL DISPOSITION