SUPREME COURT: STATE OF NEW YORK
COUNTY OF ROCKLAND
HON. ROBERT M. BERLINER, J.S.C.

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BRIAN GARCIA,

Plaintiff,

-against-

LAWRENCE A. WEISSMAN, VILLAGE OF SPRING VALLEY, SPRING VALLEY POLICE DEPARTMENT and RONELL CHARLES, as Police Officer of Spring Valley Police Department,

Defendants.

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RONELL CHARLES,

Plaintiff,

-against-

LAWRENCE A. WEISSMAN,

Defendant.

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BRIAN BULLUCK,

Plaintiff,

-against-

LAWRENCE A. WEISSMAN and "JOHN DOE",

Defendants.

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To commence the statutory time period for appeals as of right (CPLR 5513 [a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

DECISION AND ORDER

ACTION 1

Index No. 033853/2015

Motion Sequence #3

ACTION 2

Index No. 034177/2015

ACTION 3

Index No. 033742/2017

The following papers, numbered 1 to 4, were read in connection with the motion submitted by Ronell Charles, as Plaintiff in Action 2, seeking summary judgment pursuant to CPLR §3212 against Defendant Lawrence A. Weissmann (hereinafter "Weissmann"):

Notice of Motion/Affirmation in Support/Exhibits(A-K).....1-2
Affirmation in Opposition(Conklin)/Exhibits(A-D).....3
Affirmation in Reply/Exhibits(A-G).....4

Upon the foregoing papers, it is ORDERED that this motion is disposed of as follows:

These actions arise from a motor vehicle accident that occurred on August 29, 2014 at "146 North Main Street, Spring Valley, New York." The accident occurred when Officer Ronell Charles (hereinafter "Charles") was dispatched to an emergency and was traveling southbound on North Main Street with lights and sirens activated. Allegedly, Weissmann attempted to turn left in front of the Officer's vehicle thereby causing him to turn his vehicle quickly, passing completely into the northbound land to avoid contact with Weissmann's vehicle. In doing so, the Officer's vehicle struck the curb and became airborne. The Officer's vehicle made contact with the vehicle in which Brian Garcia [hereinafter "Garcia"] was a passenger in. The owner of the vehicle, Brian Bulluck, was pumping gas at the time of the accident. Action 1, Index No. 033853/2015 [hereinafter "Action 1"], was commenced by Garcia against the Village Defendants and Weissmann. Garcia asserts a cause of action sounding in negligence and seeks to recover damages for economic loss and injuries suffered due to the accident. Action 2, Index No. 034177/2015 [hereinafter "Action 2"], was commenced by Ronell Charles, individually, against Weissmann. Action 3, Index No. 033742/2017 [hereinafter "Action 3"], was commenced by Brian Bulluck against Weissmann. In Action 2, Charles asserts causes of action sounding in negligence and seeks to recover damages for personal injuries suffered due to the accident.

The Court denied Weissmann's summary judgment application in a Decision and Order dated March 27, 2018. In doing so, the Court found, as pertinent herein, that a triable issue of fact exists as to whether Weissmann's alleged negligence and failure to yield to an emergency vehicle was the proximate cause of the accident. Charles submitted Weissmann's medical records at a later date, but the Court explicitly declined to read submissions received after the return date of earlier applications

Charles's instant application is based largely on these medical records, which were not available at the time of the earlier applications. He submits that Weissmann was negligent as a

matter of law for driving while visually impaired, which entitles him to summary judgment as to liability. Charles invites the Court to "search the record" and offers Weissmann's medical records corresponding to treatment with Louis M. Maisel, M.D. of Rockland Retina in New City, New York. At bottom, Charles argues that Weissmann conceded at his deposition that he has suffered from diabetic retinopathy for some time and the medical records submitted establish that he was suffering from this condition on the date of accident. Furthermore, Charles posits that Weissmann's medical records, medical history and deposition testimony collectively establish that he was negligent as a matter of law and supports an award of summary judgment in his favor.

In opposition, Weissmann argues that Charles's motion is untimely, which is contrary to the Court's directives at an April 12, 2018 conference. As such, the Court will dispose of the motion on its merits. As to Weissmann's ability to drive, Dr. Maisel and Weissmann submit affidavits attesting to Weissmann being examined every six weeks for his vision issues. Moreover, Weisssmann states that his diagnoses do not prevent him from driving and that he has had submitted to annual tests to drive administered by Lighthouse Guild.

In reply, Charles questions the timing and manner in which the information Weissmann relies upon was received and communicated with them, including Dr. Maisel's inability to locate Weissmann's medical records for years 2011 through 2014.

"As we have stated frequently, the proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact. Failure to make such prima facie showing requires a denial of the motion, regardless of the sufficiency of the opposing papers. Once this showing has been made, however, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action." *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986][internal citations omitted].

The Court declines to elevate Weissmann's mere diagnoses and treatment for various vision issues to something akin to *negligence per se*, as the same diagnoses did not render him ineligible to hold a driver's license. Although Charles's counsel expresses shock that someone with Weissmann's conditions continues to operate a motor vehicle, the fact remains that the Department of Motor Vehicles or other policymakers have not expressed that same sentiment by making such conditions a categorical bar to maintaining driving privileges. Although Charles

submits that based upon the diagnoses, treatment, and history reflected in Weissmann's medical history, one can assume only that the conditions were present at the time of the August 24, 2014 accident and caused the accident, this necessary assumption precludes a finding of negligence as a matter of law. Accordingly, the Court finds that Charles has not established prima facie entitlement to summary judgment as to liability and the Court need not delve into the sufficiency of the opposition papers. As such, his motion is denied in its entirety.

The foregoing constitutes the Decision and Order of the Court.

Dated: New City, New York
September 20, 2018

ENTER

HON. ROBERT M. BERLINER, J.S.C.

To:
Counsel of Record via NYSCEF