

Iafallo v Sommer

2020 NY Slip Op 34750(U)

June 15, 2020

Supreme Court, Erie County

Docket Number: Index No. 802748/2018

Judge: Diane Y. Devlin

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**STATE OF NEW YORK
SUPREME COURT :: COUNTY OF ERIE**

DEBORAH IAFALLO

Plaintiffs

vs.

DECISION

INDEX NO. 802748/2018

**CHELSEA M. SOMMER
RAY ROMENTAL,
FRANCES E. GALARZA
ROBERT W. HENDRIX
LAUREN E. SPENCER**

Defendants

**John W. Looney, Esq.
Cellino and Barnes
Attorney for Plaintiff
350 Main Street #2500
Buffalo, New York 14202**

**Andrew J. Kowalewski, Esq.
Nash Connors, PC
Attorneys for Defendant Romental
344 Delaware Avenue, #400
Buffalo, New York 14202**

**Mark A. Forden, Esq.
Law Office Daniel Archilla
Attorneys for Defendant Sommer
170 Franklin Street #500
Buffalo, New York 14202**

**Thomas P. Cunningham, Esq.
Rupp Baase Pfalzgraf Cunningham
Attorneys for Defendant Hendrix
1600 Liberty Building
Buffalo, New York 14202**

The Plaintiff filed a negligence cause of action stemming from a motor vehicle accident that occurred in April 2016. According to the record, an accident occurred between defendants Sommer and Romental after which Plaintiff came to a stop

behind this accident then noticed that Defendant Hendrix was approaching her from behind. Defendant Hendrix came into contact with the rear of Plaintiff's car, which caused her vehicle to come into contact with the Romental vehicle.

Depositions of all parties—save Romental—have been conducted. Defendant Romental files motion to dismiss on the theory that negligence, if any, was not the proximate cause of Plaintiff's accident. Defendant Hendrix filed a cross motion to compel the deposition of defendant Romental or have his answer stricken; and defendant Sommer filed a cross motion to dismiss the complaint on the theory that there is no proof that she was negligent for the happening of the accident between her and Romental.

The court has considered the Notices and Cross Notices of Motions with supporting affirmations with annexed exhibits, the answering affirmations with annexed exhibits, and the replying affirmations.

ANALYSIS AND DECISION

Plaintiff testified that Defendant Romental cut her off from the right lane to the left in which she was traveling. She then had to come to a quick stop because of an accident between Sommer and Romental. Defendant Romental argues that since Plaintiff testified that she was able to come to a complete stop, the accident involving him is not the proximate cause of her subsequent accident. He relies on Murtagh v Beachy, 6 AD 3d 786 (3d Dept. 2004). However, the court agrees with Defendant Hendrix that the Court of Appeals case of Tutrani v County of Suffolk, 10 NY3d 906, is more on point with the facts as known thus far in that a defendant's conduct in front of a stopped plaintiff could be a "substantial cause of the collision" between Plaintiff and Hendrix "even though there was no contact between plaintiff's vehicle

and [Romental]'s vehicle. A jury could find Romental's actions—cutting off of Plaintiff, according to her testimony—could “set into motion an eminently foreseeable chain of events that resulted in the collision between plaintiff and [Hendrix].” *Id* at 908.

Therefore, the court denies Romental's motion for summary judgment without prejudice and grants Hendrix's cross motion to compel Romental to appear for a deposition within 90 days, remotely if necessary. The attorneys can stipulate or file a motion for a longer period due to the current pandemic. If defendant Romental fails to appear within 90 days, defendant Hendrix can renew motion to strike his answer.

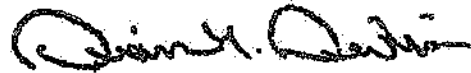
Defendant Sommer's motion

Defendant Sommer moves for summary judgment on the theory that she was not negligent for the happening of the accident between her and defendant Romental. Defendant Sommers testified that she was traveling in the left lane of the southbound 190 and maintained a safe distance with the vehicles in front of her when she was struck in the back by Romental. Furthermore, Sommer argues that the accident between her vehicle and Romental was not the proximate cause of the accident between Plaintiff and defendant Hendrix, which is essentially the same argument that Romental asserts.

Defendant Romental opposed partially with the position that there is a question of fact as to whether Sommer had some negligence. The court believes that there is an issue of fact as to whether Sommer has some degree of negligence for the accident that occurred in front of Plaintiff, and therefore, the same reasoning exists for the

Sommer defendant as to proximate cause. Defendant Hendrix also opposes and states that the Romental deposition is necessary.

The court denies Defendant Sommers' motion without prejudice.



Hon. Diane Y. Devlin
Justice of the Supreme Court

DATED: June 15, 2020
Buffalo, New York