

Coyle v Martocello

2021 NY Slip Op 33422(U)

January 6, 2021

Supreme Court, Suffolk County

Docket Number: Index No. 612633/2019

Judge: Linda Kevins

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SHORT FORM ORDER

INDEX No. 612633/2019
CAL. No. _____

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 29 - SUFFOLK COUNTY

P R E S E N T:

HON. LINDA KEVINS
Justice of the Supreme Court

MOTION DATE 6/12/2020
ADJ. DATE 9/29/2020
Mot. Seq. # 001 - MotD
Mot. Seq. # 002 - XMD

-----X

GREGORY J. COYLE,

Plaintiff,

- against -

AMANDA N. MARTOCELLO, SUNSET
AIRPORT & LIMOUSINE SERVICE, INC. and
LOUIS HOPPER

Defendants.

-----X

Upon the following papers e-filed and read on these motions for summary judgment : Notice of Motion and supporting papers by plaintiff, dated February 3, 2020; Notice of Cross Motion and supporting papers by defendants Sunset Airport & Limousine Service, Inc. and Louis Hopper, dated May 6, 2020 ; Answering Affidavits and supporting papers to # 002, by defendant Amanda Martocello, dated August 5, 2020 ; Replying Affidavits and supporting papers to # 002, by defendants Sunset and Hopper, dated August 7, 2020 ; Other ____; (~~and after hearing counsel in support and opposed to the motion~~) it is,

ORDERED that plaintiff's motion (# 001) for an order granting him partial summary judgment on the issue of liability against all defendants, and the cross motion (# 002) by defendants Sunset Airport & Limousine Service, Inc. and Louis Hopper for summary judgment dismissing the complaint as against them are consolidated for the purposes of this determination; and it is further

ORDERED that plaintiff's motion for an order granting him partial summary judgment on the issue of liability, pursuant to CPLR § 3212 (e) against all named defendants is granted to the extent that partial summary judgment in his favor is granted against defendant Amanda Martocello, and is otherwise denied; and it is further

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ORDERED that the cross motion by defendants Sunset Airport & Limousine Service, Inc. and Louis Hopper for summary judgment dismissing the complaint as against them is denied; and it is further

ORDERED that counsel for the parties, and if a party has no counsel, then the party, are directed to appear before the Court in IAS Part 29, located at the Alan D. Oshrin Courthouse, One Court Street, Riverhead, New York 11901, on **March 9, 2021 at 9:30 a.m.**, for a Conference, or if the court is still operating remotely due to the COVID-19 health crisis, such appearance shall be held remotely. Counsel and any parties who are not represented by counsel shall, **with a copy to all parties, contact the court by email at Sufkevins@nycourts.gov at least one week prior to the date of the scheduled conference** to obtain the date, time and manner of such conference; and it is further

ORDERED that if this Order has not already been entered, plaintiff is directed to promptly serve a certified copy of this Order, pursuant to CPLR §§8019(c) and 2105, upon the Suffolk County Clerk who is directed to hereby enter such order; and it is further

ORDERED that upon Entry of this Order, plaintiff is directed to promptly serve a copy of this Order with Notice of Entry upon all parties and to promptly file the affidavits of service with the Clerk of the Court.

This is an action to recover damages for personal injuries allegedly sustained by plaintiff as a result of a motor vehicle accident that occurred on May 10, 2019 on Lakeland Avenue at or near its intersection with Elaine Drive, in the Town of Islip. The accident allegedly happened when a vehicle that plaintiff was riding in as a passenger, owned by defendant Sunset Airport & Limousine Service, Inc., and operated by defendant Louis Hopper was struck in the rear by a vehicle driven by defendant Amanda Martocello.

Plaintiff now moves for partial summary judgment on the issue of liability against all of the defendants. In support of the motion, plaintiff submits copies of the pleadings, a certified police accident report and his own affidavit.

In his affidavit, plaintiff states that on May 10, 2019, at 2:04 p.m., he was a passenger in a taxi that was struck by another vehicle in the rear. The certified police accident report contains an admission by defendant Amanda Martocello who told the officer at the scene that she was unable to stop her vehicle and it struck the rear end of the vehicle that was in front of her as it was stopping.

It is well settled that a party moving for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issue of fact (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 508 NYS2d 923 [1986]; *Friends of Animals v Associated Fur Mfrs.*, 46 NY2d 1065, 1067, 416 NYS2d 790 [1979]). The failure of the moving party to make a prima facie showing requires the denial of the motion

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regardless of the sufficiency of the opposing papers (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 487 NYS2d 316 [1985]). Once the movant establishes such burden, the burden shifts to the party opposing the motion which must produce evidentiary proof in admissible form sufficient to require a trial of the material issues of fact (*Zuckerman v City of New York*, 49 NY2d 557, 427 NYS2d 595 [1980]). The court's function is to determine whether issues of fact exist, not to resolve issues of fact or to determine matters of credibility; therefore, in determining the motion for summary judgment, the facts alleged by the opposing party and all inferences that may be drawn are to be accepted as true (*see Roth v Barreto*, 289 AD2d 557, 735 NYS2d 197 [2001]; *O'Neill v Fishkill*, 134 AD2d 487, 521 NYS2d 272 [1987]).

The Vehicle and Traffic Law establishes standards of care for motorists, and an unexcused violation of such standards of care constitutes negligence per se (*see Hodnett v Westchester County Dept. of Pub. Works & Transp.*, 181 AD3d 655, 122 NYS3d 111 [2d Dept 2020]; *Barbieri v Vokoun*, 72 AD3d 853, 900 NYS2d 315 [2d Dept 2010]; *Coogan v Torrisi*, 47 AD3d 669, 849 NYS2d 621 [2d Dept 2008]; *Dalal v City of New York*, 262 AD2d 596, 692 NYS2d 468 [2d Dept 1999]). Vehicle and Traffic Law Section 1129 (a) provides: "The 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."

When the driver of a vehicle approaches another vehicle from the rear, he or she is bound to maintain a reasonably safe rate of speed and control over his or her vehicle, and to exercise reasonable care to avoid colliding with the other vehicle (*Sooklall v Morisseav-Lafague*, 185 AD3d 1079, 128 NYS3d 266 [2d Dept 2020]; *Catanzaro v Ederly*, 172 AD3d 995, 101 NYS3d 170 [2d Dept 2019]; *Tumminello v City of New York*, 148 AD3d 1084, 49 NYS3d 739 [2d Dept 2017]; *Brothers v Bartling*, 130 AD3d 554, 13 NYS3d 202 [2d Dept 2015]; *Gutierrez v Trillium USA, LLC*, 111 AD3d 669, 974 NYS2d 563 [2d Dept 2013]). A rear-end collision with a *stopped or stopping* (emphasis added) vehicle creates a prima facie case of negligence with respect to the operator of the rear vehicle and imposes a duty on that operator to rebut the inference of negligence by providing a nonnegligent explanation for the collision (*Tutrani v County of Suffolk*, 10 NY3d 906, 861 NYS2d 610 [2008]; *Edgerton v City of New York*, 160 AD3d 809, 74 NYS3d 617 [2d Dept 2018]; *Nowak v Benites*, 152 AD3d 613, 60 NYS3d 48 [2d Dept 2017]; *Le Grand v Silberstein*, 123 AD3d 773, 999 NYS2d 96 [2d Dept 2014]).

Here, plaintiff established his entitlement to summary judgment on the issue of Martocello's liability, by demonstrating that plaintiff was a passenger in a vehicle that was rear ended by a vehicle driven by defendant Martocello, and that he did not engage in any culpable conduct which contributed to the happening of the accident (*Lopez v Suggs*, 186 AD3d 589, 126 NYS2d 676 [2d Dept 2020]; *Romain v City of NY*, 177 AD3d 590, 112 NYS3d 162 [2d Dept 2019]). However, plaintiff has failed to submit any evidence establishing liability on the part of defendants Sunset Airport & Limousine Service, Inc. and Louis Hopper.

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Having established his prima facie entitlement to summary judgment on the issue of liability against defendant Martocello, the burden shifts to Martocello to proffer evidence in admissible form sufficient to raise a triable issue of fact (CPLR 3212 [b]; *Zuckerman v City of New York*, 49 NY2d 557, 427 NYS2d 595). No opposition to plaintiff's motion has been submitted by Martocello. Accordingly, plaintiff's motion for partial summary judgment on the issue of liability is granted with respect to defendant Amanda Martocello, and the motion is denied with respect to defendants Sunset Airport & Limousine Service, Inc. and Louis Hopper.

Defendants Sunset Airport & Limousine Service, Inc. and Louis Hopper cross-move for summary judgment dismissing the complaint against them arguing that Martocello was the sole proximate cause of the accident. However, the only submission in support of the motion is an affirmation of counsel. It is well settled that an affirmation of an attorney who lacks personal knowledge of the facts has no probative value (see *Cullin v Spiess*, 122 AD3d 792, 997 NYS 2d 460 [2d Dept 2014]; see also *M. Cooper Motor Leasing, Ltd. v Data Discount Center, Inc.*, 125 AD2d 454, 509 NYS2d 385 [2d Dept 1986]). No affidavit by Louis Hopper has been submitted, and the police accident report contains hearsay regarding Hopper's explanation of the accident. Having failed to establish that Hopper was not a cause of the accident, as there can be more than one proximate cause of an accident (*Carias v Grove*, 186 AD3d 1484, 131 NYS3d 99 [2d Dept 2020]; *Richardson v Cablevision Sys. Corp.*, 173 AD3d 1083, 104 NYS3d 655 [2d Dept 2019]), defendants failed to establish their prima facie entitlement to summary judgment dismissing the complaint as against them. Accordingly, the cross motion by defendants Sunset Airport & Limousine Service, Inc. and Louis Hopper for summary judgment dismissing the complaint as against them is denied.

Anything not specifically granted herein is hereby denied.

This constitutes the decision and Order of the Court.



LINDA KEAVINS, JSC

Dated: 1/6/2021

_____ FINAL DISPOSITION X NON-FINAL DISPOSITION