

Mann v Holder

2022 NY Slip Op 31828(U)

March 3, 2022

Supreme Court, Suffolk County

Docket Number: Index No. 620252/18

Judge: Carmen Victoria St. George

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**SUPREME COURT – STATE OF NEW YORK
TRIAL TERM, PART 56 SUFFOLK COUNTY**

PRESENT:

Hon. Carmen Victoria St. George
Justice of the Supreme Court

CHRISTEN A. MANN,

**Index No.
620252/18
Action No. 1**

**Motion Seq:
002 Mot D
003 MD
004 MD**

Plaintiff,

-against-

Decision/Order

JOSEPH F. HOLDER,

Defendant.

DOMINICK SORICE,

**Index No.
606208/19
Action No. 2**

**Motion Seq:
002 Mot D
003 MD
004 MD**

Plaintiff,

-against-

Decision/Order

CHRISTEN A. MANN and JOSEPH F. HOLDER,

Defendants.

The following electronically filed papers were read upon this motion:

Notice of Motion/Cross-Motion	20-34, 38-41, 43-44, 47-48
	25-42, 44-50, 53-55
Answering Papers.....	62, 64, 66, 68

These joined actions arise from a three-vehicle accident that occurred on August 17, 2016, at approximately 11:28 a.m., at the intersection of County Road 39 and Tuckahoe Road, Town of Southampton, New York. Christen Mann operated her Chrysler sedan; Joseph Holder operated his Toyota pickup truck, and Dominick Sorice operated his Jeep. There were no passengers in any of the three vehicles.

It appears undisputed that Christen Mann was stopped at a red light when Joseph Holder struck the rear of the Mann vehicle with the front of his pickup truck. Holder was apparently distracted by his dog, who was sliding off the front seat of his truck, or had slid off the front seat onto the floor of the truck. Holder admittedly took his eyes off the road momentarily to attend to his dog and struck Mann’s vehicle in the rear. It is also undisputed that Dominick Sorice was in the process of making a legal left-hand turn from Tuckahoe Road onto westbound County Road 39, with a green signal in his favor, when the front of the Mann vehicle struck the side of Sorice’s Jeep, causing it to roll over two or three times. The final points about which there does not seem to be any dispute are that Sorice did nothing to cause or contribute to the accident, and that Christen Mann suffered a fractured finger as a result of the subject three-vehicle accident. There is serious dispute, however, as to whether the rear-end impact of the Holder vehicle into the Mann vehicle propelled the Mann vehicle into the intersection, causing it to strike the Sorice vehicle, or whether the Mann vehicle came to a stop after it was rear-ended and then accelerated through the intersection, striking the Sorice vehicle.

There are three pending summary judgment actions filed in Action No. 1 that this Court will determine herein, and there are three summary judgment actions pending in Action No. 2 that will also be determined herein.

It is well recognized that summary judgment is a drastic remedy and as such should only be granted in the limited circumstances where there are no triable issues of fact (*Andre v. Pomeroy*, 35 NY2d 361[1974]). Summary judgment should only be granted where the court finds as a matter of law that there is no genuine issue as to any material fact (*Cauthers v. Brite Ideas, LLC*, 41 AD3d 755 [2d Dept 2007]). The Court’s analysis of the evidence must be viewed in the light most favorable to the non-moving party (*Makaj v. Metropolitan Transportation Authority*, 18 AD3d 625 [2d Dept 2005]).

“It is not the function of a court deciding a summary judgment motion to make credibility determinations or findings of fact, but rather to identify material triable issues of fact (or point to the lack thereof)” (*Vega v. Restani*, 18 NY3d 499, 505 [2012]). Issue-finding rather than issue determination is the court’s function upon a summary judgment motion (*Sillman v. Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404 [1957]).

Summary Judgment Motions in Action No. 1 (Sequences 002, 003, 004)

Christen Mann, as plaintiff in Action No. 1, moves for partial summary judgment against Joseph Holder on the issue of liability, and also on the issue of serious injury, plus Mann seeks dismissal of various affirmative defenses asserted by Holder, including Mann's comparative fault, equitable share, and failure to sustain serious injury (Motion Sequence 002). In support of her motion, Mann submits, *inter alia*, the pleadings, a certified police accident report,¹ medical records, the affirmation of Scott Roteman, M.D., her own deposition transcript, and the deposition transcript of Joseph Holder.

As noted by this Court at the outset, and as borne out by the submitted testimony, there is markedly contradictory testimony as to whether the Mann vehicle was propelled into the Sorice vehicle as a result of being rear-ended by the Holder vehicle, or whether Holder and Mann came to a stop after the rear-end collision, followed by Mann suddenly "accelerating fast," and "taking off" into the intersection "briskly." In contrast, Mann testified that she does not recall the incident other than to say that she was sitting at a red light, waiting for it to turn green, and then she ended up on golf course property across the street, after apparently being involved in a motor vehicle accident.

A rear-end collision with a stopped or stopping vehicle creates a *prima facie* case of negligence with respect to the operator of the moving vehicle and imposes a duty on the operator of the moving vehicle to rebut the inference of negligence by providing a non-negligent explanation for the collision (*McCoy v. Zaman*, 67 AD3d 653 [2d Dept 2009]; *Velasquez v. Denton Limo., Inc.*, 7 AD3d 787 [2d Dept 2004]).

Based upon Holder's testimony, plaintiff Mann has established her *prima facie* entitlement to summary judgment on the issue of liability as concerns the impact between the front of Holder's truck and the rear of Mann's vehicle. In fact, Holder affirmatively states in his opposition papers that he does not oppose the motion for partial summary judgment on liability for the impact between their two vehicles. Accordingly, Mann, as plaintiff in Action No. 1, is granted summary judgment against Holder on the issue of liability for the collision that occurred between the Holder and Mann vehicles.

Furthermore, inasmuch as there is no serious dispute that plaintiff Mann suffered a fracture of the ring finger on her right hand as a result of the three-vehicle accident that occurred on August 17, 2016, she has established her entitlement to summary judgment as a matter of law as to the issue of whether she has suffered a serious injury within the meaning of Insurance Law § 5102 (d). No doubt, plaintiff Mann has suffered a serious injury; however, since there are questions of fact as to Mann's actions following the first impact between the Holder vehicle and the Mann vehicle, to whose actions that injury can be attributed (Mann's or Holder's) must be resolved at a trial of this matter. In view of the foregoing, the Court determines to strike only the eighth (no serious injury) and tenth (lack of personal jurisdiction) affirmative defenses asserted in Holder's answer.

¹ The police officer did not witness the accident.

Cross-motion Sequence 3 made and filed by Holder in connection with Action No. 1 is principally directed at Action No. 2, and Holder seeks summary judgment in his favor, over and against Mann as co-defendant, and dismissal of Sorice's complaint (Action No. 2) on the ground that Holder is not liable for the collision between Mann's vehicle and Sorice's vehicle and so he is not responsible for Sorice's alleged injuries. Importantly, the affirmation on this cross-motion is identical to NYSCEF Doc. No. 54 filed in connection with Holder's cross-motion for summary judgment in Action No. 2 that is identified as cross-motion Sequence 4 in that action.

Cross-motion Sequence 4 made and filed by Mann in Action No. 1 seeks summary judgment in favor of Christen A. Mann and dismissal of Dominic Sorice's complaint against her, as well as dismissing any and all cross claims on the ground that the defendant Christen A. Mann bears no liability for the happening of the subject accident. Thus, this motion is also principally directed at Action No. 2. The affirmation filed in connection with this cross-motion is identical to the affirmation filed in support of the cross-motion and partial opposition to Sorice's motion for summary judgment (NYSCEF Doc. No. 45) in Action No. 2.

Given the mirroring of the motions, the Court will address the motions pending in Action No. 2, which will necessarily determine Sequences 3 and 4 in Action No. 1.

Summary Judgment Motions in Action No. 2 (Sequences 002, 003, 004)

Sorice's motion (Sequence 002) requests, "pursuant to CPLR §3212 granting plaintiff, DOMINICK SORICE against the defendant, JOSEPH F. HOLDER summary judgment on the issue of liability (ii) dismissing defendant's affirmative defense of comparative negligence: and (iii) for such other and further relief as this Court may deem just and proper."

Mann, as a defendant cross-moves for summary judgment dismissal of Sorice's complaint and any and all cross-claims on the basis that Mann is free from negligence in connection with the subject accident. The affirmation of counsel asserts that the rear-end collision between her vehicle and the Holder vehicle "caused her vehicle to enter the intersection and strike the vehicle operated by plaintiff Sorice" (Motion Sequence 003).

Holder cross-moves for summary judgment in his favor, over and against Mann as co-defendant, and for dismissal of Sorice's complaint on the ground that Holder is not liable for the collision between Mann's vehicle and Sorice's vehicle (Motion Sequence 004).

"Although a plaintiff need not demonstrate the absence of his or her own comparative negligence to be entitled to partial summary judgment as to a defendant's liability (internal citation omitted), the issue of a plaintiff's comparative negligence may be decided in the context of a summary judgment motion where, as here, the plaintiff moved for summary judgment dismissing a defendant's affirmative defense of comparative negligence" (*Higashi v. M&R Scarsdale Restaurant, LLC*, 176 AD3d 788 [2d Dept 2019]; *Wray v. Galella*, 172 AD3d 1446, 1447 [2d Dept 2019]; *Poon v. Nisanov*, 162 AD3d 804, 808 [2d Dept 2018]).

In support of his motion, Sorice submits, *inter alia*, the deposition transcripts of all three litigants in these joined actions. The submission of all three transcripts underscores the contradictory facts surrounding the happening of the impact between the Mann vehicle and the

Sorice vehicle. Specifically, Sorice testified that, as he was making his left-hand turn, within the span of “split seconds” before his vehicle was impacted, Sorice saw the Mann vehicle impacted by the Holder vehicle, and “[o]nce it was impacted, it was projected into the intersection towards my vehicle.” This testimony stands in stark contradiction to Holder’s testimony discussed herein above asserting that Mann stopped her vehicle after the rear-end collision, but then “took off” into the intersection, striking Sorice. It is “well established that the motion should not be granted where the facts are in dispute, where conflicting inferences may be drawn from the evidence, or where there are issues of credibility” (*Scott v. Long Island Power Authority*, 294 AD2d 348, 348 [2d Dept 2002]).

Sorice’s testimony demonstrates to this Court that both Mann and Holder have each failed to establish their respective *prima facie* entitlement to summary judgment as a matter of law, thereby requiring denial of each of their motions on that basis; thus, Motion Sequences 003 and 004 filed in Action No. 2, and Motion Sequences 003 and 004 filed in Action No. 1 are all denied.

Sorice has, however, demonstrated his *prima facie* entitlement to a determination that he is free from comparative negligence in the happening of the subject accident, and his entitlement to dismissal of the affirmative defenses of comparative negligence asserted by both Holder and Mann in their respective answers to the Sorice complaint. Furthermore, there is no argument advanced by either Mann or Holder that Sorice was in any way responsible for the collision(s), and there is no evidence in the submitted record supporting any such argument had it been made by the defendants. Accordingly, Sorice shall have summary judgment on the issue of his lack of liability for the happening of the subject accident (*CPLR § 3212 [g]*).

The Court cannot, however, grant summary judgment on liability against defendant Joseph Holder, nor can it search the record and grant summary judgment on liability against defendant Mann due to the sharply conflicting accounts concerning Mann’s actions following the rear-end collision with Holder.

“An innocent plaintiff driver exists in a case where the plaintiff driver did not contribute to the happening of the accident in any way” (*Oluwatayo v Dulinayan*, 142 AD3d 113, 119 [1st Dept 2016]). “There is a significant distinction between granting a plaintiff summary judgment on [his] lack of culpable conduct on liability and granting a plaintiff summary judgment on a defendant’s negligence. A grant of partial summary judgment against a defendant on liability in a negligence case is the equivalent of finding that the defendant owed the plaintiff a duty of care, the defendant breached that duty by its negligence, and such breach proximately caused the plaintiff injury [internal citation omitted]. In contrast, a grant of partial summary judgment on the issue of the plaintiff’s lack of fault or culpability is a much narrower finding. Such a finding merely establishes as a matter of law that the plaintiff is free of any negligence, as would be the case of an innocent passenger or driver” (*Id.* at 118).

Here, as determined, plaintiff Sorice has established not only his *prima facie* entitlement to a determination concerning his lack of culpable conduct as an undisputed innocent driver, he has demonstrated that he is entitled to summary judgment on lack of fault pursuant to CPLR 3212 (g) (*see e.g. Medina v Rodriguez*, 92 AD3d 850 [2d Dept 2012]). However, plaintiff has

not established his *prima facie* entitlement to summary judgment on liability against either defendant driver because of the conflicting and unresolved facts concerning the accident and which vehicle was responsible for the collision between the Mann and Sorice vehicles (*see Hedian v. MTLR Corp.*, 169 AD3d 620, 620 [1st Dept 2019]). Accordingly, it is unnecessary to determine whether any of the opposition papers are sufficient to raise a triable issue of fact (*see Levin v Khan*, 73 AD3d 991 [2d Dept 2010]; *Kjono v Fenning*, 69 AD3d 581[2d Dept 2010]).

The foregoing constitutes the Decisions and Orders of this Court.

Dated: March 3, 2022
Riverhead, NY



CARMEN VICTORIA ST. GEORGE, J.S.C.

FINAL DISPOSITION [] NON-FINAL DISPOSITION [X]