Wood v Deschamps

[*1] Wood v Deschamps 2017 NY Slip Op 50838(U) Decided on June 2, 2017 Supreme Court, Warren County Muller, J. Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and will not be published in the printed Official Reports.

Decided on June 2, 2017
Supreme Court, Warren County

Carrie L. Wood, Plaintiff,

against

Cheryl L. Deschamps, Defendant.

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Robert J. Muller, J.

This is plaintiff's motion for partial summary judgment on liability. A plaintiff in a personal injury action who moves for summary judgment on the issue of liability has the burden of establishing, prima facie, both that the defendant was negligent and that they were free from comparative fault (see Thoma v. Ronai, 82 NY2d 736, 737, 602 N.Y.S.2d 323, 621 N.E.2d 690; Moluh v. Vord, 143 AD3d 680, 39 N.Y.S.3d 187; Phillip v. D & D Carting Co., Inc., 136 AD3d 18, 24, 22 N.Y.S.3d 75; Espinoza v. Coca—Cola Bottling Co. of NY, Inc., 121 AD3d 640, 640, 993 N.Y.S.2d 721; Gorenkoff v. Nagar, 120 AD3d 470, 471, 990 N.Y.S.2d 604; Lu Yuan Yang v. Howsal Cab Corp., 106 AD3d 1055, 1056, 966 N.Y.S.2d 167. See also Pierre v. Demoura,148 AD3d 736, 48 N.Y.S 3d 260 [2017]; Nikolic v. City-Wide Sewer & Drain Service Corp., — N.Y.S. 3d — , 2017 WL 1657206 [2017].

The case arises out of a two vehicle collision that occurred on the afternoon of January 20, 2014 on State Route 9, in the vicinity of Stock Farm Road in the Town of Chester, Warren [*2]County, when defendant, traveling southbound on State Route 9 during a snow storm, lost control when the rear end of her vehicle swung out and crossed the double yellow centerline directly into the path of plaintiff's vehicle heading northbound in the opposite lane of travel. Defendant testified she was aware that it was snowing and that the roads had snow accumulating on them as she was traveling that afternoon. The speed limit in the accident location is 55 mph and defendant estimated she was traveling between 35-40 mph shortly before she lost control. There was nothing

mechanically wrong with her vehicle which was equipped with studded snow tires and she was traveling through a left hand "gentle" curve when she lost control.

The impact occurred in the plaintiff's lane of travel after defendant's vehicle crossed the double yellow center line. Impact was with the front of plaintiff's vehicle which had been directly in front of defendant's vehicle during the crossover. Impact was to the passenger side front of defendant's vehicle.

Defendant testifies that when the rear of her vehicle "kicked out" the plaintiff's vehicle was approximately 50 feet away in the opposite lane - and approaching- with impact happening "fast" after the rear of her vehicle slid to the right. Defendant also testified that she saw nothing unusual about the operation of plaintiff's vehicle or its speed, movement or travel. Lastly, the defendant is unable to offer an explanation - other than the road was snow covered - as to how she came to lose control of her vehicle.

The plaintiff was traveling northbound on State Route 9 for approximately 10 miles with the snowfall progressing as she headed north, the roadway having accumulated approximately 1.5 inches of snow at the time of the crash. The plaintiff estimated she was traveling between approximately 30-35 mph just before the collision. Plaintiff also testified that she first saw defendant's vehicle approximately 50 feet away in the southbound lane and that it appeared to be traveling faster than she. Plaintiff also testified that as defendant's vehicle traveled southbound it suddenly slid sideways directly into the path of her vehicle - the collision occurring in "...a matter of seconds", with time only to say, "...we're going to hit" and "no time to do anything". Plaintiff testified she only had time to take her foot off the accelerator and tap her brakes before impact.

Here, the plaintiff established her prima facie entitlement to judgment as a matter of law by the deposition testimony.

The defendant argues in opposition that her motor vehicle was in good condition with snow tires, that she was traveling within the speed limit, that she was not operating the vehicle in a reckless or negligent manner but that there were poor road conditions when she had the accident. The defendant further asserts that this is not negligence but a pure accident, that she was faced with an unavoidable accident and her conduct was reasonable under the facts and circumstances of this matter. The answer also includes an affirmative defense that the defendant had been suddenly compelled to act in an emergency situation not of her own creation together with a further more generic - but closely aligned - affirmative defense that the accident was simply unavoidable.

The common-law emergency doctrine "recognizes that when an actor is faced with a sudden and unexpected circumstance which leaves little or no time for thought, deliberation or consideration, or causes the actor to be reasonably so disturbed that the actor must make a speedy decision without weighing alternative courses of conduct, the actor may not be negligent if the actions taken are reasonable and prudent in the emergency context" (Rivera v New York City Tr. [*3]Auth., 77 NY2d 322, 327). See Caristo v. Sanzone, 96 NY2d 172, 174, 726 N.Y.S.2d 334, 750 N.E.2d 36 [2001]. While

here there is no evidence that either vehicle was traveling in excess of the posted speed limit, it is clear that the defendant was, for some time, aware of the presence of snow accumulating on the roadway. Even considering the evidence in a light most favorable to defendant (see, Kuci v Manhattan & Bronx Surface Tr. Operating Auth. 88 NY2d 923, 669 N.E.3d 1110 [1996]), as a matter of law - and as in conceded at oral argument - there is nothing to justify an emergency instruction, considering defendant's admitted knowledge of worsening weather conditions. The presence of snow building up on the roadway cannot be deemed a sudden and unexpected event.

This Court, however, does define an unavoidable accident as an occurrence which is not intended and could not have been foreseen or anticipated in the exercise of reasonable caution (Prosser, Torts [4th ed], § 29). Accordingly, unlike the emergency doctrine charge, a jury could be instructed as to an unavoidable accident only if it could find that the accident resulted from an unknown cause or in an unexplained manner not occasioned by the negligence of either party (DiLorenzo v. Venosa, 50 AD2d 603, 375 N.Y.S.2d 395). Mikula v. Duliba, 94 AD2d 503, 464, N.Y.S. 910 (1983). This Court declines to determine, as a matter of law, that the defendant should have reasonably foreseen the loss of control of her vehicle on a snow covered roadway. In this context the defendant's submissions raise an issue of fact whether the speed at which she was traveling, although reduced because of the weather conditions, was reasonable and prudent under the circumstances (see Moore v. Curtiss, 129 AD3d 1504, 11 N.Y.S. 3d 379; Campo v. Neary, 52 AD3d 1194, 1196, 860 N.Y.S.2d 703; Pietrantoni v. Pietrantoni, 4 AD3d 742, 742, 771 N.Y.S.2d 477, lv. dismissed 2 NY3d 823, 782 N.Y.S.2d 240, 815 N.E.2d 1105).

Therefore, having considered the Affidavit of Ronald B. Orlando, Esq., sworn to February 20, 2017 submitted in support of the motion together with Exhibits "A" through "K", the Affidavit of James A. Lombardo, Esq. sworn to April 3, 2017 together with Exhibit "A", the Memorandum of Law of Ronald B. Orlando, Esq., dated February 20, 2017 submitted in support of the motion, the Memorandum of Law of Kimberly Van Wormer, Esq., undated, submitted in opposition to the motion, and oral argument held before the Court on June 1, 2017, with Ronald B. Orlando, Esq. appearing in support of the motion and James A. Lombardo, Esq. appearing in opposition thereto, it is hereby

ORDERED that the motion of plaintiff for partial summary judgment on liability is denied in its entirety, and it is further

ORDERED that any relief not specifically addressed has nonetheless been considered and is hereby expressly denied.

The above constitutes the Decision and Order of this Court.

The original of this Decision and Order has been filed by the Court together with the Notice of Motion dated February 20, 2017 and the submissions enumerated above. Counsel for defendant is hereby directed to promptly obtain a filed copy of the Decision and Order for service with notice of entry in accordance with CPLR 5513.

Dated: June 2, 2017

Lake George, New York

ROBERT J. MULLER, J.S.C.