

SUPREME COURT - STATE OF NEW YORK
CALENDAR CONTROL PART - SUFFOLK COUNTY

COPY

PRESENT:

HON. PAUL J. BAISLEY, JR., J.S.C.

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VINCENT PERRETTI and MATTHEW FERRO by
his mother and natural guardian KAREN FERRO,

Plaintiffs,

-against-

KIM M. MIRANDA, WILLIAM C. MIRANDA,
JILLIAN FERRO and GUILIANO FERRO,

Defendants.
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INDEX NO.: 27122/2008
CALENDAR NO.: 201100951MV
MOTION DATE: 2/15/12
MOTION SEQ. NO.: 001 MOT D

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Upon the following papers numbered 1 to 32 read on this motion for summary judgment : Notice of Motion/ Order to Show Cause and supporting papers 1-7 ; ~~Notice of Cross Motion and supporting papers~~ ; Answering Affidavits and supporting papers 8-10 ; Replying Affidavits and supporting papers 11-32 ; Other ; (and after hearing counsel in support and opposed to the motion) it is,

ORDERED that this motion by defendants Guiliano J. Ferro and Jillian M. Ferro seeking an order pursuant to CPLR Section 3212 granting summary judgment dismissing plaintiffs complaint and all cross claims asserted against them is denied.

Plaintiffs personal injury action seeks damages for injuries sustained in a two car collision on May 28, 2007. Defendant William C. Miranda's ("Miranda") westbound vehicle collided with plaintiff Jillian M. Ferro's ("Ferro") eastbound vehicle near an intersection controlled by an overhead traffic signal. Plaintiff Ferro claims that her eastbound vehicle was traveling approximately 40 miles per hour approaching a green traffic signal when defendant Miranda's car struck the driver's side of Ferro's vehicle while attempting to make a left turn. Defendant Miranda claims that his westbound car was stopped at the intersection in the left turning lane facing a red light when Ferro's oncoming "SUV" crossed over the eastbound lane striking defendant's stationary vehicle. Plaintiffs Vincent Perretti and infant Matthew Ferro were passengers in plaintiff Ferro's vehicle which was owned by defendant Guiliano Ferro. Defendant Kim M. Miranda owned the vehicle driven by defendant William C. Miranda.

Defendants motion seeks an order granting summary judgment dismissing plaintiffs complaint and all cross claims asserted against the Ferros claiming that the undisputed, credible

evidence establishes that defendant Miranda's failure to yield the right of way to Ferro's oncoming vehicle was the sole proximate cause of the collision. In support defendants submit an attorney's affirmation together with copies of the parties' deposition testimony. Defendants contend that Vehicle & Traffic Law Section 1141 requires that drivers intending to turn to the left while entering an intersection shall yield the right of way to vehicles approaching from the opposite direction which are either within the intersection or so close as to constitute an immediate hazard. It is the defendants contention that the undisputed credible facts submitted, in the form of defendant Ferro's deposition testimony, confirms that defendant Miranda violated this section of the Vehicle & Traffic Law when he attempted to make a left (southbound) turn in front of Ferro's eastbound vehicle. Defendants assert that Miranda's failure to yield to the Ferro vehicle was the sole proximate cause of the collision and therefore plaintiffs complaint and all cross claims asserted against the Ferros must be dismissed.

In opposition plaintiff Vincent Perretti submits an attorney's affirmation reciting relevant portions of the parties' deposition testimony and claims that substantial issues of fact exist concerning how the vehicles collided based upon the defendants'/driver's conflicting testimony sufficient to defeat defendants summary judgment motion. Plaintiff claims that although defendant Ferro testified that Miranda's car struck her "SUV" while attempting to make a left turn, defendant Miranda testified that he had stopped his westbound car in the left turn lane when Ferro's vehicle struck Miranda's car head-on pushing it 100 feet backward. Plaintiff contends that under these circumstances a significant issue of credibility exists concerning which party is telling the truth which can only be determined by a jury during a plenary trial. Plaintiff also claims that Ferro, a 19 year old inexperienced driver, gave testimony which raises substantial issues of fact concerning whether she may have failed to exercise her duty of care since Ferro conceded that she saw Miranda's car as she approached the intersection yet failed to change her manner of driving as she observed Miranda attempting to make the turn in front of her oncoming vehicle.

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 eliminate any material issues of fact from the case. To grant summary judgment it must clearly appear that no material and triable issues of fact are presented (*Sillman v. Twentieth-Century Fox Film Corporation*, 3 NY2d 395, 165 NYS2d 498 (1957)). The movant has the initial burden of proving entitlement to summary judgment (*Winegrad v. N.Y.U. Medical Center*, 64 NY2d 851, 487 NYS2d 316 (1985)). Failure to make such a showing requires denial of the motion regardless of the sufficiency of the opposing papers (*Winegrad v. N.Y.U. Medical Center, supra.*; *Friends of Animals v. Associated Fur Manufacturers*, 46 NY2d 1065, 416 NYS2d 790 (1979)). Once such proof has been offered, the burden shifts to the opposing party, who, in order to defeat the motion for summary judgment, must proffer evidence in admissible form... and must "show facts sufficient to require a trial of any issue of fact" (CPLR Section 3212(b); *Zuckerman v. City of New York*, 49 NY2d 557, 427 NYS2d 595 (1980)). The opposing party must present facts sufficient to require a trial on any issue of fact by producing evidentiary proof in admissible form (*Joseph P. Day Realty Corp. v. Aeroxon Products, Inc.*, 148 AD2d 499, 538 NYS2d 843 (2nd Dept., 1979) and must assemble, lay bare and reveal his proof in order to establish that the matters set forth in his pleadings are real and capable of being established (*Castro v. Liberty Bus Co.*, 79 AD2d 1014, 435 NYS2d 340 (2nd Dept., 1981)). Summary judgment shall only be granted when there are no issues of material fact and the evidence requires the court to direct a judgment in favor of the movant as a matter of law.

Based upon the parties' conflicting testimony concerning how the accident occurred, significant issues of fact exist sufficient to require a plenary trial. Defendants' motion seeking an order granting summary judgment dismissing plaintiffs' complaint must therefore be denied.

Dated: March 12, 2012

PAUL J. BAISLEY, JR.
