

Lacen v Copeland

2010 NY Slip Op 30724(U)

March 30, 2010

Supreme Court, New York County

Docket Number: 110718/06

Judge: Paul Wooten

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: HON. PAUL WOOTEN
Justice

PART 27

EMERIS LACEN,
Plaintiff,

INDEX NO. 110718/06

-against-

MOTION DATE _____

ROBERT COPELAND, JR., LOUIS J. KENNEDY
TRUCKING and SHAKYRA M. PARKER,
Defendants.

MOTION SEQ. NO. 001

MOTION CAL. NO. _____

SHAKYRA PARKER,
Plaintiff,

INDEX NO. 107613/06

-against-

MOTION DATE _____

LOUIS J. KENNEDY TRUCKING and ROBERT
COPELAND,
Defendants.

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

The following papers, numbered 1 to 2 were read on this Motion by plaintiff(s)/defendant(s) for a motion for summary judgment.

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits (Memo) _____

Replying Affidavits (Reply Memo) _____

FILED
PAPERS NUMBERED _____
APR 2 2010

Cross-Motion: Yes No

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In these two related actions involving a motor vehicle accident which have been consolidated for discovery and trial, Shakyra Parker, a defendant in the *Lacen* action and a plaintiff in the *Parker* action, moves and cross-moves¹ for summary judgment on _____

¹Despite the confusing history of the consolidation of these two actions (*compare* orders dated March 19, 2007 and October 19, 2008), the court never granted "full consolidation" of the these two actions, which means that there is, going forward, one caption, one index number, one trial and one

liability in her favor. Defendant Robert Copeland and plaintiff Emeris Lacen oppose the motions for summary judgment and argue that, because issues of fact exist, Parker's motions for summary judgment must be denied.

FACTUAL ALLEGATIONS

This matter arises from a two-car motor vehicle accident which took place on August 26, 2005, at the intersection of Queens Boulevard and Van Dam Street in Queens, New York.

Shakyrá Parker (Parker) testified that at the time of the accident, she was driving a vehicle which she owned, that Emeris Lacen (Lacen) was the front seat passenger, and that her brother, Kevin Parker, was a back seat passenger. Parker testified that she traveled down Van Dam Street and was making a left turn onto Queens Boulevard, which has three westbound lanes. Robert Copeland (Copeland) was operating a tractor-trailer and was located to the right of Parker's vehicle. When the cars in front of Parker began to move forward, Copeland's tractor-trailer began merging left in front of Parker. Parker testified that her vehicle was at a stand still when the rear of defendant's trailer came into contact with the passenger side of her vehicle, and proceeded to pull off her vehicle's front bumper. Parker estimates that Copeland's vehicle was traveling at about 15 miles per hour when the accident occurred.

Lacen testified that Parker's vehicle was at a complete stop in the left most lane

judgment. Rather, as Judge Wooten's order dated October 29, 2008, clarifies that the two actions have merely been consolidated for discovery and joint trial. Therefore, it was an error for counsel for Shakyrá Parker to filed have a "cross motion" for summary judgment in her favor under Index No. 110718/06, the *Lacen* action. The motion should have been filed in Ms. Parker's lawsuit, *Parker v Kennedy*, Index No. 107613/06. Thus, two identical orders addressing both motions will be issued and filed under each index number.

after making a turn onto Queens Boulevard, when the last wheel of Copeland's trailer impacted the right front bumper of Parker's vehicle. Lacen maintained that the right portion of the bumper was knocked off into the street, while the left side of the bumper was being held up by a strand of material. Lacen further testified that the passenger side of the vehicle was pushed inwards from the impact, making it impossible for her to open the door and exit the vehicle.

Copeland testified that, at the time of the accident, he was driving a truck with a 51-foot long trailer which he owned and utilized to deliver building materials. Copeland was traveling on Van Dam Street in the right lane and was making a left-hand turn onto Queens Boulevard into the center lane, which was for trucks only. Copeland testified that, before turning left, he looked in his mirror and did not see anything blocking his truck from proceeding into the center lane. Copeland was about halfway into his turn, when the front left tire of Parker's vehicle made contact with his trailer. Copeland testified that he did not see Parker's vehicle before the accident took place, but did see the vehicle make contact with his tire.

Copeland further testified that when Parker's vehicle made contact with his truck, both vehicles were moving, that Parker's vehicle was traveling faster than his truck and that following the accident, Parker exited the passengers side of the moving car, and approached the front window of his truck.

DISCUSSION

The Court of Appeals has held that "[o]n a motion for summary judgment the court is not to determine credibility, but whether there exists a factual issue, or if arguably there is a genuine issue of fact." *S. J. Capelin Assocs., Inc. v Globe Mfg.*

Corp., 34 NY2d 338, 341 (1974); see also *Shapiro v Boulevard Hous. Corp.*, __AD3d__, 2010 Slip Op. 01065 (1st Dept. Feb. 11, 2010) (issues of credibility, in particular, must be resolved at trial).

Here, the testimony of Parker and Lacen, clearly conflicts with the testimony of Copeland. For example, Parker and Lacen testified that their vehicle was not moving and at a standstill at the time of the accident. However, Copeland testified that he saw Parker's vehicle moving "at the moment" of the accident and that it was moving faster than his truck. (Copeland's EBT, at 52). Copeland maintains that, at the time of the accident, Parker's vehicle either tried to pass the truck on the left side while his truck was making the left hand turn or that Parker's vehicle was trying to change lanes in front his vehicle. Copeland also maintains that because the center lane on Queens Boulevard is for trucks only and that based upon how his truck makes wide turns, Parker's vehicle would have illegally traveled into on-coming traffic in order to pass his truck.

Along with the dispute regarding whether Parker's vehicle was moving at the time of the accident, there is also a dispute as to whether Parker was the driver of her vehicle, or whether Lacen was actually driving. Copeland testified that the driver of the vehicle did not have any identification with her after the accident, so he had the driver write down her contact information. He testified that the name he was given by the driver was "Shakyra Parker." However, at his deposition, Copeland identified Parker as the passenger of the vehicle who approached his truck while the car was still moving. Copeland also testified that the women who identified herself as the driver, had a tattoo on her left bicep with a scroll. At her deposition, Lacen testified that she has a tattoo on

her left bicep that includes a scroll, while Parker has a tattoo on her left arm of a cross.

Also in dispute is whether the passenger door functioned following the accident. Lacer testified that she was riding in the passenger seat and that following the accident, the passenger side door of the car was pushed in and could not be opened. However, Copeland testified that he saw Parker exit the vehicle from this door.

The conflicting testimony regarding who was driving at the time of the accident, whether Parker's vehicle was moving at the time of the accident, and whether Parker's vehicle caused or contributed to the accident, all require denial of Parker's motions for summary judgment.

CONCLUSION and ORDER

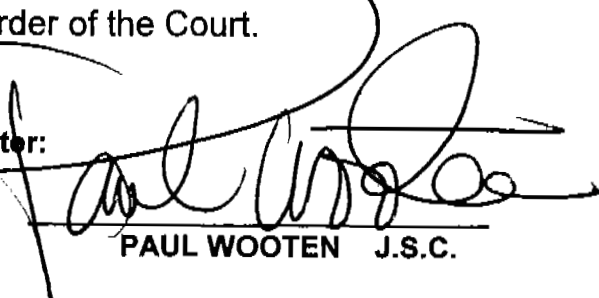
Accordingly, it is hereby

ORDERED that defendant Shakyra Parker's motion for summary judgment dismissing all claims and cross-claims against her in the *Lacer* action is denied; and it is further

ORDERED that Shakyra Parker's motion for summary judgment in her favor in the *Parker* action is denied.

This constitutes the Decision and Order of the Court.

Dated: 3-30-2010

FILED
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