

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

Salsapela Shaban,)
)
 Plaintiff,)
)
 v.) No. 20 L 7144
)
)
 Ellie M. Threlloff and Brian T. Healy,)
)
 Defendants.)
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 Brian T. Healy,)
)
 Third-Party Plaintiff,)
)
 v.)
)
 Hiytham Shaban and Flavio Hernandez,)
)
 Third-Party Defendant.)
-----)
 Brian T. Healy,)
)
 Third-Party Plaintiff,)
)
 v.)
)
 Ellie M. Threlloff,)
)
 Third-Party Defendants.)

MEMORANDUM OPINION AND ORDER

Summary judgment is appropriate only if there exists no question of material fact and the moving party deserves summary judgment as a matter of law. The record in this case presents conflicting testimony as to the cause and contributing factors leading to a five-vehicle collision. Since only a jury can assess the witnesses' testimony and weigh their credibility, both summary judgment motions must be denied.

Facts

At approximately 7:45 a.m. on February 25, 2019, five vehicles collided in a chain-reaction accident in the right-hand lane of westbound West 111th Street approaching College Parkway in Palos Hills. An unknown driver operated the lead vehicle, and Flavio Hernandez operated the second, a Chrysler PT Cruiser. Hiytham Shaban operated the third vehicle, a Toyota Camry, while Brian Healy operated the fourth, a red pick up truck. Ellie Threloff operated the fifth and last vehicle, a Mercury Grand Marquis.

On July 6, 2020, Salsapela filed a two-count negligence complaint, count one directed against Healy and count two directed against Threloff. Each count alleges the defendants owed Salsapela a duty of care that each defendant breached duty by, among other things, failing to: maintain proper control over their vehicle; keep a proper lookout; warn by using the horn; decrease speed; and leave sufficient space between vehicles. The complaint states Salsapela, not Hiytham, drove the third vehicle.

Healy subsequently filed a third-party complaint for contribution against Hiytham and Hernandez. Healy also filed a separate third-party complaint for contribution against Threloff.

The case proceeded to discovery. Salsapela testified that she was a passenger behind the driver's seat in the Toyota Camry driven by her father, Hiytham. Salsapela testified the traffic signal at the intersection for westbound West 111th Street was a steady red. Salsapela also testified there was a single impact with the rear of her car and the front of Healy's pickup truck. She said she never saw Threloff's vehicle prior to the impact.

Hiytham testified traffic was heavy approaching the intersection because many vehicles were turning onto College Parkway, the entrance to Moraine Valley Community College. Hiytham further testified that he slowed his vehicle immediately before colliding with Hernandez's car. Hiytham testified there was a single impact to the rear of his Camry by Healy's pickup truck. He admitted that his car came to a sudden stop.

Hernandez testified that Hiytham's Camry struck Hernandez's vehicle from the rear and caused Hernandez's car to strike the first car with the unnamed driver. Hernandez also testified that his car came to a sudden stop.

Healy testified he could not recall the color of the traffic signal immediately before the collision. He further testified he was travelling between 40 and 50 miles per hour as he approached the intersection despite the slightly heavy traffic conditions. He testified that Hernandez and

Hiytham both merged into the right lane of traffic suddenly—the lane in which Healy traveling—without either using a turn signal. Further, Brian said that both Hernandez’s and Hiytham’s vehicles came to a sudden stop. Healy stated that Hiytham’s vehicle had stopped for 10 seconds during which time Healy attempted to stop his vehicle. Healy admitted he was unable to stop his car in time and struck the rear of Hiytham’s car. Healy testified that two or three seconds later, Threlloff’s vehicle struck the rear of the pickup truck. Healy did not remember whether the front of his pickup truck struck the Camry a second time after Threlloff’s vehicle struck his pickup, but he testified: “I don’t remember exactly, but, you know, I think it did.”

Two parties have filed for summary judgment. First, Salsapela filed a motion seeking summary judgment against Healy for his negligence in causing the accident. Second, Threlloff filed a summary judgment motion seeking dismissal from both Salsapela’s complaint and Healy’s third-party complaint because Threlloff did not contribute to Healy’s collision with the rear of Hiytham’s vehicle. The parties briefed the motions.

Analysis

Salsapela and Threlloff bring their summary judgment motions pursuant to the Code of Civil Procedure. Summary judgment is authorized “if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” 735 ILCS 5/2-1005. The purpose of summary judgment is not to try a question of fact, but to determine whether one exists that would preclude the entry of judgment as a matter of law. *See Land v. Board of Educ. of the City of Chicago*, 202 Ill. 2d 414, 421, 432 (2002).

A defendant moving for summary judgment may disprove a plaintiff’s case in one of two ways. First, the defendant may introduce affirmative evidence that, if uncontroverted, would entitle the defendant to judgment as a matter of law; this is the so-called “traditional test.” *See Purtil v. Hess*, 111 Ill. 2d 229, 240-41 (1986). Second, the defendant may establish that the plaintiff lacks sufficient evidence to establish an element essential to a cause of action; this is the so-called “*Celotex* test.” *See Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986), followed *Argueta v. Krivickas*, 2011 IL App (1st) 102166, ¶ 6. A court should grant summary judgment on a *Celotex*-style motion only when the record indicates the plaintiff had extensive opportunities to establish his or her case but failed in any way to demonstrate he or she could do so. *Colburn v. Mario Tricoci Hair Salons & Day Spas, Inc.*, 2012 IL App (2d) 110624, ¶ 33.

Regardless of the approach, if the defendant presents facts that, if not contradicted, are sufficient to support summary judgment as a matter of law, the nonmoving party cannot rest on the complaint and other pleadings to create a genuine issue of material fact. *See Harrison v. Hardin Cnty. Cmty. Unit Sch. Dist. No. 1*, 197 Ill. 2d 466, 470 (2001). Rather, a plaintiff creates a genuine issue of material fact only by presenting enough evidence to support each essential element of a cause of action that would arguably entitle the plaintiff to judgment. *Prostran v. City of Chicago*, 349 Ill. App. 3d 81, 85 (1st Dist. 2004). To determine whether a genuine issue as to any material fact exists, a court is to construe the pleadings, depositions, admissions, and affidavits strictly against the moving party and liberally in favor of the opponent. *See Adams v. Northern Ill. Gas Co.*, 211 Ill. 2d 32, 43 (2004). The inferences drawn in favor of the nonmovant must, however, be supported by the evidence. *Destiny Health, Inc. v. Connecticut Gen'l Life Ins. Co.*, 2015 IL App (1st) 142530, ¶ 20. A triable issue precluding summary judgment exists if the material facts are disputed, or if the material facts are undisputed but a reasonable person might draw different inferences from the undisputed facts. *Id.* On the other hand, if no genuine issue of material fact exists, a court has no discretion and must grant summary judgment as a matter of law. *See First State Ins. Co. v. Montgomery Ward & Co.*, 267 Ill. App. 3d 851, 854-55 (1st Dist. 1994).

Special attention is drawn to Salsapela's summary judgment motion as a plaintiff. A plaintiff seeking summary judgment may satisfy its initial burden of production by establishing through its pleadings and supporting documents the validity of its factual position on all contested elements. *Performance Food Grp. Co., LLC v. ARBA Care Ctr. of Bloomington, LLC*, 2017 IL App (3d) 160348, ¶ 18 (citing *Triple R Dev. LLC v. Golfview Apts. I, L.P.*, 2012 IL App (4th) 100956, ¶ 7; 4 Richard A. Michael, *Illinois Practice* §§ 38.5, 40.3 (2d ed. 2011)). If the plaintiff satisfies its initial burden of production, the defendant must present evidence to establish genuine issues of material fact or the plaintiff is not entitled to judgment as a matter of law. *Id.* (citing *Triple R*, 2012 IL App (4th) 100956, ¶¶ 12, 16; Michael, *supra* § 40.3). The defendant may not rely solely on its pleadings or argument to raise an issue of material fact. *Id.*

I. Threloff's Summary Judgment Motion

The factual basis for Threloff's summary judgment motion rests on Salsapela's and Hiytham's deposition testimony that Healy's pickup truck struck the rear of the Toyota Camry only once. According to Threloff, that evidence leads inexorable to the conclusion that Threloff's Mercury Marquis striking the rear of Healy's pickup truck did not cause or contribute to Salsapela's injuries because there was no second hit to the Camry. If

Salsapela's and Hiytham's deposition testimony were the only evidence in the record, Threlloff's argument would be well taken.

There is, however, other testimony in the record. Healy testified he could not recall whether his pickup truck struck the rear of the Camry a second time, but he believed it did. There is no question that Healy's testimony is equivocal compared to Salsapela's and Hiytham's, but absolute recall is not a summary judgment requirement. Healy's recollection is certainly subject to further inquiry and his credibility is for a jury to decide. *Maple v. Gustafson*, 151 Ill. 2d 445, 452-53 (1992) ("it is the province of the jury to resolve conflicts in the evidence, to pass upon the credibility of the witnesses, and to decide what weight should be given to the witnesses' testimony"); *Sparling v. Peabody Coal Co.*, 59 Ill. 2d 491, 498-99 (1978) (credibility of witness whose own testimony is contradictory is for jury to decide). At this point, Healy's testimony presents a question of material fact not based solely on argument and is, thus, for a jury to decide.

II. Salsapela's Summary Judgment Motion

Salsapela's summary judgment motion is based on her and Hiytham's testimony that Healy's pickup truck rear ended the Shaban's Camry. That testimony is, in fact, uncontradicted. Despite the unique nature of a rear-end collisions, courts have concluded that:

[a] rear-end collision does not automatically create an inference as a matter of law that the driver of the rear car was negligent or that he was following too closely or driving too fast for conditions. It is the responsibility of the trier of fact to determine whether the rear driver, in such accidents, was acting reasonably under the circumstances, or that the accident was unavoidable.

Lee v. National Material Corp., 74 Ill. App. 3d 629, 631 (1st Dist. 1979) (quoting *Burgdorff v. I.B.M.*, 74 Ill. App. 3d 158, 163 (1st Dist. 1979)).

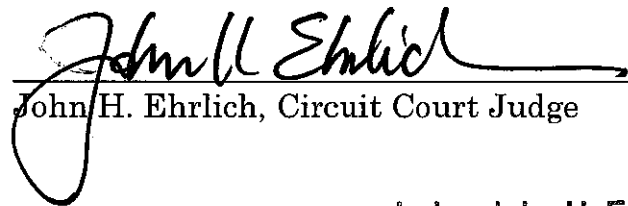
In this case there are plenty of questions of fact to go around. First, Healy unquestionably rear ended the Shaban's Camry, but he also testified that Hernandez and Hiytham both changed lanes without signaling and stopping suddenly. Indeed, both Hernandez and Hiytham admitted they stopped suddenly. That testimony raises the question as to whether Hernandez and Hiytham, either individually or combined, caused or contributed to the multi-collision event. Second, and as noted above, there exists conflicting testimony as to whether Healy's pickup truck struck the rear of the Camry a second time after being struck in the rear by Threlloff's

Mercury Marquis. That conflicting testimony raises a question as to whether a second strike occurred and, if so, whether Threloff contributed to it by driving too fast for conditions and failing to keep a lookout for traffic in front of her. Only a jury will be able to sort out the conflicting testimony and apportion damages appropriately.

Conclusion

For the reasons presented above, it is ordered that:

1. Threloff's summary judgment motion is denied; and
2. Salsapela Shaban's summary judgment motion is denied.



John H. Ehrlich, Circuit Court Judge

Judge John H. Ehrlich

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