

Trunzo v Yannotti

2013 NY Slip Op 30739(U)

April 4, 2013

Supreme Court, Queens County

Docket Number: 20657/2011

Judge: Robert J. McDonald

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SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK
CIVIL TERM - IAS PART 34 - QUEENS COUNTY
25-10 COURT SQUARE, LONG ISLAND CITY, N.Y. 11101

P R E S E N T : HON. ROBERT J. MCDONALD
Justice

- - - - - x

JENNIFER TRUNZO, Index No.: 20657/2011
Plaintiff, Motion Date: 02/11/13
- against - Motion No.: 111

MICHAEL A. YANNOTTI and DENISE YANNOTTI, Motion Seq.: 1
Defendants.

- - - - - x

The following papers numbered 1 to 12 were read on this motion by plaintiff, JENNIFER TRUNZO, for an order pursuant to CPLR 3212 granting plaintiff partial summary judgment on the issue of liability and setting the matter down for trial on damages only:

Papers Numbered

Notice of Motion-Affidavits-Exhibits.....1 - 6
Affirmation in Opposition-Affidavits-Exhibits.....7 - 10
Reply Affirmation.....11 - 12

This is a personal injury action in which plaintiff, JENNIFER TRUNZO, seeks to recover damages for injuries she sustained as a result of a motor vehicle accident that occurred on March 12, 2009, at approximately 6:45 a.m., at the intersection of West Park Avenue and Connecticut Avenue, Long Beach, Nassau County, New York.

Plaintiff claims that at the time of the accident, she was operating her vehicle in a westbound direction on Park Avenue when the defendant, Michael Yanotti, intending to make a left turn from Connecticut onto Park Avenue collided with plaintiff's vehicle in the middle of the intersection. Plaintiff states that as a result of the accident she sustained physical injuries to her neck and back.

Christian R. Oliver, Esq., counsel for plaintiff, now moves for an order pursuant to CPLR 3212(b), granting partial summary judgment in favor of plaintiff on the issue of liability and setting the matter down for a trial on damages. In support of the motion, the plaintiff submits an affirmation from counsel; a copy of the pleadings; a copy of plaintiff's verified bill of particulars; a copy of the police accident report (MV-104AN); and copies of the transcripts of the examinations before trial of the plaintiff, Jennifer Trunzo, and defendant, Michael Yanotti.

In the accident description section of the police report, the police officer, who did not witness the accident, describes the accident, based upon the statements of the two drivers as follows:

"Vehicle 1 (defendant) was trying to make a left turn from S/B on Connecticut Ave. onto E/B West Park Ave. when it collided with Veh 2 (plaintiff), which was traveling W/B on West Park Ave. Driver 1 (defendant), stated it was his fault and did not see Veh 2 (plaintiff) when he tried to make the turn."

Plaintiff, age 32, testified at an examination before trial held on August 24, 2012. She stated that on the date of the accident she was operating her vehicle on West Park Avenue approaching the intersection at Connecticut Avenue when she first saw the defendant driving a black Mercedes towards the intersection from Connecticut Avenue. She testified that as she reached the middle of the intersection, defendant's vehicle did not stop at the intersection but entered the intersection striking her vehicle on the passenger side front door with the front of his vehicle. She stated that when she observed that the defendant's vehicle was proceeding through the intersection, she turned her wheel to the left, attempting to avoid the collision.

Defendant, Michael Yannotti, age 30, was deposed on August 24, 2012. He stated that on the date of the accident he was driving a 1999 Mercedes owned by his parents Alexander and Denis Yannotti. He stated that he was traveling southbound on Connecticut Avenue intending to go to the Long Beach LIRR train station. He stated that he came to the intersection of West park and brought his vehicle to a stop right before the intersection. He stated that he observed vehicles on West Park. He looked to his left and observed a clear road. He stated that he did not see the plaintiff's vehicle. He then proceeded into the intersection intending to make a left turn onto West Park and collided with the passenger side of plaintiff's vehicle. When the police arrived at the scene he told them that he pulled up to the intersection, he didn't see anything so he entered the

intersection and collided with the plaintiff's vehicle. He told the police that the accident was his fault because he did not see the plaintiff's vehicle prior to attempting the left turn.

Plaintiff's counsel, argues in support of the motion for summary judgment, that the defendant driver violated VTL §§ 1141 by failing to yield the right of way to the plaintiff's vehicle approaching the intersection and turning at the intersection without waiting until the turn could be made with reasonable safety. Counsel contends that the defendant was negligent based upon his failure to observe and yield to the plaintiff's vehicle who was traveling straight ahead on West Park Avenue with the right of way. Plaintiff claims that defendant was negligent in making his left turn and striking the plaintiffs vehicle (citing Maloney v Niewender, 27 AD3d 426 {2d Dept. 2006}). Counsel contends that because the defendant made a left turn directly into the path of the plaintiff's vehicle that he violated VTL § 1141 and is negligent as a matter of law. He states that based upon the testimony of the parties, that when the accident occurred, plaintiff had already entered the middle of the intersection and was traveling through the intersection while defendant was still in the process of entering the intersection. Counsel states that because of the defendant's negligent actions he collided with the side of the plaintiffs vehicle with the front of his vehicle. Further, counsel contends that there is no question of fact regarding defendant's negligence as the defendant conceded that he did not see the plaintiff's vehicle as he was making the left turn and stated to the police officer at the scene that the accident was his fault. Counsel asserts that in accordance with the evidence and testimony the plaintiff is entitled to partial summary judgment on the issue of liability as defendant's actions were negligent as a matter of law and there is no evidence demonstrating that the plaintiff was comparatively negligent.

In opposition to the motion, defendant's counsel, Keri Wehrheim, Esq. argues that there are questions of fact as to which vehicle entered the intersection first and whether the plaintiff used reasonable care when she proceeded into the intersection. Counsel argues that the plaintiff observed the defendant's vehicle enter the intersection and applied her brakes 5 - 10 seconds prior to the accident occurring. Counsel asserts, therefore, that there are questions of fact as to the plaintiff's comparative negligence.

Upon review of the plaintiff's motion, the defendants' opposition and the plaintiffs' reply thereto, this court finds as follows:

The proponent of a summary judgment motion must tender evidentiary proof in admissible form eliminating any material issues of fact from the case. The failure to make that showing requires the denial of the motion regardless of the sufficiency of the opposing papers (see Mastrangelo v Manning, 17 AD3d 326 [2d Dept 2005]). If the proponent succeeds, the burden shifts to the party opposing the motion, who then must show the existence of material issues of fact by producing evidentiary proof in admissible form, in support of his position (see Zuckerman v. City of New York, 49 NY2d 557[1980]). 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 (see Cauthers v Brite Ideas, LLC, 41 AD3d 755 [2d Dept. 2007]).

Vehicle and Traffic Law § 1141 requires that "the driver of a vehicle intending to turn to the left within an intersection... yield the right of way to any vehicle approaching from the opposite direction which is within the intersection or so close as to constitute an immediate hazard." A driver with the right of way is entitled to anticipate that the other driver will obey traffic laws that require him to yield (see Kann v Maggies Paratransit Corp., 63 AD3d 792 [2d Dept. 2009]; Palomo v Pozzi, 57 AD3d 498 [2d Dept. 2009]; Berner v Koegel, 31 AD3d 591[2d Dept. 2006]; Gabler v Marley Bldg. Supply Corp., 27 AD3d 519[2d Dept. 2006]). Further, a driver is negligent when an accident occurs because the driver failed to see that which through proper use of the driver's senses he or she should have seen (see Laino v Lucchese, 35 AD3d 672 [2d Dept. 2006]; Berner v Koegel, 31 AD3d at 592 [2d Dept. 2006]; Bongiovi v Hoffman, 18 AD3d 686 [2d Dept. 2005]).

It is plaintiff's contention that the defendant Michael Yannotti, was negligent as a matter of law in attempting to make a left turn onto West Park Avenue in violation of VTL §1141 and that said negligence was the sole proximate cause of the accident. This Court agrees.

Here, the plaintiff established prima facie entitlement to judgment as a matter of law through the submission of the deposition testimony of each party. Plaintiff testified that she saw the defendant's vehicle on Connecticut Avenue as she approached the intersection but that as she reached the middle of the intersection, the defendant proceeded into the intersection and struck her vehicle broadside on the front passenger door. Defendant testified that although he looked for traffic when he reached the intersection at West Park Avenue he did not see the plaintiff's vehicle prior to his entering the intersection. Thus, the evidence established that defendant was negligent in

violating Vehicle and Traffic Law § 1141 by making a left turn when it was not reasonably safe to do so, directly into plaintiff's vehicle which was lawfully present in the intersection (see Ducie v Ippolito, 95 AD3d 1067 [2d Dept. 2012]; Socci v Levy, 90 AD3d 1020 [2d Dept. 2011]; Stanford v Dushey, 71 AD3d 988 [2d Dept. 2010]).

In opposition, the defendants failed to raise a triable issue of fact as to whether the plaintiff was at fault in the happening of the accident. It has been recognized that a driver with the right-of-way who has only seconds to react to a vehicle which has failed to yield is not comparatively negligent for failing to avoid the collision (see Yelder v Walters, 60 AD3d 734 [2d Dept. 2010]; Jaramillo v Torres, 60 AD3d at 735 [2d Dept. 2009]; DeLuca v Cerda, 60 AD3d 721 [2d Dept. 2009]). As Plaintiff had the right of way she was entitled to anticipate that defendant would obey the traffic laws which required him to yield. Here, the plaintiff testified that she only had seconds to try to avoid the impact when she first realized that the defendant was proceeding into the intersection. Therefore, plaintiff established her freedom from comparative negligence as she was lawfully in the intersection when defendant, who concededly did not see the plaintiff's vehicle, entered the intersection (see Bonilla v Gutierrez, 81 AD3d 581 [2d Dept. 2011]);

Accordingly, based upon the foregoing it is hereby

ORDERED, that the plaintiff's motion is granted, and the plaintiff JENNIFER TRUNZO shall have partial summary judgment on the issue of liability as against the defendants MICHAEL A. YANNOTTI and DENISE YANNOTTI and the Clerk of Court is authorized to enter judgment accordingly.

Dated: April 4, 2013
Long Island City, N.Y.

ROBERT J. MCDONALD
J.S.C.