ORIGINAL

Short Form Order

NEW YORK STATE SUPREME COURT – QUEENS COUNTY
Present: HONORABLE BERNICE D. SIEGAL IAS TERM, PART 19
Justice

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Ralph Moise,

Plaintiff,

-against-

Lakeisha D. Williams and Jennifer V. Williams,

Defendants.

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Index No.: 700505/12
Motion Date: 5/15/13
Motion Cal. No.: 74
Motion Seq. No.: 1

The following papers numbered 1 to 12 read on this motion for an order summary judgment on the limited issue of liability against the defendants.

	PAPERS NUMBERED
Notice of Motion - Affidavits-Exhibits.....	1 - 4
Affirmation in Opposition.....	5- 9
Reply Affirmation.....	10 - 12

Upon the foregoing papers, it is hereby ordered that the motion is resolved as follows:

Plaintiff, Ralph Moise ("Moise") moves for an order for Summary Judgment on the issue of liability as against the defendants.

FILED
JUL 18 2013
COUNTY CLERK
QUEENS COUNTY

Facts

Plaintiff contends he was driving his vehicle on Murdock Avenue when defendants' vehicle, attempting to exit a parking space, struck his vehicle. Defendant Lakeisha Williams ("Lakeisha") was parked in the vehicle owned by defendant Jennifer Williams along Murdock Avenue. Moise

contends that Lakeisha failed to signal prior to exiting her parking spot.

Lakeisha admitted to the police officer, as indicated in the police report, that she "pulled out from parked and didn't see [plaintiff's vehicle]."

Lakeisha states in her affidavit that prior to exiting her parking spot she checked her rear view mirror and engaged her left turn signal. Lakeisha also states that as she was entering the roadway, her vehicle was impacted on the front driver side by plaintiff's vehicle.

Discussion

It is well established that summary judgment should be granted when there is no doubt as to the absence of triable issues. (*See Rotuba Extruders, Inc. v. Ceppos*, 46 N.Y.2d 223, 231 [1978].) As such, the function of the court on the instant motion is issue finding and not issue determination. (*See S.J. Capelin Associates, Inc. v. Globe Mfg. Corp.*, 34 N.Y.2d 338, 341 [1974].) The party moving for summary judgment must tender admissible evidentiary proof that eliminates any material issues of fact from the case. (*Zuckerman v. City of New York*, 49 N.Y.2d 557, 562 [1980].) If the movant succeeds, the burden shifts to the party opposing the motion, who must show issues of material facts sufficient to require a trial. (*Id.*)

Pursuant to VTL § 1128:

> "Whenever any roadway has been divided into two or more clearly marked lanes for traffic the following rules in addition to all others consistent herewith shall apply:
>
> (a) A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety."

Moise made a prima facie showing of negligence on the part of Lakeisha based on Lakeisha's statement to the police officer (*Niyazov v. Bradford*, 13 A.D.3d 501 [2nd Dept 2004]; *Vaden v. Rose*, 4 A.D.3d 468 [2nd Dept 2004] (police report containing an admission against interest sufficient to support a prima facie case for summary judgment]) and Lakeisha's own deposition testimony that the motor vehicle accident at issue occurred when she pulled out of a parking spot and into a lane of moving traffic (see Vehicle and Traffic Law § 1128[a]; *Calandra v. Dishotsky*, 244 A.D.2d 376 [2nd Dept 1997].) The burden then shifts to the defendants to raise a triable issue of fact.

In opposition, the defendant failed to raise a triable issue of fact as to whether the plaintiff was at fault in the happening of the accident. To rebut plaintiff's prima facie showing of negligence Lakeisha was required to establish an issue of fact with respect to whether "plaintiff was speeding prior to the accident or that (plaintiff) contributed in any way to the accident." (*Flores v City of New York*, 66 A.D.3d 599, 599 [2nd Dept 2009].) In opposition, Lakeisha contends that she took every precaution prior to exiting her parking spot and that she did not observe a vehicle approaching on Murdoch Ave. Lakeisha contends that despite not seeing the plaintiff prior to the accident, she "can only estimate that [plaintiff] must have been speeding" prior to the accident. Lakeisha's assertion that plaintiff might have been speeding is "completely speculative and inadequate to withstand summary judgment." (*Colandrea v. Choku*, 94 A.D.3d 1034, 1036 [2nd Dept 2012]; *Czarnecki v. Corso*, 81 A.D.3d 774 [2nd Dept 2011][holding that since defendant admitted to not seeing the plaintiff's vehicle prior to the collision, his assertions that the plaintiff may have been speeding were speculative].)

Conclusion

For the reasons set forth above, plaintiff's motion for summary judgment on the issue of

liability is granted and the matter is set down for a trial on damages only.

Dated: July 17, 2013

Bernice D. Siegal, J. S. C.