

White v Trufelli

2014 NY Slip Op 33241(U)

April 4, 2014

Supreme Court, Queens County

Docket Number: 703041/2012

Judge: Bernice D. Siegal

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ORIGINAL

Short Form Order

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

-----X
Natanya White,

Plaintiff,

-against-

Kristen A. Trufell and Noreen Trufelli,

Defendants.
-----X

Index No.: 703041/12
Motion Date: 1/6/14
Motion Cal. No.: 264
Motion Seq. No.: 1

The following papers numbered 1 to 12 read on this motion for an order pursuant to CPLR §3212 directing summary judgment to the defendants on the issue of liability, setting the matter down for a trial on damages only.

- Notice of Motion - Affidavits-Exhibits.....
- Affirmation in Opposition.....
- Reply Affirmation.....

FILED
PAPERS
NUMBERED
1 - 4
5-
10 - 12
APR - 9 2014
COUNTY CLERK
QUEENS COUNTY

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

Plaintiff moves for summary judgment pursuant to CPLR §3212 against the defendants on the grounds that there is no basis upon which liability can be imputed to the plaintiff.

Background

Plaintiff brought the within action for personal injuries allegedly sustained as a result of a pedestrian knockdown that occurred on October 4, 2012. Natanya White (“White” or “Plaintiff”), a pedestrian contends she was struck by a vehicle operated by Kristen Trufelli (“Kristen”), driver,

and owned by Noreen Trufelli (collectively as “Defendants”). Plaintiff contends that she was walking southbound across 62nd Drive, in the crosswalk, with a walk-sign in her favor, when Kristen made a left hand turn from Northbound Junction Blvd onto 62nd Drive.

Plaintiff contends that upon reaching the intersection she stopped for approximately ten seconds because the pedestrian control device was flashing red. Plaintiff states that when the pedestrian control device changed to white she began to cross the street via the crosswalk and as she was approaching the other end of the cross-walk she was struck by Defendants’ vehicle.

Kristen testified at her deposition that she did not see the Plaintiff prior to the accident and that when the light turned green she was looking down at her map on her vehicle’s navigation screen.

Kristen also testified that “the light was red, then I heard honking behind me so I looked up and it had turned green so I looked left and turned left.” (Kristen dep. pp 28.)

Defendants contend that Kristen had a green traffic light when the accident took place.

Discussion

Motions for summary judgment are granted only when there are no material issues of fact to be resolved at trial. (*See Andre v. Pomeroy*, 35 N.Y.2d 361, 364 [1974]). Since a motion for summary judgment is considered a drastic remedy, the motion's proponent has the burden of establishing a cause of action "sufficiently to warrant the court as a matter of law in directing judgment in his favor and he must do so by tender of evidentiary proof in admissible form." (*See Zuckerman v. City of New York*, 49 N.Y.2d 557, 562 [1980]); *Pomeroy* at 364). If the proponent succeeds, then the burden shifts to the opposing party, who must then demonstrate through admissible evidence that there are material issues of fact sufficient to defeat the motion for summary judgment. (*See Zuckerman* at 562). This standard, however, is more flexible for the opposing party

because he is permitted to demonstrate an acceptable excuse for the failure to provide admissible evidence. *Id.*

In relevant part, VTL §1146(a) states that “every driver of a vehicle shall exercise due care to avoid colliding with any...pedestrian...upon any roadway and shall give warning by sounding the horn when necessary.

Here, plaintiff made the requisite prima facie showing of her entitlement to summary judgment through the submission of the deposition testimony, which shows that the defendant breached her duty to plaintiff by failing to yield as Plaintiff crossed the sidewalk, per VTL §1151(a), or by exercising due care to avoid hitting Plaintiff with her vehicle, per §1146(a). (*See Moreira v. M.K. Travel and Transport, Inc.*, 106 A.D.3d 965 [2nd Dept 2013]; *Cavitch v. Mateo*, 58 A.D.3d 592, 593 [2d. Dept. 2009]; *Gill v. Braasch*, 100 A.D.3d 1415 [4th Dept. 2012]).

In opposition, the defendants failed to raise a triable issue of fact. Defendants rely on the testimony of Kristen wherein she states that she began her turn after the light had turned green in her favor. “Although a driver facing a steady green light is entitled to proceed, he or she has a duty to yield the right-of-way to pedestrians lawfully within a crosswalk.” (*Barbieri v. Vokoun*, 72 A.D.3d 853, 855 [2nd Dept 2010]; see Vehicle and Traffic Law § 1111[a][1]). The evidence elicited at the depositions of Plaintiff and Defendant indicate that Kristen did not properly yield the right-of-way. Specifically, Plaintiff testified that she “was almost all the way” across the crosswalk when she was struck. In addition, Kristen testified that just prior to the accident she was looking at her car navigation and only noticed the light being green because she heard a honk and that she did not see the Plaintiff prior to the accident. (*Benedikt v. Certified Lumber Corp.*, 60 A.D.3d 798 [2nd Dept 2009][Defendant failed to raise an issue of fact when he admitted to not seeing the plaintiff prior to the accident].) Defendant had a “duty to see what should be seen and to exercise reasonable care

under the circumstances to avoid” the accident. (*Williams v. Spencer-Hall*, 113 A.D.3d 759,760 [2nd Dept 2014]; *Cajas-Romero v. Ward*, 106 A.D.3d 850 [2nd Dept 2013].) Furthermore, “[A] motorist approaching an intersection is charged with the duty to watch vigilantly for pedestrians and vehicles caught between light changes and cannot depend exclusively on a favorable light.” (*Patterson v. Meyers*, 583 So.2d 79, 82 [La.App. 4 Cir.,1991].)

Conclusion

Accordingly, the motion for summary judgment on the issue of liability is granted in favor of the plaintiff and, the matter is set down for a trial on damages only.

Dated:

April 4, 2014


Bernice D. Siegal, J. S. C.