

Deleon v McHugh

2014 NY Slip Op 33281(U)

July 23, 2014

Supreme Court, Queens County

Docket Number: 701455/2013

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

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LUIS DELEON,
Plaintiff,
- against -

Index No.: 701455/2013
Motion Date: 07/01/14
Motion No.: 41
Motion Seq.: 1

BARBARA M. MCHUGH,
Defendant,

----- x

FILED
JUL 30 2014
COUNTY CLERK
QUEENS COUNTY

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

Papers Numbered

- Notice of Motion-Affidavits-Exhibits.....1 - 5
Affirmation in Opposition-Affirmations.....6 - 9
Reply Affirmation.....10 - 12

In this negligence action, plaintiff, Luis Deleon, seeks to recover damages for personal injuries he sustained as a result of a motor vehicle accident that occurred at approximately 9:00 a.m. on January 25, 2012, between the vehicle operated by plaintiff, and the vehicle owned and operated by defendant, Barbara M. McHugh. The accident took place at the intersection of 29th Street at or near the intersection with Parsons Boulevard, Queens County, New York. Plaintiff was allegedly injured when his vehicle collided with the defendant's vehicle in the intersection. The intersection is controlled by a stop sign which was facing the direction of the defendant's vehicle on 29th Avenue. Plaintiff contends that he was proceeding with the right-of-way on Parsons Boulevards when the vehicles collided in the intersection. Plaintiff contends that the defendant was negligent in entering the intersection without yielding the right of way

and that said negligence was the sole proximate cause of the accident.

The plaintiff commenced this action by filing a summons and complaint on April 22, 2012. Issue was joined by service of defendant's verified answer dated May 9, 2012. The plaintiff filed a Note of Issue on March 18, 2014.

In support of the motion for summary judgment, the plaintiff submits an affirmation from counsel, Scott L. Wiss, Esq; a copy of the pleadings; a copy of the plaintiff's verified bill of particulars; and copies of the transcripts of the examinations before trial of the plaintiff and defendant.

In her examination before trial, taken on November 5, 2013, the defendant, Barbara McHugh, testified that she was involved in a motor vehicle accident on January 25, 2012, at the intersection of 29th Street and Parsons Boulevard. It was 9:00 a.m. and she was going from her home to her place of employment at a nursing home. She was traveling eastbound on 29th Street. At the intersection with Parsons Boulevard there was a stop sign governing her direction of travel. There were no stop signs governing travel on Parsons Boulevard at that intersection. She stated that she brought her vehicle to a complete stop even with the stop sign. She was stopped for 15 seconds. While stopped she looked left and right and then left again. She did not see any traffic on Parsons in either direction. She began to move forward into the intersection at about 2 miles per hour. She stated that there were mailboxes on the corner obstructing her full view of Parsons Boulevard so she pulled up two feet from the stop sign and stopped her vehicle again to look for traffic coming from her left because she intended to make a right turn onto Parsons Boulevard. She was looking ahead when her vehicle was struck by the defendant's vehicle which had come from a southbound direction. She stated that she was only slightly into the intersection when the accident occurred. When the police came to the scene she told the officer at the scene that she stopped at the corner then moved up a little and a car came very fast from the left and swiped the front of her car and kept going. She stated that the front of her vehicle collided with the rear of plaintiff's vehicle. Although the police report states that she told the officer that she stopped and then proceeded through the intersection and collided with the defendant's vehicle, she denied that she made that statement to the police officer.

Plaintiff Luis Deleon, age 33, a New York City Police Officer, testified at an examination before trial on November 5, 2013. He states that he was involved in a motor vehicle accident

on January 25, 2012 at approximately 9:00 a.m. He was coming from work and was heading home driving a 2007 Nissan Maxima southbound on Parsons Boulevard. He stated that there was no traffic control device in his direction on Parsons Boulevard and 29th Avenue whereas there was a stop sign for vehicles approaching Parsons Boulevard on 29th Avenue. He stated that he did not see the defendant's vehicle prior to the impact. His vehicle was struck in the rear quarter panel. He called the 911 police operator. He observed damage to the front of the plaintiff's Hyundai SUV. When the police officer came to the scene he told the officer that the other driver struck his vehicle. He declined medical assistance at the scene.

Plaintiff now seeks summary judgment contending that the evidence establishes that the defendant violated VTL § 1142(a), was negligent as a matter of law, and was the sole proximate cause of the accident. Plaintiff's counsel contends that the accident was caused solely by the negligence of the defendant who had a stop sign facing her direction of traffic and failed to yield the right of way to the plaintiff in violation of VTL § 1142. Plaintiff submits that although the defendant states that she stopped at the stop sign, she then proceeded into the intersection and failed to see the vehicle operated by the plaintiff and failed to yield to the plaintiff's vehicle which was proceeding with the right-of-way on Parsons Boulevard. Thus, the plaintiff contends that the defendant was solely responsible for causing the accident while the plaintiff, who was proceeding lawfully with the right of way, was free from culpable conduct (citing Williams v Hayes, 103 AD3d 713 [2d Dept. 2013]; Thompson v Schmitt, 74 AD3d 789 [2d Dept. 2010]; Bongiovi v Hoffman, 18 AD3d 686 [2d Dept. 2005]).

In opposition, Jeffrey G. Kuhlman,, Esq., counsel for defendant, submits that summary judgment is not appropriate as there are triable issues of fact with respect to defendant's negligence in the happening of the accident. Counsel asserts that the defendant did come to a complete stop, waited 15 seconds, looked in both directions, moved up slightly and was the struck by the plaintiff's vehicle. Counsel asserts that the defendant's actions were reasonable under the circumstances, and, as such, the testimony of the parties raises questions of fact as to the comparative negligence of the plaintiff.

The proponent of a summary judgment motion must tender evidentiary proof in admissible form eliminating any material issues of fact from the case. 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]).

Pursuant to VTL § 1142(a):

"every driver of a vehicle approaching a stop sign shall stop as required by section eleven hundred seventy-two and after having stopped shall yield the right of way to any vehicle which has entered the intersection from another highway or which is approaching so closely on said highway as to constitute an immediate hazard during the time when such driver is moving across or within the intersection."

Upon review of the plaintiff's motion, the affirmation in opposition, and the reply thereto, this Court finds as follows:

This Court finds, that plaintiff presented evidence that the defendant, who was faced with a stop sign at the intersection of 29th Avenue and Parsons Boulevard, was negligent having driven her vehicle into the intersection without yielding the right-of-way to the plaintiff's vehicle (see Vehicle and Traffic Law § 1142[a]; Luke v McFadden, 2014 NY Slip Op 4906 [2d Dept., 2014][driver who fails to yield the right-of-way after stopping at a stop sign controlling traffic is in violation of Vehicle and Traffic Law §§ 1142(a) and 1172(a), and is negligent as a matter of law]; Galvis v Ravilla, 111 AD3d 600 [2d Dept. 2013]; Timm v Barilli, 109 AD3d 655 [2d Dept. 2013]; Figueroa v Diaz, 107 AD3d 754 [2d Dept. 2013]; Hutton v Whelan, 104 AD3d 914 [2d Dept. 2013]; Williams v Hayes, 103 AD3d 713 [2d Dept. 2013]; Francavilla v Doyno, 96 AD3d 714 [2d Dept. 2012]; Zuleta v Quijada, 94 AD3d 876 [2d Dept. 2012]; Kotzias v Panagiotis, 91 AD3d 607 [2d Dept. 2012]; Duran v Simon, 83 AD3d 654 [2d Dept. 2011]). It is immaterial that the defendant testified that she stopped at the stop sign before proceeding into the intersection, because she did not have the right of way when she proceeded into the intersection (see Williams v Hayes, 103 AD3d 713 [2d Dept. 2013]; Amalfitano v Rocco, 100 AD3d 939 [2d Dept. 2012]; Czarnecki v Corso, 81 AD3d 774 [2d Dept. 2011]; Martin v Ali, 78 AD3d 1135 [2d Dept. 2010]).

Further, the evidence submitted in support of the motion established, prima facie, that Ms. McHugh's conduct was the sole proximate cause of the accident. The plaintiff was entitled to anticipate that defendant would obey the traffic law requiring her to yield (see Luke v McFadden, 2014 NY Slip Op 4906 [2d Dept. 2014]; Bennett v Granata, 987 NYS2d 424 [2d Dept. 2014]; Williams v Hayes, 103 AD3d 713 [2d Dept. 2013]; Francavilla v Doyno, 96 AD3d 714 [2d Dept. 2012]; Kotzias v Panagiotis, 91 AD3d at 607[2d

Dept, 2012]; Duran v Simon, 83 AD3d 654 [2d Dept. 2011]; Martin v Ali, 78 AD3d 1135 [2d dept. 2010]).


Having made the requisite prima facie showing of entitlement to summary judgment as a matter of law, the burden shifted to the defendant to raise a triable issue of fact as to whether plaintiff was also negligent, and if so, whether that negligence contributed to the happening of the accident (see Goemans v County of Suffolk, 57 AD3d 478 [2d Dept. 2007]). Here, this Court finds that the defendant failed to raise a triable issue of fact as to whether plaintiff was comparatively negligent because the driver who has the right of way is entitled to anticipate that the driver facing the stop sign will obey the traffic law requiring him or her to yield (see Harris v Linares, 106 AD3d 873 [2d Dept. 2013]; Briggs v Russo, 98 AD3d 547 [2d Dept. 2012]; Barbato v Maloney, 94 AD3d 1028 [2d Dept. 2012]; Rahaman v Abodeledhman, 64 AD3d 552 [2d Dept. 2009]). In addition, a driver with the right-of-way who has only seconds to react to a vehicle which has failed to yield is not comparatively at fault for failing to avoid the collision (see Bennett v. Granata, 987 NYS2d 424 [2d Dept. 2014]; Figueroa v Diaz, 107 AD3d 754 [2d Dept. 2013]; Barbato v Maloney, 94 AD3d 1028 [2d Dept. 2012]).

Accordingly, for all of the above stated reasons, it is hereby,

ORDERED that the motion by plaintiff, LUIS DELEON, for an order granting partial summary judgment against defendant BARBARA M. McHUGH on the issue of liability is granted, and it is further,

ORDERED, that the Clerk of Court is authorized to enter judgment accordingly.

Dated: July 23, 2014
Long Island City, N.Y.


ROBERT J. MCDONALD
J.S.C.