

Marin v Ardeljan

2014 NY Slip Op 33571(U)

October 20, 2014

Supreme Court, Queens County

Docket Number: 702971/2012

Judge: Robert J. McDonald

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.

This opinion is uncorrected and not selected for official publication.

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

ORIGINAL

----- x

CRYSTLE R. MARIN,
Plaintiff,

Index No.: 702971/2012

Motion Date: 09/11/14

- against -

Motion No.: 79

JON ARDELJAN and VALERIE J. KNOWLES,

Motion Seq.: 2

Defendants,

----- x

The following papers numbered 1 to 15 were read on this motion by Defendant, Jon Ardeljan, for an order pursuant to CPLR 3212(b) granting defendant summary judgment on the issue of liability and dismissing the plaintiff's complaint and all cross-claims against him:

Papers Numbered

- Ardeljan's Notice of Motion-Memo of Law-Exhibits.....1 - 6
Plaintiff's Affirmation in Opposition-
Affirmations-Memo of Law.....7 - 11
Knowles' Affirmation in Opposition.....12 - 14
Ardeljan's Reply Affirmations(2).....15 - 19

In this negligence action, plaintiff, Crystle R. Marin, seeks to recover damages for personal injuries she sustained as a result of a motor vehicle accident that occurred on April 7, 2010, between the vehicle owned and operated by defendant, Jon Ardeljan, and the vehicle owned and operated by defendant, Valerie J. Knowles. Plaintiff, Crystle R. Marin, was a passenger in the Knowles vehicle. The accident took place at the intersection of Palmetto Street and Onderdonk Avenue, Queens County, New York. Plaintiff was allegedly injured when the two vehicles collided in the intersection. The intersection is controlled by a stop sign which was facing the direction of the Knowles' vehicle on Palmetto Street. Ardeljan, who had no traffic control device in his direction, contends that he was proceeding with the right-of-way on Onderdonk Avenue when the vehicles collided in the intersection. Plaintiff contends that both defendants were negligent. Defendant Ardeljan asserts that Knowles was negligent

FILED
OCT 27 2014
COUNTY CLERK
QUEENS COUNTY

in entering the intersection without yielding the right of way and that Knowles' negligence was the sole proximate cause of the accident.

The plaintiff commenced this action by filing a summons and complaint on November 29, 2012. Issue was joined by service of defendant Ardeljan's verified answer with cross-claims dated January 18, 2013. Defendant Knowles served her verified Answer with cross-claims on April 1, 2013. A Note of Issue was filed on March 14, 2014. The case is presently on the calendar of the Trial Scheduling Part on February 18, 2015.

In support of the motion for summary judgment, defendant Jon Ardeljan submits an affirmation from counsel, Katie A. Walsh, Esq; a copy of the pleadings; and copies of the transcripts of the depositions of plaintiff, Crystle R. Marin, and defendants Jon Ardeljan and Valerie J. Knowles.

Jon Ardeljan was deposed on January 16, 2014. He stated that he was involved in an automobile accident on April 7, 2010 at approximately 3:30 p.m. at the intersection of Onderdonk Avenue and Palmetto Road. He was proceeding eastbound on Onderdonk. There was no traffic control device for traffic proceeding on Onderdonk and there was a stop sign governing traffic proceeding on Palmetto. While approaching the subject intersection he was traveling at a rate of 15-20 miles per hour. As he entered the intersection he was looking straight ahead and saw the other vehicle in front of his vehicle less than one second before the impact. When he first saw the other vehicle it was two or three feet away from his car. He stated that the Knowles vehicle came right through the intersection. A portion of her vehicle was in the intersection when he first saw it. The front of his vehicle struck the driver's side door of the Knowles vehicle. He stated that the Knowles vehicle was proceeding at 30 miles per hour. He said that Knowles' vehicle was halfway in the intersection at the time of the impact. He did not know if Knowles stopped at the stop sign before proceeding into the intersection. He started to brake when he saw her vehicle but did not have time to avoid the accident.

Valerie J. Knowles testified at an examination before trial on May 6, 2014. On the date of the accident she was operating her Nissan Altima and her friend Crystle was a front seat passenger. She did not recall the name of the street she was on or whether it was a one way or two way street but there were cars parked on her left. She stated that there was a stop sign governing traffic in her direction of travel. When she got to the stop sign on Palmetto she testified that she came to a complete stop. She intended to

proceed straight through the intersection. She testified that after she came to a complete stop: "I inched my way because you can't see from the intersection. You can't see the left side. So I inched my way. I saw nothing - you can't see the full block. Either you can see half a block, and I saw nothing and I proceeded." She stated there were cars parked on the side of the road obstructing her view. She looked to her left as she was inching up but she did not see the other vehicle prior to the impact. She stated that at the time of the impact she was looking straight ahead, proceeding at a rate of 10 to 20 miles per hour. As she inched her way into the intersection she asked Crystal to help her look to the left for oncoming cars because she could only partially see cars coming from her left on Onderdonk. She could not see because there was a truck parked on her left and a building on the corner blocking her view. As she entered the intersection her vehicle was struck on the driver's side door. Her vehicle was propelled into a light pole on the corner. After the accident she stated that she approached the other driver and smelled alcohol on his breath. She told the officers at the scene that she believed the defendant was drunk but they did not administer a field sobriety test and he was permitted to leave the scene. She estimated his rate of speed at 40-50 miles per hour.

Crystle Marin, age 29, was deposed on January 16, 2014. She stated that on the date of the accident she was a front seat passenger in the motor vehicle operated by Valerie Knowles. She stated that there was a stop sign at the intersection with Onderdonk. She stated that Knowles stopped at the stop sign for a few seconds. Ms. Marin was looking to the left up the block on Onderdonk to see if any cars were coming. She stated that Ms. Knowles inched up because her view was blocked. She stated that she could not see very far up the block either. They were in the middle of the intersection when the impact occurred. The impact was heavy to the driver's side door and caused Ms. Marin to hit her face and body on the inside of the car.

Mr. Ardeljan now seeks summary judgment contending that the evidence establishes that Ms. Knowles' actions violated VTL § 1142(a), that Ms. Knowles was negligent as a matter of law and was the sole proximate cause of the accident. Ardeljan's counsel contends that the accident was caused solely by the negligence of Ms. Knowles 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. Mr. Ardeljan submits that Ms. Knowles was negligent in entering the intersection when it was not safe to do so, failed to see the vehicle operated by the co-defendant and failed to yield to the co-defendants' vehicle which was proceeding with the right-of-way on Onderdonk Avenue. Counsel asserts that Ms.

Knowles entered the intersection without being able to see to her left to ascertain whether there was a vehicle approaching. It is claimed that by entering the intersection without knowing whether any vehicles were coming from her left she caused the subject accident (citing Figueroa v Diaz, 107 AD3d 754 [2d Dept. 2013]; Francavilla v Doyno, 96 AD3d 714 [2d Dept. 2012]; Barbato v Maloney, 94 AD3d 1028 [2d Dept. 2012]; Zuleta v Quijada, 94 AD3d 876 [2d Dept. 2012]; Zuleta v Quijada, 94 AD3d 876 [2d Dept. 2011]). Thus, Mr. Ardeljan contends that Ms. Knowles' negligence was the sole proximate cause of the accident while the co-defendant, Ardeljan, who was proceeding lawfully with the right of way, was free from culpable conduct (see Grossman v Spector, 48 AD3d 750 [2d Dept. 2008]; Odumbo v Perera, 27 AD3d 709 [2d Dept. 2006]; Bongiovi v Hoffman, 18 AD3d 686 [2d Dept. 2005]).

In opposition, Jonathan R. Avolio, Esq., counsel for plaintiff, submits that summary judgment is not appropriate as there are triable issues of fact with respect to Mr. Ardeljan's negligence in the happening of the accident. Although counsel states that defendant Knowles had a stop sign in her direction thus bearing some negligence, counsel also asserts that the courts have held that there can be more than one proximate cause of an accident (see Incle v Byrne-Lowell, 115 AD3d 709 [2d Dept. 2014]; Cox v Nunez, 23 AD3d 427 [2d Dept. 2005]). Plaintiff argues that there is evidence of comparative negligence on the part of Mr. Ardeljan in that Mr. Ardeljan failed to see the Knowles vehicle in the intersection and failed to yield, resulting in the accident. Counsel claims that as the Knowles vehicle was already in the intersection when Ardeljan saw her, there is a question of fact as to whether Ardeljan was negligent in entering the intersection, was inattentive, was traveling at an excessive speed, used reasonable care to avoid the collision, and failed to yield the right of way to Knowles vehicle which was already in the intersection (citing Virzi v Fraser, 51 AD3d 784 [2d Dept. 2008]; Romano v 202 Corp. 305 AD2d 576 [2d Dept. 2003]; Bodner v Grenwald, 296 AD2d 564 [2d Dept. 2002]). Thus, plaintiff asserts that Mr. Ardeljan has not established his freedom from comparative negligence.

Scott R. Dinstall, Esq. counsel for Valerie J. Knowles, opposes the motion asserting that there are triable issues of fact as to whether Ardeljan entered the intersection when it was unsafe to do so, whether he was traveling at an unsafe speed under the circumstances, whether he failed to see what was there to be seen and whether he was operating his vehicle after having consumed alcohol.

In reply, the movant contends that the evidence shows that Ardeljan was already in the intersection when he first saw the

Knowles vehicle entering and, as such, the Ardeljan vehicle was in the intersection first. Further Ardeljan submits that the allegations that Ardeljan was traveling at an excessive rate of speed and that he was intoxicated are pure speculation

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 defendant Ardeljan's motion, the plaintiff's affirmation in opposition, the co-defendant's affirmation in opposition and the defendant's reply thereto, this Court finds as follows:

The plaintiff presented evidence that the defendant, who was faced with a stop sign at the intersection of Palmetto Road and Onderdonk Avenue, was negligent in entering the intersection without having a clear view of the traffic on the through street and without yielding the right-of-way to the Ardeljan's's vehicle (see Vehicle and Traffic Law § 1142[a]; Luke v McFadden, 119 AD3d 533 [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 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]).

Here, Ms. Knowles testified that she proceeded into the intersection despite the fact that her view of Onderdonk Avenue was partially obstructed by a vehicle parked near the corner. She stated that she looked to the left and also asked the plaintiff to look to the left but neither one could not fully see down Onderdonk Avenue. Ms. Knowles stated she proceeded slowly into the intersection although she could not see into it and she did not see the Ardeljan's vehicle come from the left. Although she never saw Ardeljan's vehicle prior to impact, she approximated its speed as 40-50 miles per hour based upon the force of the impact. In this regard, the courts have held that where the proof establishes that a vehicle enters an intersection without a clear view of traffic and fails to yield the right-of-way to cross-traffic after stopping at a stop sign, the evidence is sufficient to establish the driver is negligent based upon a violation of Vehicle and Traffic Law § 1142(a) (see Galvis v Ravilla, 974 NYS2d 288 [2d Dept. 2013]; Timm v Barilli, 109 AD3d 655 [2d Dept. 2013]; Figueroa v Diaz, 107 A.D.3d 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]; Martin v Ali, 78 AD3d 1135 [2d Dept. 2010]; Cartica v Kieltyka, 55 AD3d 523 [2d Dept. 2008]).

Further, the evidence submitted in support of the motion established, prima facie, that Mr. Ardeljan was free of comparative negligence and that Ms. Knowles conduct in driving into the path of Ardeljan's vehicle was the sole proximate cause of the accident. The Ardeljan vehicle was entitled to anticipate that Ms. Knowles would obey the traffic law requiring her to yield (see Luke v McFadden, 119 AD3d 533 [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 Ms. Knowles to raise a triable issue of fact as to whether Mr. Ardeljan 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 Ms. Knowles and the plaintiff failed to raise a triable issue of fact as to whether Ardeljan 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]; Williams v Hayes, 103 AD3d 713 [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]).

Further, although Ms. Knowles alleges that the movant was intoxicated at the time of the accident, the fact that the defendant may have been intoxicated is a factor to be considered by the jury in determining the credibility of the witness and "in determining whether or not the plaintiff used the care of a reasonably prudent sober person under the circumstances" (see PJI 2:45). Therefore, even if Ardeljan was intoxicated as alleged, such intoxication does not automatically establish the defendant's negligence for causing the accident and does not vitiate the effect of any negligence on the part of Ms. Knowles (see Gall v Schwed, 119 AD3d 524 [2d Dept. 2014]; Kemper v Arnow, 18 AD3d 939 [3rd Dept. 2005]). Defendant's intoxication, without a showing of causation, cannot provide a basis for liability (see Reed v City of Syracuse, 309 AD2d 1195 [4th Dept. 2003]; Tiberi v Barkley, 226 AD2d 1005 [3rd Dept. 1996]).

Lastly, the plaintiff's argument that Ardeljan was negligent in the operation of his vehicle and was traveling at an excessive rate of speed is speculative, as Knowles testified that she never saw Ardeljan's vehicle prior to the impact, and as such, her assertions are insufficient to defeat the motion for summary judgment (see Galvis v Ravilla, 111 AD3d 600 [2d Dept. 2013]; Francavilla v Doyno, 96 AD3d 714 [2d Dept. 2012]; Duran v Simon, 83 AD3d 654 [2d Dept. 2011]).

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

ORDERED that the motion by defendant JON ARDELJAN for an order dismissing the plaintiff's complaint and all cross-claims against him is granted, and it is further,

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

Dated: October 20, 2014
Long Island City, N.Y.



ROBERT J. MCDONALD
J.S.C.