

Rodriguez v Coca-Cola Refreshments USA, Inc.

2015 NY Slip Op 32868(U)

June 25, 2015

Supreme Court, Queens County

Docket Number: 703310/2013

Judge: David Elliot

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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE DAVID ELLIOT
Justice

IAS Part 14

ANA MARIA RODRIGUEZ,
Plaintiff(s),

Index
No. 703310 2013

- against -

Motion
Date June 5, 2015

COCA-COLA REFRESHMENTS USA, INC., et
ano.,

Defendant(s).

Motion
Cal. No. 98

Motion
Seq. No. 2

FILED
JUN 26 2015
COUNTY CLERK
QUEENS COUNTY

The following papers read on this motion by plaintiff for an order granting her summary judgment in her favor on the issue of liability.

Papers
Numbered

Notice of Motion - Affirmation - Exhibits.....	EF42-50
Answering Affirmation - Exhibits.....	EF51-53
Reply.....	EF54

Upon the foregoing papers it is ordered that the motion is determined as follows:

Plaintiff commenced this action to recover damages for personal injuries alleged to have been sustained as a result of a motor vehicle accident which occurred on May 6, 2013 on Hoyt Avenue at or near its intersection with 33rd Street,¹ County of Queens, City and State

1. There are some discrepancies in the papers submitted hereon as to the exact location of the subject accident. Notwithstanding, in light of the court's determination on this motion, discussed, *infra*, whether or not these differences create a material issue of fact is irrelevant, as there is another

of New York. On her motion, plaintiff submits her deposition transcript, in which she testified, in relevant part: that she was driving eastbound in the left-most lane of Hoyt Avenue, which has four lanes for moving traffic in her direction of travel; that the left-most lane allows for traffic to turn left onto 33rd Street or continue straight onto the Grand Central Parkway (GCP) entrance ramp, the second lane is for traffic traveling straight only, the third lane is for traffic going either straight toward the GCP entrance ramp or toward Astoria Boulevard, and the fourth and right-most lane allows for traffic to go straight toward Astoria Boulevard; that it was her intention to go straight through the intersection of 33rd Street onto the GCP entrance ramp; that she saw defendants' truck coming from her right side and she "couldn't do anything but brake because he already hit me"; and that she does not recall seeing defendants' vehicle prior to that time.

Plaintiff also submits the transcript of defendant Kenneth M. Fearon, who testified, in relevant part: that he was traveling on Astoria Boulevard in the second lane from the left-most lane; that it was his intention to make a left turn onto 32nd Street; that he believed that he could do so from his lane of travel, and he also believed that traffic in the left-most lane – which included plaintiff's vehicle – was a left-turn only lane; that, after the accident, he learned that the lane that he was in only allowed for traffic to proceed straight, and that the lane of travel to the left of him was for traffic proceeding left or straight; and that, prior to attempting to turn left, he looked to the left of him and in his left mirror and did not see anyone coming.

Plaintiff also submits a New York City Bureau of Traffic Operations map obtained from the New York City Department of Transportation based on a request her counsel made pursuant to the Freedom of Information Law (Public Officers Law § 84 *et seq.*), said map depicting the intersection where the accident occurred. At her deposition, plaintiff marked said area. Thereat, the map reveals that the left-most lane is demarcated for both left turns and traffic proceeding straight, while the lane to its right is demarcated for traffic proceeding straight only.

Though the evidence submitted by plaintiff establishes that defendant Fearon operated his truck in violation of Vehicle and Traffic Law § 1160 (c) (*see Howell v RS Cab Corp.*, 63 AD3d 1002 [2009]; *Mora v Garcia*, 3 AD3d 478 [2004]; *Lowden v Wilson*, 8 Misc 3d 128 [A] [2005]), plaintiff failed to eliminate issues of fact as to whether her actions with respect to the operation of her own vehicle may have contributed to the accident (*see Francis v J.R. Bros. Corp.*, 98 AD3d 940 [2012]; *Shin Sook Jin v Kwon*, 42 AD3d 445 [2007]; *Eastmond v Wen Po Wong*, 300 AD2d 344 [2002]). In support of her motion, plaintiff merely states in a conclusory manner that defendant Fearon's negligence was the sole proximate cause of the

basis for denying summary judgment in plaintiff's favor.

accident, and that plaintiff had the right of way. Though plaintiff was certainly entitled to anticipate that defendant Fearon would obey traffic rules and regulations, plaintiff, too, had an obligation to operate her vehicle with due care (*see generally Adobea v Junel*, 114 AD3d 818 [2014]; *Lu Yuan Yang v Howsal Cab Corp.*, 106 AD3d 1055 [2013]; *Colpan v Allied Cent. Ambulette, Inc.*, 97 AD3d 776 [2012]), and the record presents issues of fact in that regard.

Since plaintiff failed to meet her burden, the court need not consider the sufficiency of defendants' opposition papers (*see Garrido v Puente*, 114 AD3d 722 [2014]; *Day v MTA Bus Co.*, 94 AD3d 940 [2012]).

Accordingly, the motion is denied.

Dated: June 25, 2015



J.S.C.

FILED
JUN 26 2015
COUNTY CLERK
QUEENS COUNTY