Kouyate v Croughn
2017 NY Slip Op 31609(U)
June 16, 2017
Supreme Court, Bronx County
Docket Number: 23878/2014E
Judge: Robert T. Johnson

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

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ABDOULAYE KOUYATE,

Plaintiff,

-against-

COREY M. CROUGHN and NEW YORK RESTORATION PROJECT,

Defendants.

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DECISION & ORDER

Index No: 23878/2014E

Motion # 002

The following papers, numbered 1-3 were considered on the motion for summary judgment:

PAPERS	NUMBERED
Notice of Motion and annexed Exhibits and Affidavits	1
Answering Affidavits and Exhibits	2
Replying Affidavits	3

Upon the foregoing papers, it is ordered that the motion for summary judgment is denied.

Presently before the Court is Plaintiff's motion for summary judgment. Plaintiff commenced this action to recover damages for personal injuries allegedly sustained by him as a result of a two-vehicle accident that occurred in the afternoon of July 2, 2014, at the intersection of East 121st Street and Park Avenue in Manhattan. According to the evidence submitted on this motion, Plaintiff was traveling in the southbound lane of Park Avenue when he was struck by a car owned by Defendant New York Restoration Project, and operated by its employee, Defendant

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Corey M. Croughn ("Defendants' vehicle"). Park Avenue is a divided roadway with two separate lanes of travel; one for northbound traffic and the other for southbound traffic. The two roads are separated by a center median area with structural beams that support elevated train tracks. There is one traffic light horizontally mounted to the overhead structure on East 121st Street that controls traffic crossing the northbound lane of Park Avenue. There are also freestanding traffic light devices on the western corners of East 121st Street that control traffic crossing the southbound lane of Park Avenue.

At his deposition, Croughn testified that he was driving westbound on East 121st Street. As he approached the Park Avenue intersection, the traffic light controlling traffic crossing the northbound lane of Park Avenue was yellow. Croughn nevertheless proceeded into the intersection, crossed the northbound lane of Park Avenue without incident, and proceeded under the elevated train tracks. Croughn testified that he didn't see a traffic signal for traffic crossing the southbound lane of Park Avenue, and as he entered that intersection, he collided with Plaintiff's vehicle. Croughn testified that he saw Plaintiff's vehicle a few seconds before the accident and tried to accelerate past it, but was unable to avoid the collision.

Plaintiff testified at his deposition that he had been driving southbound on Park Avenue. As he approached the intersection of East 121st Street, he stopped at a red traffic light with one vehicle stopped ahead of him. When the light turned green, he proceeded into the intersection after the first vehicle. Plaintiff testified that he was looking straight ahead and did not see Defendants' vehicle until the moment of impact. Photographs of the vehicles show damage to

the front bumper of Plaintiff's vehicle, and the rear passenger side panel of Defendants' car, next to the rear tire.

In the motion before the Court, Plaintiff moves for summary judgment on the issue of liability. "To prevail on a motion for summary judgment on the issue of liability in an action alleging negligence, a plaintiff has the burden of establishing, *prima facie*, not only that the defendant was negligent, but that the plaintiff was free from comparative fault, since there can be more than one proximate cause of an accident" (*Ramos v. Bartis*, 112 A.D.3d 804, 804, 977 N.Y.S.2d 315 [2d Dep't 2013](internal citations omitted). In support of his motion, Plaintiff has submitted, inter alia, a transcript of his own deposition testimony, Croughn's deposition testimony, pictures of the intersection, and photographs of the damage to the two vehicles.

Plaintiff contends that the accident was caused solely by Defendant's "failure to observe and heed a red traffic signal," which he argues constitutes negligence as a matter of law (*Vainer v. DiSalvo*, 79 A.D.3d 1023, 914 N.Y.S.2d 236 [2d Dep't 2010]); VTL § 1111 (d)(1). In support of his motion, Plaintiff states that the undisputed evidence shows that Plaintiff had a steady green light in his favor, and there is no issue of comparative negligence since Plaintiff had the right of way and had no time to react before the collision occurred.

Defendants argue that there is no "concrete proof" that Croughn entered the intersection against a red light, and that Plaintiff assumes this based on Plaintiff's testimony that he entered the intersection with a steady green light.

A driver who enters an intersection against a red light in violation of VTL §1110 (a) is negligent as a matter of law (*See Joaquin v. Franco*, 116 A.D.3d 1009, 1010, 985 N.Y.S.2d 131

[2d Dep't 2014]). As noted above, however, Croughn testified that the traffic signal was yellow when he crossed the northbound lane of Park Avenue. VTL § 1111 (b)(1) provides that traffic facing a steady yellow signal may enter the intersection, although "said traffic is thereby warned that the related green movement is being terminated or that a red indication will be exhibited immediately thereafter." Although Croughn testified that he did not see the traffic light for vehicles crossing the southbound lane of Park Avenue, this does not eliminate the issue of whether that particular light was red, especially since a non-moving party is accorded "the benefit of every favorable inference" on a motion for summary judgment (*Negri v. Stop & Shop, Inc.*, 65 N.Y.2d 625, 491 N.Y.S.2d 151 [1985]); *see also Conti v. Schwab*, 73 A.D.3d 1472, 900 N.Y.S.2d 819 [4th Dep't 2010](where plaintiff entered intersection against yellow traffic signal, and defendant was traveling in opposite direction and making left turn when collision occurred, issue of fact as to whether Plaintiff's traffic signal was turning red or whether he failed to use reasonable care in entering the intersection against a yellow signal).

While a driver with the right-of-way is entitled to assume that an opposing driver will obey the traffic laws requiring him or her to yield, the driver with the right-of-way must nonetheless "see what can be seen through the reasonable use of his or her senses" in order to avoid an accident (*Mark v. New York City Tr. Auth.*, 2017 NY Slip. Op. 03940, 2017 N.Y. App. Div. LEXIS 3874 [2d Dep't 2017]). Even where a vehicle enters an intersection with a green light, the driver may nevertheless be found negligent if he or she fails to use reasonable care when proceeding into the intersection (*See Strasburg v Campbell*, 28 A.D.3d 1131, 1132, 816 N.Y.S.2d 627 [4th Dep't 2006](internal citations and quotation marks omitted)("a driver cannot

blindly and wantonly enter an intersection . . . but, rather, is bound to use such care to avoid [a] collision as an ordinarily prudent [motorist] would have used under the circumstances").

Moreover, Croughn testified at his deposition that he saw Plaintiff's vehicle in the intersection before the collision occurred and attempted–albeit unsuccessfully–to avoid a collision by accelerating past Plaintiff's vehicle. The photographs submitted by Plaintiff on this motion show damage to the front bumper of Plaintiff's vehicle, and the rear passenger side panel of Defendants' car. Thus, it appears that Defendants' vehicle passed directly in front of Plaintiff's vehicle, and almost cleared Plaintiff's lane of travel when the collision occurred. In the Court's view, there is a question of fact as to which vehicle was in the intersection first, whether Plaintiff should have seen Defendants' car, and whether he could have taken steps to avoid the collision. The Court recognizes that a driver is not comparatively negligent for failing to avoid the collision if he or she "has only seconds to react to a vehicle which has failed to yield" (*Yelder v. Walters*, 64 A.D.3d 762, 764, 883 N.Y.S.2d 290 [2d Dep't 2009]; *Jiang-Hong Chen v. Heart Tr., Inc.*,143 A.D.3d 945, 39 N.Y.S.3d 504 [2d Dep't 2016]). Nevertheless, "[n]egligence cases by their very nature do not usually lend themselves to summary judgment, since often, even if all parties are in agreement as to the underlying facts, the very question of negligence is itself a question for jury determination" (*Ugarriza v. Schmieder*, 46 N.Y.2d 471, 474, 414 N.Y.S.2d 304 [1979]).

In conclusion, the Court finds that Plaintiff has failed to establish, *prima facie*, that he was not comparatively at fault in the happening of the accident. The motion is therefore denied

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without regard to the sufficiency of the Defendants' opposition papers *(See Mark v. New York City Tr. Auth.*, 2017 N.Y. App. Div. LEXIS 3874, 2017 N.Y. Slip. Op. 03940 [2d Dept't 2017]).

Accordingly, Plaintiff's motion for summary judgment is denied.

The foregoing constitutes the Decision and Order of the Court.

Dated: Bronx, New York
June 16, 2017

Robert T. Johnson, .J.S.C.