

Johnson v Caiola

2017 NY Slip Op 33366(U)

September 25, 2017

Supreme Court, Suffolk County

Docket Number: Index No. 604280/2017

Judge: Paul J. Baisley, Jr.

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E-FILE

SHORT FORM ORDER

INDEX NO. 604280/2017

SUPREME COURT - STATE OF NEW YORK
DCM-J - SUFFOLK COUNTY

PRESENT:

HON. PAUL J. BAISLEY, JR., J.S.C.

JOSEPH JOHNSON IV,

Plaintiff,

-against-

CONSTANCE M. CAIOLA and LOUIS S.
CAIOLA,

Defendants.

ORIG. RETURN DATE: July 26, 2017

FINAL RETURN DATE: September 13, 2017

MOT. SEQ. #001 - MG

PLTF'S ATTORNEY:

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Upon the following papers read on this e-filed motion for summary judgment ; Notice of Motion/ Order to Show Cause and supporting papers by plaintiff, uploaded June 16, 2017 ; Notice of Cross Motion and supporting papers ____; Answering Affidavits and supporting papers by defendants, uploaded August 21, 2017 ; Replying Affidavits and supporting papers by plaintiff, uploaded September 7, 2017 ; Other _____; (~~and after hearing counsel in support and opposed to the motion~~) it is,

ORDERED that the motion by plaintiff Joseph Johnson for summary judgment in his favor on the issue of liability is granted; and it is further

ORDERED that the parties shall appear at 10:00 a.m. on October 16, 2017, at the DCM-J Part of the Supreme Court, One Court Street, Riverhead, New York, for a preliminary conference.

This is an action to recover damages for injuries allegedly sustained by plaintiff Joseph Johnson as a result of a motor vehicle accident, which occurred on January 11, 2016 at the intersection of Hill Street and East Gate Road, in the Town of Southampton, New York. The accident allegedly occurred when a vehicle operated by defendant Constance Caiola and owned by defendant Louis Caiola struck plaintiff's vehicle as she made a left turn across plaintiff's lane of traffic. Plaintiff contends that defendant violated Vehicle and Traffic Law §§ 1140, 1141 and 1142 by making a left turn across his lane of traffic when it was not safe to do so.

Plaintiff now moves for summary judgment in his favor on the issue of liability on the grounds that defendant driver violated Vehicle and Traffic Law § 1140, 1141, and 1142 by making a left turn into the path of his vehicle traveling with the right-of-way. Plaintiff submits, in support of the motion, copies of the pleadings, his affidavit, and a certified police report. In opposition, defendants argue that further discovery is necessary before summary judgment may be considered.

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The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law by tendering evidence in admissible form sufficient to eliminate any material issues of fact from the case (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 508 NYS2d 923 [1986]; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 487 NYS2d 316 [1985]). The movant has the initial burden of proving entitlement to summary judgment (*Winegrad v New York Univ. Med. Ctr.*, *supra*). Failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers (*Winegrad v New York Univ. Med. Ctr.*, *supra*). Once such proof has been offered, the burden then shifts to the opposing party who must proffer evidence in admissible form and must show facts sufficient to require a trial of any issue of fact to defeat the motion for summary judgment (CPLR 3212 [b]; *Alvarez v Prospect Hosp.*, *supra*; *Zuckerman v City of New York*, 49 NY2d 557, 427 NYS2d 595 [1980]).

A failure to comply with the Vehicle and Traffic Law constitutes negligence as a matter of law (*Colpan v Allied Cent. Ambulette, Inc.*, 97 AD3d 776, 949 NYS2d 124 [2d Dept 2012]; *Vainer v DiSalvo*, 79 AD3d 1023, 914 NYS2d 236 [2d Dept 2010]). Vehicle and Traffic Law § 1140 (a) requires a driver approaching an intersection to yield the right-of-way to a vehicle which has entered the intersection from a different highway. Pursuant to Vehicle and Traffic Law § 1141, a vehicle intending to turn left within an intersection must yield the right-of-way to any vehicle approaching from the opposite direction which is within the intersection. A driver who attempts to make a left turn when it is not reasonably safe to do so, such as when another vehicle is lawfully present in the intersection and the driver fails to see this through proper use of his or her senses, is in violation of this provision of the Vehicle and Traffic Law (*see Foley v Santucci*, 135 AD3d 813, 23 NYS3d 338 [2d Dept 2016]; *Krajiniak v Jin Y Trading, Inc.*, 114 AD3d 910, 980 NYS2d 812 [2d Dept 2014]; *Ducie v Ippolito*, 95 AD3d 1067, 944 NYS2d 275 [2d Dept 2012]; *Loch v Garber*, 69 AD3d 814, 893 NYS2d 233 [2d Dept 2010]). Vehicle and Traffic Law § 1142 (a) requires a driver of a motor vehicle approaching a stop sign to stop and yield the right-of-way to any vehicle that has entered the intersection or is approaching so closely as to constitute an immediate hazard (*see also McPherson v Chanzeb*, 123 AD3d 1098, 999 NYS2d 521 [2d Dept 2014]; *Barbato v Maloney*, 94 AD3d 1028, 943 NYS2d 204 [2d Dept 2012]).

Further, a motorist is required to “see that which through proper use of [his or her] senses [he or she] should have seen” (*Bongiovi v Hoffman*, 18 AD3d 686, 687, 795 NYS2d 354 [2d Dept 2005]; *see Nohs v Diraimondo*, 140 AD3d 1132, 35 NYS3d 209 [2d Dept 2016]; *Thompson v Schmitt*, 74 AD3d 789, 902 NYS2d 606 [2d Dept 2010]). The operator of a vehicle with the right-of-way is entitled to assume that the opposing driver will obey traffic laws requiring him or her to yield (*see Kassim v Uddin*, 119 AD3d 529, 987 NYS2d 878 [2d Dept 2014]; *Ducie v Ippolito*, *supra*; *Ahern v Lanaia*, 85 AD3d 696, 924 NYS2d 802 [2d Dept 2011]; *Dominguez v CCM Computers, Inc.*, 74 AD3d 728, 902 NYS2d 163 [2d Dept 2010]; *Yelder v Walters*, 64 AD3d 762, 883 NYS2d 290 [2d Dept 2009]). However, “[a] driver who has the right-of-way has a duty to exercise reasonable care to avoid a collision with another vehicle already in the intersection” (*Gause v Martinez*, 91 AD3d 595, 596, 936 NYS2d 272 [2d Dept 2012], quoting *Todd v Godek*, 71 AD3d 872, 872, 895 NYS2d 861 [2d Dept 2010]; *see Adobea v Junel*, 114 AD3d 818, 980 NYS2d 564 [2d Dept 2014]; *Shui-Kwan Lui v Serrone*, 103 AD3d 620, 959 NYS2d 270 [2d Dept 2013]). Nevertheless, as a matter of law, a driver is not comparatively negligent in failing to avoid the collision if he or she has a right-of-way and only has seconds to react to a vehicle that has failed to yield (*see Foley v Santucci*, *supra*; *Ducie v Ippolito*, *supra*; *Breen v Seibert*, 123 AD3d 963, 999 NYS2d 176 [2d Dept 2014]; *Bennett v*

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Granata, 118 AD3d 652, 987 NYS2d 424 [2d Dept 2014]; *Vainer v DiSalvo*, *supra*; *Yelder v Walters*, *supra*). Finally, even where there is evidence that another driver involved in the accident was negligent as a matter of law due to a violation of the Vehicle and Traffic Law, “the proponent of a summary judgment motion has the burden of establishing freedom from comparative negligence as a matter of law” (*Pollack v Margolin*, 84 AD3d 1341, 1342, 924 NYS2d 282 [2d Dept 2011]; *see Regans v Baratta*, 106 AD3d 893, 965 NYS2d 171 [2d Dept 2013]; *Shui-Kwan Lui v Serrone*, *supra*).

Plaintiff established prima facie entitlement to summary judgment by showing that defendant driver was negligent in entering the intersection without yielding the right-of-way, and that he was not comparatively negligent (*see* Vehicle and Traffic Law §§ 1141, 1142; *Foley v Santucci*, *supra*; *Ducie v Ippolito*, *supra*). In his affidavit, plaintiff stated that he was driving in a southeasterly direction on Hill Road at the time of the accident and that his lane of traffic did not have a traffic control device. Defendant driver was traveling in a northeasterly direction on East Gate Road and her lane of traffic was controlled by a yield sign. Plaintiff also affirmed that as his vehicle entered the intersection, defendant driver’s vehicle collided with the passenger side of his vehicle.

In addition, the police report contains an admission made by defendant driver that she was making a left turn from East Gate Road and did not see plaintiff’s vehicle, and that collided with plaintiff’s vehicle. As the police report is certified as a true and accurate copy, and this statement is an admission of a party, it is admissible on the issue of liability (*see* CPLR 4518 [a]; *Memenza v Cole*, 131 AD3d 1020, 16 NYS3d 287 [2d Dept 2015]; *Jackson v Trust*, 103 AD3d 851, 962 NYS2d 267 [2d Dept 2013]). By failing to yield the right-of-way when plaintiff was already lawfully in the intersection, defendant driver violated the Vehicle and Traffic Law and was negligent as a matter of law (*see* Vehicle and Traffic Law §§ 1141, 1142; *Breen v Seibert*, *supra*; *Ducie v Ippolito*, *supra*; *Marcel v Sanders*, 123 AD3d 1097, 1 NYS3d 230 [2d Dept 2014]; *Adobea v Junel*, *supra*; *Vainer v DiSalvo*, *supra*). Although plaintiff had a duty to use reasonable care to avoid the collision (*see* *Kassim v Uddin*, *supra*; *Galagotis v Armenti*, 133 AD3d 818, 20 NYS3d 556 [2d Dept 2015]), he was not comparatively at fault because he had no time to react to defendant driver’s failure to yield the right-of-way (*see* *Foley v Santucci*, *supra*; *Ducie v Ippolito*, *supra*; *Breen v Seibert*, *supra*; *Bennett v Granata*, *supra*), as he affirmed that he was already in the intersection when defendant driver failed to yield and entered the intersection.

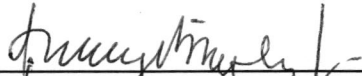
The burden now shifts to defendants to submit evidentiary proof in admissible form to raise a triable issue of fact as to whether there is a non-negligent explanation for the happening of the accident or whether plaintiff was also negligent, and if so, whether that negligence contributed to the happening of the accident (CPLR 3212 [b]; *see* *Zuckerman v City of New York*, *supra*; *McLaughlin v Lunn*, *supra*; *Binkowitz v Kolb*, *supra*). In opposition, defendants submit an affirmation of their attorney alleging that further discovery is necessary to determine whether plaintiff was also negligent in the happening of the accident. However, this affirmation does not fulfill defendants’ duty to provide a non-negligent explanation for the collision or to raise a triable issue of fact as to whether plaintiff was also at fault for the occurrence (*see* *Zuckerman v City of New York*, *supra*; *Orellana v Maggies Paratransit Corp.*, 138 AD3d 941, 30 NYS3d 224 [2d Dept 2016]). Further, because defendant driver has personal knowledge of the relevant facts underlying the accident, defendants’ purported need to conduct discovery does not warrant denial of the motion (*see* *Turner v Butler*, 139 AD3d 715, 32 NYS3d 174 [2d Dept 2016]; *Deleg v Vinci*, 82 AD3d 1146, 919 NYS2d 396 [2d Dept

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2011]; *Monteleone v Jung Pyo Hong*, 79 AD3d 988, 913 NYS2d 755 [2d Dept 2010]). Defendants, therefore, failed to raise any issues of fact regarding plaintiff's comparative negligence.

Accordingly, plaintiff Joseph Johnson's motion for summary judgment in his favor on the issue of liability is granted.

Dated: 9/25/17



HON. PAUL J. BAISLEY, JR., J.S.C.