

Coote v Bonino

2018 NY Slip Op 31988(U)

August 14, 2018

Supreme Court, New York County

Docket Number: 452873/2017

Judge: Adam Silvera

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART IAS MOTION 22

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MICHAEL COOTE,

Plaintiff,

- v -

KRISTI BONINO, LISA GAON

Defendant.

INDEX NO. 452873/2017

MOTION DATE 05/02/2018,
05/15/2018

MOTION SEQ. NO. 001 002

DECISION AND ORDER

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MIGUEL RODRIGUEZ,

Plaintiff,

- v -

MICHAEL COOTE, ALANA COOTE, KRISTI BONINO, LISA
GAON

Defendant.

INDEX NO. 151525/2014

MOTION DATE 08/01/2018,
08/01/2018

MOTION SEQ. NO. 007 008

DECISION AND ORDER

-----X

HON. ADAM SILVERA:

The following e-filed documents, listed by NYSCEF document number (Motion 007) 78, 79, 80, 81, 82, 83, 84, 85, 98, 100, 101, 102

were read on this motion for

JUDGMENT - SUMMARY

The following e-filed documents, listed by NYSCEF document number (Motion 008) 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 99, 103, 104, 105, 107, 108, 109, 110, 111, 112

were read on this motion for

JUDGMENT - SUMMARY

The following e-filed documents, listed by NYSCEF document number (Motion 001) 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 47, 49, 50

were read on this motion for

JUDGMENT - SUMMARY

The following e-filed documents, listed by NYSCEF document number (Motion 002) 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 48, 51, 52, 53 were read on this motion for JUDGMENT - SUMMARY

BACKGROUND

This Decision/Order addresses two separate cases and index numbers which stem from the same three-car motor vehicle incident which occurred on October 31, 2013, on Rockaway Boulevard a/k/a Route 878 a/k/a Nassau Expressway near its intersection with Burnside Avenue in the County of Nassau, State of New York when a northbound vehicle owned by Alanna Coote and operated by Michael Coote carrying passenger Miguel Rodriguez collided with two vehicles: one operated by Kristi Bonino and the other by Lisa Gaon in the southbound lane.

Here, in Index No. 452873/2017, plaintiff Michael Coote filed suit against defendants Kristi Bonino and Lisa Gaon. The present motions, defendant Lisa Gaon's motion sequence 001 and defendant Kristi Bonino's motion, motion sequence 002 are both denied. Defendants each move for summary judgment as to liability against plaintiff Michael R. Coote, pursuant to CPLR 3212, and to dismiss plaintiff's complaint against them respectively. Both defendants allege in their motions that plaintiff's vehicle crossed over a double-yellow lane line and entered the southbound lane and made contact with defendants' vehicles.

In Index No. 151525/2014 plaintiff Miguel Rodriguez filed suit against Michael Coote, Alanna Coote, Kristi Bonino and Lisa Gaon. The present motions, defendant Lisa Gaon's motion, motion sequence 007 and defendant Kristi Bonino's motion, motion sequence 008 are both denied. Further, plaintiff's Cross-motion is denied. Defendants each move for summary judgment as to liability in their favor, pursuant to CPLR 3212, and to dismiss plaintiff Rodriguez's complaint against them respectively. Both defendants allege in their motions that defendant Michael Coote's vehicle crossed over a double-yellow lane line and entered the southbound lane and made contact with defendants' vehicles and thus no duty was breached against plaintiff Rodriguez. Plaintiff Rodriguez Cross moves to deny Gaon and Bonino's

motions for summary judgment and moves for partial summary judgment as to liability against defendant Gaon, defendant Bonino, defendant Michael Coote, and defendant Alanna Coote.

Summary Judgment & VTL

“The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case” (*Winegrad v New York University Medical Center*, 64 NY2d 851, 853 [1985]). Once such entitlement has been demonstrated by the moving party, the burden shifts to the party opposing the motion to “demonstrate by admissible evidence the existence of a factual issue requiring a trial of the action or tender an acceptable excuse for his failure ... to do [so]” (*Zuckerman v City of New York*, 49 NY2d 557, 560 [1980]).

Violation of the Vehicle and Traffic Law constitutes negligence per se (*See Flores v City of New York*, 66 AD3d 599 [1st Dep’t 2009] [finding that plaintiff made a prima facie showing of negligence where the nonmovant driver pulled out of a parked position into a lane of moving traffic causing an accident in violation of the New York Vehicle and Traffic Law 1128(a).

The New York Vehicle and Traffic Law § 1128(a) states that a “vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has ascertained that such movement can be made with safety.” A party satisfies “their prima facie burden by demonstrating that defendant driver entered the left lane when it was not safe to do so, in violation of the VTL § 1128(a), and that plaintiff driver did not contribute to the accident” (*Steigelman v Transervice Lease Corp.*, 145 AD3d 439 [1st Dep’t 2016] [internal citations omitted]).

Further, pursuant to VTL § 1126(a) “when official markings are in place indicating those portions of any highway where overtaking and passing or driving on the left of such markings

would be especially hazardous, no driver of a vehicle proceeding along such highway shall at any time drive on the left side of such markings.”

Conclusion

Here, defendants were lawfully stopped at a traffic light when plaintiff suddenly crossed over the double yellow line and veered into defendants' vehicles. Defendants submit the affidavit of non-party witness, Ronald Knox, who affirms that he “saw the [plaintiff] in front of me, his car sailed over the double yellow line, sideswiped a vehicle with a woman in it and a child . . . careened off of that car and slammed into the car behind her head first” (Gaon Mot, Exh E at 12, ¶¶ 5-9). Defendant Bonino and defendant Gaon each testified that they witnessed plaintiff's vehicle cross over the double yellow line before it entered into the southbound lane and struck defendants' vehicles (*id.*, Exh C at 28, ¶¶ 5-20; *id.*, Exh D at 31, ¶¶ 11-24 & at 32, ¶¶5-9). Defendants have demonstrated through their testimony and that of non-interested witness Knox, that plaintiff violated the VTL and have thus made out a prima facie case of negligence, and the burden shifts to plaintiff to raise a triable issue of fact.

Plaintiff's opposition raises an issue of fact. In opposition, plaintiff alleges that there is an issue of fact as to whether his vehicle crossed over the double yellow line in violation of the VTL. Plaintiff points to the deposition of passenger Miguel Rodriguez, plaintiff in a companion action: Miguel Rodriguez v. Michael Coote, Alana Coote, Kristi Bonino, and Lisa Gaon filed under index number 151525/2014. Rodriguez states that he did not see plaintiff cross over the yellow line (Bonino Mot, Exh J at 30, ¶ 2). Thus, an issue of fact exists precluding summary judgment in Index No. 452873/2017 motion sequence 001 and 002, precluding summary judgment in Index No. 151525/2014 motion sequence 007 and 008, and precluding the branch of Miguel Rodriguez's cross-motion for summary judgment. Further, as the Court has denied

defendant Gaon and defendant Bonino's motions for summary judgment, the branch of Miguel Rodriguez's cross-motion seeking such relief is denied as moot.

Accordingly, it is

ORDERED that this Court's Decision/Order Index No. 452873/2017 dated May 16, 2018 and June 22, 2018 are hereby vacated and that the case, Index No. 452873/2017 is hereby restored to the Court's calendar; and it is further

ORDERED that in Index No. 452873/2017, defendant Lisa Gaon's motion, motion sequence 001 and defendant Kristi Bonino's motion, motion sequence 002, for summary judgment as to liability against plaintiff Michael R. Coote, pursuant to CPLR 3212, and to dismiss plaintiff's complaint against them respectively are denied; and it is further

ORDERED that in Index No. 151525/2014, defendant Lisa Gaon's motion, motion sequence 007 and defendant Kristi Bonino's motion, motion sequence 008 for summary judgment as to liability in their favor, pursuant to CPLR 3212, and to dismiss plaintiff Rodriguez's complaint against Kristi Bonino and Lisa Gaon are denied; and it is further

ORDERED that in Index No. 151525/2014, plaintiff Miguel Rodriguez's Cross-motion is denied; and it is further

ORDERED that all parties appear for a compliance conference on October 3, 2018, in room 103 of 80 Centre Street at 9:30AM.

ORDERED that within 30 days of entry, plaintiff shall serve a copy of this decision/order upon all parties with notice of entry.

This constitutes the Decision/Order of the Court

8/14/18
DATE


ADAM SILVERA, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED	<input type="checkbox"/>	
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	REFERENCE
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	