Kraynova v Lowy
2018 NY Slip Op 33492(U)
January 29, 2018
Supreme Court, Kings County
Docket Number: 509904/2016
Judge: Carl J. Landicino

FILED: KINGS COUNTY CLERK 02/06/2018 INDEX NO. 509904/2016
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At an IAS Term, Part 66 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 29th day of January, 2018.

P R E S E N T:
HON. RICHARD VELASQUEZ
Justice.

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VALENTINA KRAYNOVA,

Plaintiff(s),

Index No.: 509904/2016

-against-

Decision and Order

SHLOME Z. LOWY, SIMIE T. KAHAN, YANA V. LANDERMAN and ALEKSANDR KROYTOR,

Defendant(s).

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The following *papers* numbered 1 to 3 read on this motion:

Papers	Numbered
Notice of Motion/Order to Show Cause Affidavits (Affirmations) Annexed	1
Opposing Affidavits (Affirmations)	2
Reply Affidavits (Affirmations)	3-4

After oral argument and a review of the submissions herein, the Court finds as follows:

Defendant, SHLOME Z. LOWY move this court pursuant to C.P.L.R. § 2221(d) for an order granting leave to reargue co-defendants YANA V. LANDERMAN and ALEKSANDR KROYTOR motion dated November 1, 2016 and plaintiff's summary judgment motion dated December 13, 2016, and in the event that such leave is granted, and upon re-argument, for an Order denying co-defendant's YANA V. LANDERMAN and

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ALEKSANDR KROYTOR and plaintiff's motion in their entirety. Plaintiffs oppose the same.

ARGUMENTS

Defendant, SHLOME Z. LOWY move this court to reargue, contending that this court has overlooked and misapprehended the controlling principal of law.

Plaintiff opposes the same contending the arguments advanced by these defendants in the instant motion are the same as the arguments they advanced in the underlying motion, and that this court did not misapprehend or misapply the controlling principal of law.

ANALYSIS

N.Y. C.P.L.R. § 2221 in pertinent part states: "(d) A motion for leave to reargue: 1. shall be identified specifically as such; 2. shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion, but shall not include any matters of fact not offered on the prior motion; and 3. shall be made within thirty days after service of a copy of the order determining the prior motion and written notice of its entry. N.Y. C.P.L.R. § 2221(d)(2) articulates the standards previously outlined in the caselaw. A motion to reargue, it says: "shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion, but shall not include any matters of fact not offered on the prior motion. N.Y. C.P.L.R. 2221 (McKinney).

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Under the caselaw existing prior to the 1999 amendments, a motion for re-argument was often used when there was a change in the law after the prior order. N.Y. C.P.L.R. § 2221(e)(2) now clarifies that the motion to renew, not the motion to reargue, is the proper expedient when the motion is based on a change in the law that occurs while the case is still subjudice, such as a new statute taking effect or a definitive ruling on a relevant point of law being handed down by an appellate court that is entitled to stare decisis. *See* Siegel, New York Practice § 449 (4th ed. 2005). The distinction, made clear in the caselaw and now embodied in the statute, is that the motion to renew involves new proof while the motion to reargue does not; it merely seeks to convince the court that it overlooked or misapprehended something the first time around and ought to change its mind. N.Y. C.P.L.R. § 2221 (McKinney)

In the present case, Defendant contends that in deciding the previous motion in plaintiffs' favor, the Court overlooked or misapprehended relevant facts or misapplied controlling principles of law. The Court can find nothing in defendant's renewal which indicates that the Court overlooked or misapprehended relevant facts. Defendant fails to set forth any facts that the Court overlooked, however, but contends apparently that the Court misapplied controlling principles of law. The Court disagrees.

A plaintiff is entitled to summary judgment in an intersection accident where the defendant enters the intersection against a stop sign and/or fails to yield the right of way. It is well settled that where a showing is made that a motorist either failed to stop at a stop sign, or upon doing so, failed to yield the right of way to the oncoming motor vehicle. "A prima facie case is made that the accident occurred solely because of the negligence of

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the motorist." *See, e.g. Miranda v. Devlin*, 260 A.D.2d 461, 688 N.Y.S.2d 578 (2nd Dept. 1999); *Cascio v. Scigiano*, 690 N.Y.S.2d 737 (2nd Dept. 1999); *Gravina v. Wakschal*, 255 A.D.2d 291, 679 N.Y.S.2d 420 (2nd Dept. 1998); *Snow v. Howe*, 253 A.D.2d 870, 678 N.Y.S.2d 357 (2nd Dept. 1998); *Rumanov v. Greenblatt*, 251 A.D.2d 566, 63 N.Y.S.2d 614 (2nd Dept. 1998); *Ponticello v. Wilhelm*, 249 A.D.2d 459, 671 N.Y.S.2d 315 (2nd Dept. 1998); *Nunziata v. Birchell*, 238 A.D.2d 555, 656 N.Y.S.2d 383 (2nd Dept. 1997); *Maxwell v. Land-Sanders*, 233 A.D.2d 303, 649 N.y.S.2d 809 (2nd Dept. 1996).

In the present case, it is established that the vehicle owned and operated by co-defendants YANA V. LANDERMAN and ALEKSANDR KROYTOR (i.e. the vehicle that the plaintiff was a passenger in) had the right of way, as such said vehicle is entitled to assume that the offending vehicle would obey traffic laws requiring it to yield the right of way. *Galinder v. Hemmes*, 298 A.D.2d 493, 748 N.Y>S.2d 796 (2nd Dept. 2002). Moreover, summary judgment has also been granted where defendant comes to a stop at the stop sign and then proceeds, nevertheless failing to yield to the right of way which is the same situation as in the present case. *See Snow v. Howe*, 253 A.D.2d 870, 678 N.Y.S.2d 357 (2nd Dept. 1998).

Accordingly, Defendant's motion to reargue is denied for the reasons stated above.

This constitutes the Decision/Order of the Court.
Date: January 29, 2018

RICHARD VELASQUEZ, J.S.C.

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So Ordered
Hon. Richard Velasquez
JAN 29 2018