

Genao v Suquilanda
2018 NY Slip Op 34116(U)
July 31, 2018
Supreme Court, Westchester County
Docket Number: Index No. 54249/2017
Judge: Sam D. Walker
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To commence the statutory time for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER
PRESENT: HON. SAM D. WALKER, J.S.C.**

-----X
OLGA M. GENAO,

Plaintiff,

-against-

DECISION & ORDER
Index No. 54249/2017
Seq. # 1

JAVIER A. SUQUILANDA and GUSTAVO A.
SUQUILANDA,

Defendant.
-----X

The following papers were read on the motion for summary judgment on the issue of liability:

Notice of Motion/Affirmation in Support/Exhibits A-H

1-10

Factual and Procedural Background

The plaintiff, Olga M. Genao ("Genao"), commenced this action on March 30, 2017, to recover damages for injuries she allegedly sustained in a motor vehicle accident.

Genao now files the present motion for summary judgment on the issue of liability, arguing that the defendants violated New York State Vehicle and Traffic Law § 1126(a) and that she is entitled to judgment because there are no issues of fact in dispute. In support of the motion, Genao relies upon her own deposition, a certified police report, an attorney's affirmation, and copies of the pleadings and orders.

The plaintiff alleges that she was operating her vehicle on Yonkers Avenue, when the defendant cross over a double yellow line into the lane of traffic in which she was traveling, striking her vehicle.

Discussion

A party moving for summary judgment bears the initial burden of affirmatively demonstrating its entitlement to summary judgment as a matter of law (see *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]; (see *Alvarez v Prospect Hospital*, 68 NY2d 320, 324 [1986])). To demonstrate its entitlement to relief, the moving party must come forward with evidentiary proof that establishes the absence of any material issues of fact, (see *McDonald v Mauss*, 38 AD3d 727, 728 [2d Dept 2007])). Once the moving party has established its prima facie entitlement to summary judgment, the burden shifts to the opposing party to submit evidentiary proof in admissible form to establish material issues of fact (see *Alvarez*, 68 NY2d at 324; *Winegrad*, 64 NY2d at 853).

New York Vehicle and Traffic Law § 1126(a), states in pertinent part that:

When official markings are in place indicating those portions of any highway where overtaking and passing or driving to 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. New York VTL § 1128(a).

"A violation of the Vehicle and Traffic Law constitutes negligence as a matter of law" (*Gluck v New York City Transit Authority*, 118 AD3d 667, 669 [2d Dept 2014]). A plaintiff driver is entitled to judgment as a matter of law on the issue of liability if he or she demonstrates that the sole proximate cause of an accident was the defendant driver's violation of the vehicle traffic law (see *Gause v Martinez*, 91 AD3d 595, 596 [2d Dept

2012)). Here, the plaintiff's evidence demonstrates his prima facie entitlement to judgment as a matter of law (*Gluck v New York City Transit Authority*, 118 AD3d @ 669). "Crossing a double yellow line into the opposing lane of traffic, in violation of Vehicle and Traffic Law § 1126(a), constitutes negligence as a matter of law, unless justified by an emergency situation not of the driver's making" (see *Gadon v Oliva*, 294 AD2d 397 [2d Dept 2002]).

The deposition of the plaintiff and the certified police report confirm that the defendants' vehicle entered into the lane in which Genao's vehicle was traveling, in violation of VTL §§ 1126. The evidence submitted by Genao establishes entitlement to summary judgment as a matter of law, thereby shifting the burden to the defendants to demonstrate the existence of a factual issue requiring a trial. (see *Macauley v Elrac, Inc.*, 6 AD3d 584, 585 [2d Dept 2004]). Here, the motion is unopposed.

Therefore, this Court finds that Genao has established her prima facie entitlement to judgment as a matter of law on the issue of liability through the evidence submitted, showing the defendants' violation of the Vehicle and Traffic Law, that the defendants' negligence was the sole proximate cause of the accident and that Genao is free from comparative fault. (*Walker v Patrix Trucking N.Y. Corp.*, 115 AD3d 943, 944 [2d Dept 2014]; *Ducie v Ippolito*, 95 AD3d 1067, 1068).

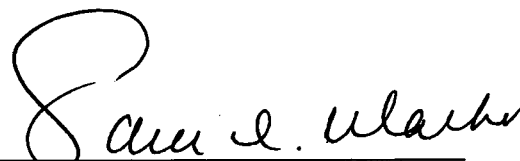
Accordingly, based upon the foregoing, it is

ORDERED that the motion for summary judgment on liability is GRANTED.

The parties are directed to appear in the Settlement Conference Part in Courtroom 1600 on August 28, 2018 on the issue of damages.

The foregoing constitutes the decision and order of this Court.

Dated: White Plains, New York
July 31, 2018


HON. SAM D. WALKER, J.S.C.