Iroham v Maldonado
2018 NY Slip Op 34180(U)
January 26, 2018
Supreme Court, Westchester County
Docket Number: Index No. 68520/2016
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.

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CYNTHIA IROHAM,
Plaintiff,
-against-

SAMUEL R. MALDONADO,

Defendant.

DECISION & ORDER
Index No. 68520/2016
Seq. # 1

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

Notice of Motion/Affirmation in Support/Exhibits A-F 1-8

Factual and Procedural Background

The plaintiff, Cynthia Iroham, commenced this action on December 7, 2016, to recover damages for injuries she allegedly sustained in a motor vehicle accident which occurred on February 10, 2016, when the defendant's vehicle struck her vehicle while she was driving southbound on the Major Deegan Expressway in Bronx, New York.

The plaintiff now files the present motion for summary judgment on the issue of liability, arguing that no genuine question of fact exists as to the defendant's negligence. The plaintiff asserts that at the time of the collision, she was in the right lane of the Expressway when, without warning, the defendant struck another vehicle in the middle lane and then entered the right lane striking her vehicle

In support of the motion, the plaintiff relies upon her own deposition and affidavit, the defendant's deposition, a certified police report, an attorney's affirmation, and copies of the pleadings.

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 § 1128(a), states in pertinent part that:

> Whenever any roadway has been divided into two or more clearly marked lanes for traffic the following rules in addition to all others consistent herewith shall apply:
> 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 first ascertained that such movement can be made with safety. VTL § 1128(a).

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]). However, there may be more than one proximate cause of an accident and the proponent of a summary judgment motion bears the burden of establishing freedom

from comparative negligence as a matter of law (*Id*), since a driver with a right-of-way also has a duty to use reasonable care to avoid a collision (*see Attl v Spetler*, 137 AD3d 1176, 1176 [2d Dept 2016]). Nevertheless, "a driver with the right-of-way who has only seconds to react to a vehicle which has failed to yield is not comparatively negligent for failing to avoid the collision" (*Id*); *see also Smith v. Omanes*, 123 AD3d 691, 691 [2d Dept 2014]).

The depositions of the parties confirm that the defendant's vehicle entered into the lane in which the plaintiff's vehicle was traveling, in violation of VTL §§ 1128. The evidence submitted by the plaintiff establishes entitlement to summary judgment as a matter of law, thereby shifting the burden to the defendant 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 defendant did not oppose the motion for summary judgment on liability. Additionally, the affirmative defenses raised by the defendant with regard to liability offer no factual support and simply utilizes boilerplate language with no factual foundation. Unsupported conclusory allegations are not "evidentiary facts" and are insufficient to defeat the plaintiff's prima facie showing, (*see F.D.I.C v 7 A.M. to 11 P.M. Delicatessen, Inc.*, 251 AD2d 620 [2d Dept 1998]; *JPMorgan Chase Bank v Gamut-Mitchell, Inc.*, 27 AD3d 622 [2d Dept 2006]). Therefore, the Court finds that there are no issues of fact to be determined on the issue of liability in this action.

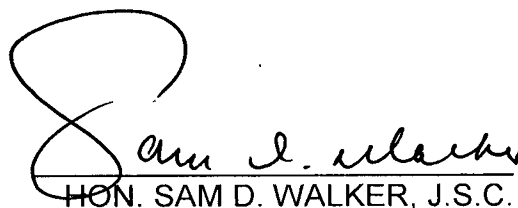
Accordingly, based upon the foregoing, it is

ORDERED that the motion for summary judgment on liability is GRANTED and it is further

The parties are directed to appear in the Settlement Conference Part in courtroom 1600 on February 27, 2018 at 9:15 a.m.

The foregoing shall constitute the Decision and Order of the Court.

Dated: White Plains, New York
January 26, 2018



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