

Mentor v CA, Inc.
2018 NY Slip Op 34331(U)
August 14, 2018
Supreme Court, Nassau County
Docket Number: Index No. 607909/2016
Judge: Anna R. Anzalone
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SUPREME COURT - STATE OF NEW YORK

PRESENT: Honorable Anna R. Anzalone
Justice of the Supreme Court

ANGELICA MENTOR,

Plaintiff(s)

- against -

CA, INC., JOHN A. BUSH, 3 AND JOSEPH S.
VERNOT,

Defendant(s.)

TRIAL/IAS, PART 20

NASSAU COUNTY

Index No. 607909/2016

Motion Seq. No.: 1 and 2

The following papers read on this motion:

Sequence No. 1

Defendant Vernot's Notice of Motion.....1

Defendant Bush's Affirmation in Opposition2

Reply Affirmation.....3

Sequence No. 2

Plaintiff's Notice of Motion of Cross Motion.....4

Defendant Bush's Affirmation in Opposition5

Motion (Seq. no. 1) by attorney for defendant Joseph S. Vernot ("Vernot") for an Order granting summary judgment in favor of defendant Vernot, pursuant to CPLR§3212, on the grounds that no triable issues of fact exist and/or dismissing plaintiff's complaint, and any and/all cross-claims, pursuant to CPLR§ 3211 (a) (7), in that such fails to state a cause of action against defendant, Vernot. Based upon all the papers submitted for this court's consideration of the instant motion, the court make the following findings of fact:

The instant action arises out of a two car automobile accident which occurred on January 31, 2014 between a vehicle driven by defendant Vernot and a vehicle driven by John A. Bush, 3

("Bush") owned by defendant CA, Inc. Plaintiff, Angelica Mentor was a front seat passenger in Vernot's vehicle. The accident took place on Carmen Avenue at or near its intersection with Wantagh Parkway. It is undisputed that there were two lanes on Carman Avenue going in both directions separated by a double yellow line. Vernot was traveling in the left lane of Carman Avenue going straight.

Plaintiff testified that she never saw the other vehicle involved in the accident prior to the impact. She indicated at her oral examination that defendant Vernot had his left turn signal on to indicate his intention to make a left on the Wantagh Parkway. Plaintiff testified that defendant Vernot had not entered the opposite lane of travel prior to the accident. Plaintiff testified that Vernot's vehicle was traveling straight.

Defendant Bush testified that he was exiting the Wantagh Parkway. There were a few cars in front of Bush's vehicle and at some point, he was at the top of the exit ramp. When asked if there was a stop sign or traffic light at the top of the exit ramp, defendant responded, "There's nothing there". Defendant Bush estimated that he stopped for approximately twenty to thirty seconds at the top of the ramp due to traffic. Defendant testified that he looked to his left and looked to his right. He indicated that when he looked to the left, the road was straight for a while, so he could see the cars, he would say sixty or seventy feet. He indicated that when he looked to the right his visibility was about the same. He testified that he activated his left signal and the signal remained activated as he proceeded to move the vehicle to make the left turn. When asked if he saw the vehicle that was involved in the accident with his vehicle even for a split second before the impact, Bush answered, "no". Bush testified that the right quarter panel of his vehicle contacted the left quarter front panel of the other vehicle. Bush further testified that at the time of the impact, a portion of his vehicle was in the lane of travel going from his right to his left. Bush estimated that he was traveling a few miles an hour and his foot was on the gas. When asked what he told the police when they arrived at the scene, he answered "with the congestion I was making the left turn, our vehicles hit, and we moved them over to the side just because of the traffic"

Vernot testified at his oral examination that he was traveling on Carmen Avenue for a few seconds and it was his intention to turn left onto the Wantagh Parkway from Carmen Avenue. Vernot indicated that the time of the accident his vehicle was still to the right of the double yellow line separating traffic on Carmen Avenue. Vernot testified that when he first saw Bush's vehicle

it had not crossed over the double yellow line, however it then crossed over the double yellow line prior to impact. Vernot testified that when he saw Bush's vehicle he applied his brakes and his vehicle skidded and he blew his horn. Vernot testified that he was traveling 15-20 mph and Bush's vehicle was traveling approximately 20-25 mph.

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 demonstrate the absence of any material issues of fact. *Alvarez v. Prospect Hospital*, 68 NY2d 320, 508 NYS2d 923 (1968). To make a prima facie showing, the motion must be supported by affidavit, by a copy of the pleadings and by other available proof, such as depositions and written admissions. Once a prima facie showing has been made, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action. *Id.*; see also *Zuckerman v. City of New York*, 49 NY2d 557, 427 NYS2d 595 (1980).

Vehicle and Traffic Law § 1141 provides that "[t]he driver of a vehicle intending to turn to the left within an intersection ... shall yield the right of way to any vehicle approaching from the opposite direction which is within the intersection or so close as to constitute an immediate hazard." A violation of this statute constitutes negligence per se. *Mamar v. Terrones*, 146 A.D.3d 737, 44 N.Y.S.3rd 529, (2017) citing *Katikireddy v. Espinal*, 137 A.D.3d 866, 867, 26 N.Y.S.3d 775; *Ciatto v. Lieberman*, 266 A.D.2d 494, 495, 698 N.Y.S.2d 54; see also *Martin v. Herzog*, 228 N.Y. 164, 168, 126 N.E. 814.

Here, defendant Vernot met his prima facie burden for summary judgment against defendant Bush by establishing that defendant Bush violated Vehicle and Traffic Law § 1141 by failing to yield the right of way to Vernot's vehicle when he made a left turn in the intersection which caused the collision. Defendant Bush submits in his opposition papers that issues of fact remain as to whether there was a stop sign controlling defendant Bush as he exited the ramp from Wantagh Parkway onto Carman Avenue, and additionally, there remains an issue of fact as to the speed of the relative defendants at the time the accident happened. This court disagrees with defendant Bush's argument. If there was a stop sign at the top of the exit ramp or the speed the vehicle were going is irrelevant. Given that Vernot was traveling straight which was not disputed

by defendant Bush, and Bush attempted to make a left turn, a stop sign, and the vehicles speed would not change this scenario.

The operator of a vehicle with the right-of-way is entitled to assume that the opposing driver will obey the traffic laws requiring him or her to yield *Bennett v. Granata* 118 A.D. 3d 652, 987 N.Y.S.2d 424 (2014) citing *Regans v. Baratta*, 106 A.D.3d 893, 965 N.Y.S.2d 171; *Ahern v. Lanaia*, 85 A.D.3d 696, 924 N.Y.S.2d 802; *Mohammad v. Ning*, 72 A.D.3d 913, 914, 899 N.Y.S.2d 356; *Loch v. Garber*, 69 A.D.3d 814, 816, 893 N.Y.S.2d 233 “Although a driver with a right-of-way also has a duty to use reasonable care to avoid a collision, ... 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” *Bennett v. Granata* 118 A.D. 3d 652, 987 N.Y.S.2d 424 (2014) citing *Yelder v. Walters*, 64 A.D.3d 762, 764, 883 N.Y.S.2d 290 see *Ducie v. Ippolito*, 95 A.D.3d 1067, 944 N.Y.S.2d 275; *Socci v. Levy*, 90 A.D.3d 1020, 1021, 935 N.Y.S.2d 332; *Vainer v. DiSalvo*, 79 A.D.3d 1023, 1024, 914 N.Y.S.2d 236).

This court determines that the defendant Vernot had to right of way as he traveled straight on Carman Avenue and was not negligent for failing to avoid the collision when defendant Bush attempted to make a left hand turn and failed to yield the right of way to oncoming traffic.

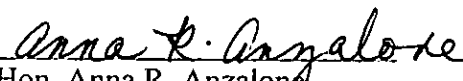
Accordingly, the defendant Vernot has established its entitlement to summary judgment in favor of defendant Joseph S. Vernot, pursuant to CPLR § 3212, on the grounds that no triable issues of fact exist. Consequently, plaintiff's motion (Sequence no 2) for an Order pursuant to CPLR § 3212 granting plaintiff, Angelica Mentor summary judgment on the issue of liability and holding defendants CA, Inc and John A. Bush, 3 liable as a matter of law is granted.

Counsel for defendant Vernot shall file and serve a copy of the within order with notice of entry upon all parties within twenty (20) days from the date of this Order.

The foregoing constitutes the Decision and Order of the Court

DATED: August 14, 2018
Mineola, New York

ENTER:


Hon. Anna R. Anzalone

ENTERED

AUG 21 2018

NASSAU COUNTY
COUNTY CLERK'S OFFICE

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