

En LI v Lutwak

2019 NY Slip Op 32915(U)

October 2, 2019

Supreme Court, New York County

Docket Number: 155521/2016

Judge: Adam Silvera

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ADAM SILVERA PART IAS MOTION 22
Justice
EN LI INDEX NO. 155521/2016
Plaintiff, MOTION DATE 06/27/2019
- v - MOTION SEQ. NO. 002
ER LUTWAK, DECISION + ORDER ON MOTION
Defendant.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64 were read on this motion to/for PARTIAL SUMMARY JUDGMENT.

Upon the foregoing documents, it is ORDERED that plaintiff En Ming Li's motion on the issue of liability is granted for the reasons set forth below. Before the court is plaintiff's motion, Motion Sequence 002, for (1) an Order pursuant to CPLR §3212 granting summary judgment in favor of plaintiff on the issue of liability as against defendant on the issue of liability and to set down this matter for a trial for an assessment of damages. Defendant opposes the motion.

The suit at bar stems from a motor vehicle accident that occurred on East 89th Street and its interception with Lexington Avenue in the County, City and State of New York when plaintiff was allegedly seriously injured while lawfully riding a motor bike on the roadway when he attempted to pass defendant's double parked vehicle and was struck by defendant's vehicle's passenger front side door when it suddenly opened.

"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]). Under VTL § 1214 “no person shall open the door of a motor vehicle on the side available to moving traffic unless it is reasonably safe to do so and can be done without interfering with the movement of other traffic.” A “Plaintiff’s affidavit stating that the rear door of defendants’ vehicle ‘opened without warning’ and struck the left side of his vehicle established that defendant driver violated Vehicle and Traffic Law (VTL) § 1214, and that plaintiff was unable to avoid the accident” (*Tavarez v Herrasme*, 140 Ad3d 453 [1st Dep’t 2016] citing *Montesinos v Cote*, 46 AD3d 774 [2nd 2007])[finding that “the evidence established that the injured plaintiff violated Vehicle and Traffic Law § 1214 by opening the door on the side of her car adjacent to moving traffic when it was not reasonably safe to do so, and was negligent in failing to see what, by the reasonable use of her senses, she should have seen”]).

In support of their motion, plaintiff submits the deposition of plaintiff and the affidavit of witness Quinhui Li (Mot, Exh E & F). Plaintiff testified that defendant stopped his vehicle when plaintiff honked and proceeded to pass defendant’s vehicle when the passenger door opened and struck him (Exh F at 31-32 & 39). Quinhui Li, who witnessed the accident, testified that he saw defendant’s vehicle’s door suddenly open and strike plaintiff when he was going around defendant’s vehicle (Mot, Exh E). Plaintiff has demonstrated that defendant’s vehicle opened the vehicle door on the side available to moving traffic when it was not reasonably safe to do so, and

that plaintiff was unable to avoid the accident. Thus, plaintiff has demonstrated that defendants violated Vehicle and Traffic Law § 1214 which constitutes negligence per se. The burden now shifts to defendants.

In opposition defendant fails to raise an issue of fact and calls into question the comparative negligence of plaintiff. The Court of Appeals has held that a plaintiff is entitled to partial summary judgment on the issue of a defendant's liability even if a defendant raises an issue of fact regarding plaintiff's comparative negligence (*Rodriguez v City of New York*, — NE3d —, 2018 NY Slip Op 02287 [2018]). The issue of a plaintiff's comparative negligence is addressed and determined when considering the damages that a defendant owes to a plaintiff (*id.* at 3). Plaintiff's motion for summary judgment is appropriate regardless of plaintiff's potential comparative negligence. Pursuant to VTL § 1214, Defendant had a duty, regardless of plaintiff's ability to operate his motor bike at the time of the accident, to not open his car door until it was "reasonably safe to do so and can be done without interfering with the movement of other traffic." Thus, defendant has failed to raise a triable issue of fact and plaintiff's motion for summary judgment is granted as to defendants' liability.

Accordingly, it is

ORDERED that plaintiff's motion for summary judgment on the issue of is granted; and it is further

ORDERED that an immediate trial as to the amount of damages to which plaintiff is entitled shall be had before the Court; and it is further

ORDERED that plaintiff shall, within 20 days from entry of this Order, serve a copy of this Oder with notice of entry upon counsel for all parties hereto and upon the Clerk of the Trial Support Office (Room 158) and shall serve and file with said Clerk a Note of Issue and statement

of readiness and shall pay the fee therefor, and said Clerk shall cause the matter to be placed upon the calendar for such trial.

This constitutes the Decision/Order of the Court.

10/2/19
DATE


ADAM SILVERA, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE