Green v Glory Car & Limo Serv., Inc.
2019 NY Slip Op 34299(U)
October 2, 2019
Supreme Court, Bronx County
Docket Number: Index No. 21206/2018E
Judge: Mary Ann Brigantti
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

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SHAMIKA L. GREEN,

Plaintiff,

Index No.: 21206/2018E

-against-

GLORY CAR & LIMO SERVICE, INC., COCOA POINT CAR SERVICE and AMAUWA O. IGWE,

Defendants.

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HON. MARY ANN BRIGANTTI:

Plaintiff, SHAMIKA L. GREEN, moves for partial summary judgment in her favor on the issue of the liability of Defendants, COCOA POINT CAR SERVICE and AMAUWA O. IGWE, and Plaintiff's freedom from comparative fault for the happening of the accident.

This is an action to recover damages for alleged personal injuries sustained by Plaintiff GREEN in a motor vehicle accident, which occurred on or about October 17, 2015, at 8:00 a.m., on Bassford Avenue, near its intersection with 183rd Street, in Bronx, NY. Defendant COCOA was the owner of the other motor vehicle, involved in the accident, which was operated by Defendant IGWE, who was driving the vehicle with the permission of COCOA (*see* Defendants' Verified Answer dated March 23, 2018).[1]

In support of her Motion, Plaintiff's submissions include her Affidavit; the

[1] Plaintiff alleges that the remaining Defendant, GLORY CAR & LIMO SERVICE, failed to appear in this action.

Police Accident Report; a "Google Maps" photo of the subject intersection; and the pleadings.

According to Plaintiff GREEN, she was driving northbound on Bassford Avenue, towards its intersection with 183rd Street. There are no Stop signs controlling traffic there on Bassford Avenue, and Plaintiff's vehicle had the right of way. The vehicle driven by IGWE, was traveling eastbound on 183rd Street towards its intersection with Bassford Avenue, where there was a Stop sign. Defendants' vehicle did not stop at the Stop sign, and did not yield the right of way. As a result, Defendants' vehicle struck Plaintiff's vehicle on the rear driver's side, in a t-bone collision (*see* Plaintiff GREEN Affidavit, dated March 6, 2019).

The Google Maps image supports Plaintiff's position as to the location of the Stop sign. Defendants made no objection to this photograph.[2] The Police Accident Report corroborates Plaintiff's recitation of the accident, since it sets forth that a witness alleged that Defendants' vehicle did not stop at the Stop sign, and that it hit Plaintiff's vehicle.

Vehicle and Traffic Law § 1142 (a) provides that "every driver of a vehicle

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[2] *See* CPLR § 4532-b, which provides that an "image, map, location, ... or other information taken from a web mapping service, a global satellite imaging site, or an internet mapping tool, is admissible in evidence ... subject to a challenge that [it] ... does not fairly and accurately portray that which it is being offered to prove... [A] party ... may object ... Unless objection is made ... , the court shall take judicial notice".

approaching a stop sign shall stop as required by section eleven hundred seventy-two and after having stopped shall yield the right of way to any vehicle which has entered the intersection from another highway or which is approaching so closely on said highway as to constitute an immediate hazard during the time when such driver is moving across or within the intersection."

Vehicle and Traffic Law § 1172 (a) provides that "every driver of a vehicle approaching a stop sign shall stop at a clearly marked stop line, but if none, then shall stop before entering the crosswalk on the near side of the intersection, or in the event there is no crosswalk, at the point nearest the intersecting roadway where the driver has a view of the approaching traffic on the intersecting roadway before entering the intersection and the right to proceed shall be subject to the provisions of section eleven hundred forty-two."

A plaintiff meets her prima facie burden for summary judgment by demonstrating that a defendant failed to stop for a Stop sign, in violation of Vehicle and Traffic Law §§ 1142 (a) and 1172 (a), which constitutes negligence as a matter of law. The vehicle with the right of way is entitled to anticipate that other vehicles will obey the traffic laws that require them to yield, and has no duty to watch for and avoid a driver who might fail to stop at a Stop sign (*Gonzalez v Bishop*, 157 AD3d 460, 460 [1st Dept 2018]).

Accordingly, Plaintiff made a prima facie showing on her entitlement to

partial summary judgment on the issue of liability by establishing that Defendant IGWE was negligent by failing to stop at a Stop sign and striking Plaintiff's vehicle. Thus, Plaintiff shifted the burden to Defendants to advance a non-negligent explanation for the accident (*see Harrigan v Sow*, 165 AD3d 463 [1st Dept 2018]).

Herein, however, Defendant driver, IGWE, the person with knowledge of the relevant facts concerning the circumstances surrounding the happening of the accident, has not submitted his own affidavit; and Defendants have not made the requisite showing.

It is well-established that where the submission on the part of the party opposing a summary judgment motion "consisted only of the bare affirmation of [his] ... attorney who demonstrated no personal knowledge of the manner in which the accident occurred [, s]uch an affirmation by counsel is without evidentiary value and thus unavailing" (*Zuckerman v New York*, 49 NY2d 557, 563 [1980]). In *Zuckerman*, as here, the opponent of the motion proffered no affidavit made by a party or eyewitness having knowledge of the relevant facts. There was no explanation for the failure to submit affidavits. No request was made for a further adjournment of the motion to permit Counsel to obtain the same (*Zuckerman v New York,* 49 NY2d at 563).

Defendants' Counsel argues that the motion is premature, insofar as

discovery has not been completed. In this regard, CPLR 3212 (f), "Facts unavailable to opposing party" provides that: "Should it appear from **affidavits** submitted in opposition to the motion that facts essential to justify opposition may exist but cannot then be stated, the court may deny the motion or may order a continuance to permit affidavits to be obtained or disclosure to be had and may make such other order as may be just." [emphasis added]

However, herein, the information as to why Defendants' car struck plaintiff's vehicle reasonably rests within Defendants' own knowledge *(see Castaneda v DO&CO NY Catering, Inc.*, 144 AD3d 407, 407 [1st Dept 2016]). The "mere hope that evidence sufficient to defeat a motion for summary judgment may be uncovered during the discovery process is insufficient to deny such a motion" (*Flores v. City of New York*, 66 AD3d 599, 600 [1st Dept. 2009]).

Furthermore, the Court of Appeals recently established "that to obtain partial summary judgment on defendant's liability he [plaintiff] does not have to demonstrate the absence of his own comparative fault" (*Carlos Rodriguez, Appellant, v City of NY*, 31 NY3d 312, 323 [2018]).

Accordingly, Plaintiff's Motion, for partial summary judgment in her favor on liability against Defendants, is granted, to the extent that Defendant AMAUWA O. IGWE is found negligent and his negligence was a substantial factor in causing the accident; and that Plaintiff was free from comparative fault

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for the happening of the accident.[3]

This constitutes the decision and order of this Court.

Dated: 10/2, 2019

HON. MARY ANN BRIGANTTI, J.S.C.

[3] However, this Court makes no determination as to other issues herein, such as whether Plaintiff's alleged injuries were proximately caused by the negligence of the Defendants, and whether Plaintiff sustained a "serious injury" within the meaning of the Insurance Law.