

Bickel v Morales

2019 NY Slip Op 34534(U)

July 23, 2019

Supreme Court, Suffolk County

Docket Number: Index No. 605272/2018

Judge: Martha L. Luft

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Short Form Order

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SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 50 - COUNTY OF SUFFOLK

P R E S E N T:

Hon. Martha L. Luft
Acting Justice Supreme Court

DECISION AND ORDER

JANE BICKEL, x

Plaintiff,

-against-

RODOLFO S. MORALES and RUDOLFO
J. MORALES,

Defendants.
_____ x

Mot. Seq. No.: 001 - MG
Orig. Return Date: 01/15/2019
Mot. Submit Date: 03/12/2019

PLAINTIFF'S ATTORNEY

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Copiague, NY 11726

DEFENDANTS' ATTORNEY

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Upon the e-file documents numbered 6 through 26, it is

ORDERED that the motion by the plaintiff Jane Bickel for an order granting partial summary judgment in her favor on the issue of liability is granted.

This is an action to recover damages for injuries allegedly sustained by the plaintiff Jane Bickel as a result of a motor vehicle accident which occurred on December 4, 2015, on Waverly Avenue, near the intersection with Express Drive North, in the Town of Brookhaven, New York. The accident allegedly happened when a vehicle operated by the plaintiff came into contact with a vehicle owned by the defendant Rodolfo S. Morales and operated by the defendant Rodolfo J. Morales. At the time of the accident, the plaintiff's vehicle was traveling southbound on Waverly Avenue, and the defendants' vehicle was traveling northbound on Waverly Avenue. As the plaintiff was attempting to make a right turn onto Express Drive North and Mr. Morales was attempting to make a left turn onto Express Drive North, the two vehicles collided. After the police responded to the accident scene, Mr. Morales was arrested for operating his vehicle while intoxicated. On January 5, 2018, Mr. Morales was convicted upon his guilty plea of violating of Vehicle and Traffic Law § 1192 (2) in connection with the subject accident, and he was sentenced to, among other things, three years' probation.

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The plaintiff now moves for partial summary judgment in her favor on the issue of liability, arguing that Mr. Morales's negligence was a proximate cause of the collision. In support, plaintiff submits, among other things, her own affidavit, a certified copy of a police report, and a certificate of disposition from Suffolk County First District Court. In opposition, the defendants submit an affirmation of their attorney, and an affidavit of Mr. Morales.

A plaintiff in a negligence action moving for summary judgment on the issue of liability must establish, prima facie, that the defendant breached a duty owed to the plaintiff, and that the defendant's negligence was a proximate cause of the alleged injuries (*see Rodriguez v City of New York*, 31 NY3d 312, 319, 76 NYS3d 898 [2018]; *Poon v Nisanov*, 162 AD3d 804, 79 NYS3d 227 [2d Dept 2018]). To be entitled to partial summary judgment, a plaintiff does not bear the burden of establishing the absence of his or her own comparative fault (*see Rodriguez v City of New York, supra*, at 324-325; *Lopez v Dobbins*, 164 AD3d 776, 79 NYS3d 566 [2d Dept 2018]; *Poon v Nisanov, supra*). Further, the Vehicle and Traffic Law § 1141 provides that the 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, and a violation of this statute constitutes negligence per se (*see Yu Mei Liu v Weihong Liu*, 163 AD3d 611, 81 NYS3d 75 [2d Dept 2018]; *Lebron v Mensah*, 161 AD3d 972, 76 NYS3d 219 [2d Dept 2018]; *Katikireddy v Espinal*, 137 AD3d 866, 26 NYS3d 775 [2d Dept 2016]). The operator of a vehicle with the right-of-way is entitled to assume that the opposing driver will obey the traffic law requiring him or her to yield (*see Yu Mei Liu v Weihong Liu, supra; Lebron v Mensah, supra; Katikireddy v Espinal, supra*).

The doctrine of res judicata precludes a party from re-litigating in a subsequent action or proceeding an issue clearly raised in a prior action or proceeding and decided against that party or those in privity (*see Kaufman v Eli Lilly & Co.*, 65 NY2d 449, 455, 492 NYS2d 584, 588 [1985]; *Ryan v New York Tel. Co.*, 62 NY2d 494, 500, 478 NYS2d 823, 826 [1984]; *Clifford v County of Rockland*, 140 AD3d 1108, 35 NYS3d 211 [2d Dept 2016]), and the party seeking to invoke it must demonstrate that the issues in both proceedings are identical, that the issue in the prior proceeding was actually litigated and decided, that there was a full and fair opportunity to litigate in the prior proceeding, and that the issue previously litigated was necessary to support a valid and final judgment on the merits (*see Conason v Megan Holding, LLC*, 25 NY3d 1, 17, 6 NYS3d 206 [2015]; *Buechel v Bain*, 97 NY2d 295, 303-304, 740 NYS2d 252 [2001]; *Clifford v County of Rockland, supra*). A criminal conviction resulting from a guilty plea that is based upon facts identical to those in a related civil action may successfully bar the convicted defendant from re-litigating the issue of liability (*see D'Arata v New York Cent. Mut. Fire Ins. Co.*, 76 NY2d 659, 664, 563 NYS2d 24, 26 [1990]; *Hartman v Milbel Enters., Inc., supra; Morrow v Gallagher*, 113 AD3d 827, 979 NYS2d 395 [2d Dept 2014]; *Maiello v Kirchner*, 98 AD3d 481, 949 NYS2d 200 [2d Dept 2012]).

Here, by her affidavit, the plaintiff has sustained her burden of establishing a prima facie case that Mr. Morales breached a duty owed to her, and that this breach was a proximate cause of

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her alleged injuries (*see Rodriguez v City of New York, supra; Lopez v Dobbins, supra; Poon v Nisanov, supra*). The plaintiff's affidavit establishes that, while her vehicle was traveling southbound on Waverly Avenue, faced with a green traffic light, and attempted to make a right turn onto Express Drive North, it was struck by a vehicle operated by Mr. Morales as he attempted to make a left turn onto Express Drive North, failing to yield the right of way to the plaintiff's vehicle, creating a prima facie case of negligence (*see Vehicle and Traffic Law § 1141; Yu Mei Liu v Weihong Liu, supra; Lebron v Mensah, supra; Katikireddy v Espinal, supra*). Further, Mr. Morales's plea of guilty to driving while intoxicated in connection with the subject accident bars him from re-litigating the issue of liability for same, and the plaintiff may invoke the benefit of collateral estoppel (*see Vehicle and Traffic Law § 1192 (2); Conason v Megan Holding, LLC, supra; D'Arata v New York Cent. Mut. Fire Ins. Co., supra; Morrow v Gallagher, supra*).

The plaintiff having made the requisite prima facie showing of entitlement to summary judgment, the burden shifted to the defendants to submit evidentiary proof in admissible form which raises a triable issue of fact (*see Zuckerman v City of New York, 49 NY2d 557, 427 NYS2d 595 [1980]; Yu Mei Liu v Weihong Liu, supra; Poon v Nisanov, supra*). In opposition, the defendants submit an affirmation of their attorney, arguing, among other things, that the motion is premature, as no depositions have been conducted, and that there are triable issues of fact as to whether the plaintiff was comparatively negligent in the happening of the accident. However, the affirmation from an attorney having no personal knowledge of the facts is without evidentiary value and, thus, is insufficient to raise a triable issue of fact (*see Zuckerman v City of New York, supra*). Further, because Mr. Morales has personal knowledge of the relevant facts underlying the accident, the defendants' purported need to conduct discovery does not warrant denial of the motion (*see Turner v Butler, 139 AD3d 715, 32 NYS3d 174 [2d Dept 2016]; Deleg v Vinci, 82 AD3d 1146, 919 NYS2d 396 [2d Dept 2011]; Monteleone v Jung Pyo Hong, 79 AD3d 988, 913 NYS2d 755 [2d Dept 2010]*). The defendants also submit an affidavit of Mr. Morales, by which he avers, among other things, that he entered the intersection with a green light in his favor, that traffic in the opposite direction was clear, and that he was able to make his left turn onto Express Drive North and nearly complete it when the plaintiff's vehicle collided with the rear passenger side of his vehicle. However, as a plaintiff moving for partial summary judgment on the issue of liability no longer bears the burden of establishing the absence of his or her own comparative fault (*see Rodriguez v City of New York, supra, at 324-325*), Mr. Morales's affidavit is insufficient to rebut the plaintiff's prima facie showing that he was negligent. Moreover, Mr. Morales's affidavit fails to address his guilty plea to driving while intoxicated in connection with the subject accident, or to demonstrate the absence of a full and fair opportunity to contest the prior determination so as to preclude the application of collateral estoppel (*see D'Arata v New York Cent. Mut. Fire Ins. Co., supra; Morrow v Gallagher, supra; Maiello v Kirchner, supra*). As the defendants' submissions fail to raise any triable issues of fact, they fail to rebut the plaintiff's prima facie showing that Mr. Morales's negligence was a proximate cause of the accident (*see Rodriguez v City of New York, supra; Zuckerman v City of New York, supra; Yu Mei Liu v Weihong Liu, supra; Morrow v Gallagher, supra*).

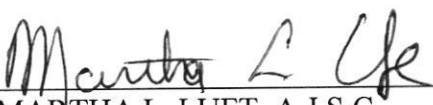
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In light of the foregoing, the plaintiff's motion for partial summary judgment is granted.

ENTER

Date: July 23, 2019
Riverhead, New York



MARTHA L. LUFT, A.J.S.C.

___ FINAL DISPOSITION

X NON-FINAL DISPOSITION