

Chavez v Defeo

2019 NY Slip Op 34567(U)

September 23, 2019

Supreme Court, Suffolk County

Docket Number: Index No. 610818/2016

Judge: Linda Kevins

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INDEX No.610818/2016
CAL No. _____

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 29 - SUFFOLK COUNTY

PRESENT:

Hon. LINDA KEVINS
Justice of the Supreme Court

-----X

NELSON CHAVEZ and MARIA VILLATORO,
Plaintiff,

-against-

VITO A. DEFEQ,

Defendant.

-----X

DECISION AND ORDER
MOTION Seq. # 002 - MG

The following papers have been read on this unopposed Motion by Plaintiff Nelson Chavez:

Notice of Motion, Affirmation, Memorandum of Law & Exhibits 1

Upon the foregoing papers, it is Ordered that this Motion is decided as follows:

Plaintiff Nelson Chavez (hereinafter "Chavez") seeks an Order granting Plaintiff Chavez Summary Judgment pursuant to CPLR 3212 dismissing the counterclaim brought by Defendant Vito A. Defeo against Plaintiff Chavez. There is no opposition to this application.

This is an action to recover damages for personal injuries allegedly sustained by Plaintiffs Nelson Chavez (hereinafter Chavez) and Maria Villatoro (hereinafter "Villatoro") as a result of a two-vehicle accident. Plaintiff now moves to dismiss the counterclaim on the issue of breach of duty owed, arguing that Defendant was negligent per se when making a left turn after entering into an intersection while it was unsafe to do so in violation of Vehicle and Traffic Law §§ 1141, 1142 and 1172.

The incident took place at the intersection of Broadway-Greenlawn Avenue and Delamere Street, Greenlawn, Town of Huntington, Suffolk County, New York. Plaintiff Chavez's direction of travel on Broadway-Greenlawn Avenue was not governed by a stop sign however Defendant's direction of travel on Delamere Street was governed by a stop sign. At the

time of the alleged incident, Plaintiff Villatoro was a passenger in Plaintiff Chavez's vehicle. In support of the motion, Plaintiff Chavez submits, among other things, an affirmation of counsel, memorandum of law, copies of the pleadings and deposition transcripts of Plaintiffs and Defendant.

It is well settled that the proponent of a summary judgment motion bears the initial burden of establishing his or her entitlement to judgment, as a matter of law, in his or her favor by offering admissible evidence sufficient to eliminate any material issues of fact from the case (*see Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986]; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851 [1985]; *Zuckerman v City of New York*, 49 NY2d 557 [1980]). Failure to make such a showing requires denial of the motion, regardless of the sufficiency of any opposition thereto (*Winegrad v New York Univ. Med. Ctr.*, *supra*). Once the movant has made the requisite showing, the burden then shifts to the opposing party, requiring him or her to present admissible evidence and facts sufficient to require a trial on any issue of fact (*CPLR 3212 [b]*; *Alvarez v Prospect Hosp.*, *supra*; *Zuckerman v City of New York*, *supra*). On such a motion, the Court is charged with determining whether issues of fact exist while viewing any evidence in a light most favorable to the nonmoving party; the Court is not responsible for resolving issues of fact or determining matters of credibility (*see Chimbo v Bolivar*, 142 AD3d 944 [2d Dept 2016]; *Pearson v Dix McBride, LLC*, 63 AD3d 895 [2d Dept 2009]; *Kolivas v Kirchoff*, 14 AD3d 493 [2d Dept 2005]). A motion for summary judgment should be denied where the facts are in dispute, where conflicting inferences may be drawn from the evidence, or where there are issues of credibility (*see Chimbo v Bolivar*, *supra*; *Beneratos v Comerford*, 78 AD3d 730 [2d Dept 2010]). A plaintiff may obtain partial summary judgment on the issue of liability without demonstrating the absence of his or her own comparative fault (*Rodriguez v City of New York*, 31 NY3d 312 [2018]; *Poon v Nisanov*, 162 AD3d 804 [2d Dept 2018]).

The Vehicle and Traffic Law establishes standards of care for motorists, and an unexcused violation of such standards constitutes negligence per se (*see Ferrara v Castro*, 283 AD2d 392 [2d Dept 2001]). Moreover, an operator of a motor vehicle has a "common-law duty to see that which [he or she] should have seen through the proper use of [his or her] senses" (*Moussouros v Liter*, 22 AD3d 469 [2d Dept 2005]). "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" (*Gause v Martinez*, 91 AD3d 595 [2d Dept 2012]).

Plaintiff Chavez alleges the Defendant violated the following sections of the Vehicle & Traffic Law:

§1142 entitled, Vehicle entering stop or yield intersection, in relevant part provides:

(a) Except when directed to proceed by a police officer, every driver of a vehicle 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.

§1141 entitled, Vehicle turning left, provides:

The driver of a vehicle intending to turn to the left within an intersection or into an alley, private road, or driveway 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.

§1172 entitled, Stop signs and yield signs, in relevant part, provides:

(a) Except when directed to proceed by a police officer, 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.

Vehicle and Traffic Law § 1141 mandates a vehicle intending to turn left within an intersection yield the right of way to any vehicle approaching the intersection. The vehicle intending to turn left must yield to those vehicles which are within the intersection or so close to it that they may constitute an immediate hazard (*Aponte v Vani*, 155 AD3d 929 [2d Dept 2017]). When a driver attempts to make a left turn when it is not reasonably safe to do so, into the path of an oncoming vehicle, that driver is in violation of the Vehicle and Traffic Law (*Attl v Spetier*, 137 AD3d 1176 [2d Dept 2016]). Vehicle and Traffic Law § 1142 requires a driver approaching a stop sign to stop in accordance with Vehicle and Traffic Law § 1172 before yielding the right of way to a vehicle entering the proceeding intersection so closely "as to constitute an immediate hazard." If a driver fails to yield this right of way after stopping at a stop sign, then he or she is negligent as a matter of law (*Miller v County of Suffolk*, 163 AD3d 954 [2d Dept 2018]).

Here, Plaintiff Chavez alleges the accident occurred on February 24, 2016, when a vehicle owned and operated by Defendant struck Plaintiff Chavez's vehicle at the intersection of Broadway-Greenlawn Avenue and Delemere Street, Town of Huntington, Suffolk County, New York. Plaintiff Chavez alleges that immediately prior to the accident, he was traveling northbound on Broadway with Plaintiff Villatoro as a passenger and Defendant was traveling eastbound on Delamere Street towards the intersection.

Plaintiff Chavez's deposition demonstrates that he was traveling in the right of way and the Defendant, whose direction of travel was controlled by a stop sign, entered the subject intersection, and made a left turn causing the vehicles to collide. As provided in Plaintiff Chavez and Defendant's depositions, it is undisputed that Defendant was unable to complete his left turn without colliding with the front of Plaintiff Chavez's vehicle and it is compelling evidence of the immediate hazard created by Defendant's vehicle (*see Shashaty v Gavitt*, 158 AD3d 830 [2d Dept 2018]; *Giwa v Bloom*, 154 AD3d 921 [2d Dept 2017]; *see generally Al-Mamar v Terrones*, 146 AD3d 737 [2d Dept 2017]). Thus, Defendant was required to yield to Plaintiff Chavez's oncoming vehicle, regardless of which vehicle entered the intersection first, since Plaintiff

Chavez was entitled to anticipate Defendant would obey the requisite traffic laws (see *Shashaty v Gavitt, supra*; *Giwa v Bloom, supra*; *Hatton v Lara*, 142 AD3d 1047 [2d Dept 2016]). Plaintiff Chavez in his deposition also states that he swerved to the right immediately upon seeing defendants' vehicle cross in front of him within the intersection, and he was unable to avoid the collision (see *Shashaty v Gavitt, supra*). Based upon the foregoing, Plaintiff Chavez has met his burden on the motion for partial summary judgment on the issue of negligence, shifting the burden now to Defendant (*Alvarez v Prospect Hosp., supra*).

Here, Plaintiff Chavez's submissions are sufficient to make a prima facie showing of entitlement to summary judgment of the complaint in the counterclaim. (see *Kastritsios v Marcello*, 84 AD3d 1174 [2d Dept 2011]; *Bernier v Torres*, 79 AD3d 776 [2d Dept 2010]; *Mandel v Benn*, 67 AD3d 746 [2d Dept 2009]). The burden, then, shifted to Defendant to offer a non-negligent explanation for the accident sufficient to raise a triable issue of fact (see *Emil Norsic & Son, Inc. v L.P. Transp., Inc.*, 30 AD3d 368 [2d Dept 2006]; *Rainford v Han*, 18 AD3d 638 [2d Dept 2005]). Defendant, however, has failed to present any evidence in opposition. Thus, the Defendant has not met their burden.

Accordingly, Plaintiff Chavez's request for an Order granting Summary Judgment pursuant to CPLR 3212 dismissing the counterclaim brought by Defendant Vito A. Defeo against Plaintiff Chavez Motion is Granted.

Accordingly, it is hereby

ORDERED, this application by Plaintiff Chavez is GRANTED to the extent the Defendant's counterclaim is dismissed; and it is further

ORDERED, that Movant(s) is/are directed to immediately serve a certified copy of this Order, pursuant to CPLR §§8019(c) and 2105, upon the Suffolk County Clerk; and it is further

ORDERED, that upon Entry of this Order by the Suffolk County Clerk, Movant(s) is/are directed to serve, forthwith, a copy of this Order with Notice of Entry upon all parties and to promptly file the Affidavit(s) of Service with the Clerk of the Court.

The Court has considered the remaining issues and finds them unavailing.

This constitutes the Decision and Order of this Court.

Dated: September 23, 2019
Riverhead, New York



HON. LINDA KEVINS
J.S.C.

_____ FINAL DISPOSITION X NON-FINAL DISPOSITION