

Jacques v Tress

2019 NY Slip Op 34572(U)

October 28, 2019

Supreme Court, Rockland County

Docket Number: Index No. 031542/2018

Judge: Sherri L. Eisenpress

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

-----X

JHON JACQUES,

Plaintiff,

-against-

ELIMELECH G. TRESS,

Defendant.

-----X

Sherri L. Eisenpress, A.J.S.C.

DECISION & ORDER

Index No.: 031542/2018

(Motion # 1)

The following papers, numbered 1-4, were considered in connection with Plaintiff's Notice of Motion for an Order, pursuant to Civil Practice Law and Rules § 3212, granting partial summary judgment in favor of Plaintiff on the issue of liability:

<u>PAPERS</u>	<u>NUMBERED</u>
NOTICE OF MOTION/AFFIRMATION IN SUPPORT/EXHIBITS "A-F"	1-2
AFFIRMATION IN OPPOSITION/EXHIBIT "A-B"	3
AFFIRMATION IN REPLY	4

Upon a careful and detailed review of the foregoing papers, the Court now rules as follows:

This action was commenced by Plaintiff on March 20, 2018, with the filing of the Summons and Complaint through the NYSCEF system. Issue was joined with the filing of Defendant's Answer through the NYSCEF system on May 24, 2018. The action arises from a motor vehicle accident on February 10, 2017, at the intersection of South Myrtle Avenue and Walnut Place, Spring Valley, New York. A note of issue was filed on April 29, 2019 and the within summary judgment motion is timely made.

The subject intersection is a four way stop, which each side having its own stop sign. The evidence demonstrates that at the time of the subject occurrence, Plaintiff brought

his vehicle to a complete stop behind the white line of his stop sign. At the stop sign across from Plaintiff, a town employee was stopped behind his stop sign. Plaintiff testified that when that operator flashed his lights to signal Plaintiff to proceed, Plaintiff crept up to look left and right to look for cars and then proceeded into the intersection. When he was in the intersection, he observed Defendant's vehicle to his left, fail to stop at the stop sign and then make contact with his vehicle.

Defendant testified that he was aware of the stop sign on Walnut Place. He was traveling about 25-30 mph, and was about 50-60 feet from the intersection, when he first noticed the stop sign. Defendant testified that he intended to stop at the stop sign but claimed his brakes failed due to the presence of "black ice". Defendant testified that he impacted Plaintiff's car at about ten miles an hour. Defendant's car struck the rear door of Plaintiff's car pushing it towards a pole on the corner of the intersection.

Plaintiff asserts that he is entitled to summary judgment as a matter of law based upon the Defendant's violation of Vehicle and Traffic Law Sec. 1142(a) "Vehicle entering stop or yield intersection", which states in relevant part:

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.

He argues that it is undisputed that Plaintiff's vehicle was already in the intersection as Defendant approached; Defendant did not stop at the stop sign; Defendant approached the intersection at too fast a speed to timely bring his vehicle to stop and was required to anticipate that the roads may be slippery or icy in the month of February.

In opposition thereto, Defendant asserts that summary judgment must be denied because a jury can infer that had Plaintiff simply ignored the directive of the motorist who was flashing his lights at the Plaintiff to proceed into the intersection, the Plaintiff's vehicle would not

have been present in the intersection when the icy road prevented the defendant from stopping. Defendant argues that the emergency doctrine is applicable in the instant matter because he was unable to stop due to the icy condition of the road, which was not an emergency of his own making.

The proponent of a summary judgment motion must establish his or her claim or defense sufficient to warrant a court directing judgment in its favor as a matter of law, tendering sufficient evidence to demonstrate the lack of material issues of fact. Giuffrida v. Citibank Corp., et al., 100 N.Y.2d 72, 760 N.Y.S.2d 397 (2003), citing Alvarez v. Prospect Hosp., 68 N.Y.2d 320, 508 N.Y.S.2d 923 (1986). The failure to do so requires a denial of the motion without regard to the sufficiency of the opposing papers. Lacagnino v. Gonzalez, 306 A.D.2d 250, 760 N.Y.S.2d 533 (2d Dept. 2003). However, once such a showing has been made, the burden shifts to the party opposing the motion to produce evidentiary proof in admissible form demonstrating material questions of fact requiring trial. Gonzalez v. 98 Mag Leasing Corp., 95 N.Y.2d 124, 711 N.Y.S.2d 131 (2000), citing Alvarez, supra, and Winegrad v. New York Univ. Med. Center, 64 N.Y.2d 851, 508 N.Y.S.2d 923 (1985). Mere conclusions or unsubstantiated allegations unsupported by competent evidence are insufficient to raise a triable issue. Gilbert Frank Corp. v. Federal Ins. Co., 70 N.Y.2d 966, 525 N.Y.S.2d 793 (1988); Zuckerman v. City of New York, 49 N.Y.2d 557 (1980), 427 N.Y.S.2d 595.

"A violation of the Vehicle and Traffic Law constitutes negligence as a matter of law." Gluck v. New York City Tr. Auth, 118 A.D.3d 667, 669, 987 N.Y.S.2d 89 (2d Dept. 2014). Moreover, a driver is bound to see what is there to be seen through the proper use of his or her senses, and is negligent for the failure to do so. Shui-Kwan Lui v. Serrone, 103 A.D.3d 620, 959 N.Y.S.2d 270 (2d Dept. 2013). Thus, a driver also has a duty to exercise reasonable care under the circumstances to avoid an accident. Id. Moreover, a driver who has the right-of-way is entitled to anticipate that other drivers will obey traffic laws which require them to yield. Smith v. Omanes, 123 A.D.3d 691, 998 N.Y.S.2d 198 (2d Dept. 2014).

Here, Plaintiff has established his entitlement to summary judgment as to liability based upon Defendant's violation of a statute. The evidence submitted in support of the motion established that the defendant failed to properly observe Plaintiff's vehicle, bring his vehicle to a stop at the stop sign and yield to Plaintiff's vehicle already in the intersection before proceeding into the intersection. Mohammad v. Ning, 71 A.D.3d 913, 899 N.Y.S.2d 356 (2d Dept. 2010); Odumbo v. Perera, 27 A.D.3d 709, 813 N.Y.S.2d 462 (2d Dept. 2006).

In opposition thereto, Defendant failed to raise a triable issue of fact. The emergency doctrine holds that when an actor is faced with a sudden and unexpected circumstance which leaves little or no time for thought, deliberation or consideration, or causes the actor to be reasonably so disturbed that the actor must make a speedy decision without weighing alternative courses of conduct, the actor may not be negligent if the actions taken are reasonable and prudent in the emergency context, provided the actor has not created the emergency. Caristo v. Sanzone, 96 N.Y.2d 172, 174, 726 N.Y.S.2d 334 (2001). In Caristo, the Court held that defendant was not entitled to a jury instruction regarding the emergency doctrine where she collided with another vehicle when he she lost control due to a patch of ice on the roadway. Likewise, in the case of Grimm v. Bailey, 105 A.D.3d 703, 963 N.Y.S.2d 277 (2d Dept. 2013), the Court rejected defendant's argument that she was not negligent because she applied her brakes but her vehicle was unable to stop because of icy road conditions. See also Plummer v. Nourdinne, 82 A.D.3d 1069, 919 N.Y.S.2d 187 (2d Dept. 2011)(inference of negligence not rebutted by the mere assertion that taxi was unable to stop on a slippery roadway); Kosinski v. Sayers, 294 A.D.2d 407, 743 N.Y.S.2d 124 (2002). Here, Defendant's claim that he was unable to stop because of the presence of "black ice" on the roadway does not excuse his failure to yield at the stop sign, particularly given the fact that it is foreseeable that black ice may be present on the roadway in February.

Nor does Defendant's contention that Plaintiff's summary judgment motion requires denial because a jury may determine that Plaintiff should not have entered the

intersection in response to the Town vehicle flashing its lights. At best, this is an issue of comparative negligence. The impact of questions of comparative negligence on a motion for summary judgment was very recently resolved by the Court of Appeals in Rodriguez v. City of New York, 31 N.Y.2d 312, 76 N.Y.S.3d 898 (2018), wherein the court noted:

[T]o be entitled to partial summary judgment a plaintiff does not bear the double burden of establishing a prima facie case of defendant's liability and the absence of his or her own comparative fault.

When a defendant's liability is established as a matter of law before trial, the jury must still determine whether the plaintiff was negligent and whether such negligence was a substantial factor in causing plaintiff's injuries, and if so, the comparative fault of each party is then apportioned by the jury. Id. at 374. Therefore, any allegation of comparative negligence on Plaintiff's part in the instant matter does not preclude a grant of summary judgment to Plaintiff for Defendant's violation of a statute.

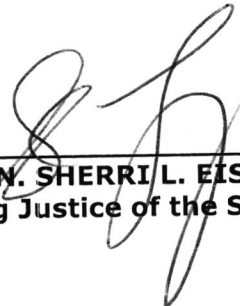
Accordingly, it is hereby

ORDERED that Plaintiffs' Notice of Motion for Summary Judgment on the issue of liability is granted in its entirety; and it is further

ORDERED that counsel shall appear in the Trial Readiness Part on **WEDNESDAY, DECEMBER 4, 2019, at 9:30 a.m.**

The foregoing constitutes the Decision and Order of this Court on Motion # 1.

Dated: New City, New York
October 28, 2019



HON. SHERRIL L. EISENPRESS
Acting Justice of the Supreme Court

To: All parties (via NYSCEF)