

Miolla v Lanzetta

2019 NY Slip Op 34598(U)

October 10, 2019

Supreme Court, Suffolk County

Docket Number: Index No. 17-607383

Judge: Linda Kevins

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SHORT FORM ORDER

INDEX No. 17-607383
CAL. No. 19-00347MV

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

PRESENT:

Hon. LINDA J. KEVINS
Justice of the Supreme Court

MOTION DATE 6-18-19
ADJ. DATE 8-13-19
Mot. Seq. # 001 - MD

-----X	
STEPHANIE V. MIOLLA,	GRUENBERG KELLY DELLA
	Attorney for Plaintiff
Plaintiff,	700 Koehler Avenue
	Ronkonkoma, New York 11779
- against -	
JOSEPH LANZETTA and ANGELA	LAW OFFICES OF STEWART H. FRIEDMAN
DEMARCO,	Attorney for Defendants
	100 William Street, 9th Floor
Defendants.	New York, New York 10038
-----X	

Upon the following papers read on this motion on this e-filed motion for summary judgment: Notice of Motion/ Order to Show Cause and supporting papers by defendants, filed May 21, 2019; Notice of Cross Motion and supporting papers ____; Answering Affidavits and supporting papers by plaintiff, filed June 4, 2019; Replying Affidavits and supporting papers by defendants, filed July 26, 2019; Other ____; (~~and after hearing counsel in support and opposed to the motion~~) it is,

ORDERED that the motion by defendants for summary judgment dismissing the complaint is denied.

This is an action to recover damages for injuries allegedly sustained by plaintiff Stephanie Miolla as a result of a motor vehicle accident which occurred on April 6, 2016, on North Ocean Avenue, at its intersection with Rosedale Avenue, in Babylon, New York. The accident allegedly occurred when plaintiff's vehicle attempted to make a left turn onto North Ocean Avenue and struck a northbound vehicle owned by defendant Angela Demarco and operated by defendant Joseph Lanzetta in an intersection with a stop sign controlling plaintiff's lane of traffic on Rosedale Avenue.

Defendants now moves for summary judgment dismissing the complaint on the grounds that plaintiff violated Vehicle and Traffic Law §§ 1141 and 1142 (a) by failing to yield the right-of-way to defendant driver's vehicle after stopping at a stop sign. Defendants submits, among other things, the deposition testimony of plaintiff and defendant driver. In opposition, plaintiff contends that defendants' submissions present conflicting versions of how the accident occurred.

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Plaintiff testified that her direction of travel on Rosedale Avenue was controlled by a stop sign. She further testified that she made a complete stop at the stop sign for five to ten seconds, and that she looked left and right before attempting to make a left onto North Ocean Avenue. Plaintiff stated that although she observed three vehicles traveling on North Ocean Avenue, approaching the subject intersection, when she looked to her left at the stop sign, she proceeded to turn left because she believed that the approaching vehicles were far enough away from her vehicle to complete the turn. She testified that the approaching vehicles were more than two car lengths away from her vehicle. Defendant driver's vehicle allegedly was the farthest away from plaintiff's vehicle, traveling in the right lane behind two non-party vehicles. Plaintiff stated that the non-party vehicle closest to her vehicle was in the process of changing from the right lane to the right-turning lane, while the other non-party vehicle was traveling behind it in the right lane. She further stated that neither vehicle in the right lane cleared the intersection before she started to make her turn, and that she could not recall their speed. The parties do not dispute that the speed limit at or near the subject intersection was 45 miles per hour. According to plaintiff's testimony, she began making a left turn at approximately 5 to 10 miles per hour, and she was halfway complete with her turn, with the front of her vehicle reaching the right lane of North Ocean Avenue, before the collision occurred. Plaintiff testified that three to four seconds elapsed from the time that she started to move from the stop sign until the front of her vehicle was impacted. Plaintiff further testified that a "split second" before the collision, she observed defendant driver's vehicle increase his speed and change lanes from the right lane to the left lane to pass a non-party vehicle in the right lane. Plaintiff stated that she swerved her vehicle in response to defendant driver's lane change, and that her foot was on the gas pedal at the time of impact. However, she could not recall the direction in which she swerved her vehicle, and whether the non-party vehicle in front of defendant's driver vehicle stopped after the collision occurred.

Defendant driver testified that he was traveling northbound on North Ocean Avenue at the time of the incident, and that his direction of travel was not controlled by any traffic control devices. He further testified that he first observed plaintiff's vehicle, which was completely stopped, from a distance of approximately 40 feet, and that he initially continued to maintain a speed of 43 or 44 miles per hour as he approached the subject intersection. According to defendant driver's testimony, when he observed plaintiff's vehicle suddenly move towards North Ocean Avenue, he attempted to move his vehicle from the right lane to the left lane and applied his brakes in order to avoid the collision. However, defendant driver stated that he was unable to complete his lane change. Defendant driver further stated that there were no northbound vehicles in the right lane ahead of him at the time of the collision, and that five to ten seconds elapsed from the time that he observed plaintiff's stopped vehicle until the front passenger side of his vehicle was impacted.

The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law by tendering evidence in admissible form sufficient to eliminate any material issues of fact from the case (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 508 NYS2d 923 [1986]; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 87 NYS2d 316 [1985]). The movant has the initial burden of proving entitlement to summary judgment (*Winegrad v New York Univ. Med. Ctr.*, *supra*). Once the movant demonstrates a prima facie entitlement to judgment as a matter of law, the

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burden shifts to the party opposing the motion to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action (*see Vega v Restani Constr. Corp.*, 18 NY3d 499, 942 NYS2d 13 [2012]; *Alvarez v Prospect Hosp.*, *supra*; *Zuckerman v City of New York*, 49 NY2d 557; 427 NYS2d 595 [1980]; *see also* CPLR 3212 [b]). The failure to make a prima facie showing requires a denial of the motion, regardless of the sufficiency of the opposing papers (*see Winegrad v New York Univ. Med. Ctr.*, *supra*). In deciding the motion, the court must view all evidence in the light most favorable to the nonmoving party (*see New York City Asbestos Litig. v Chevron Corp.*, 33 NY3d 20, 99 NYS3d 734 [2019]; *Stonehill Capital Mgt., LLC v Bank of the West*, 28 NY3d 439, 45 NYS3d 864 [2016]).

A defendant moving for summary judgment in a negligence action has the burden of demonstrating, prima facie, that he or she was not at fault in the happening of subject collision (*see Richardson v Cablevision Sys. Corp.*, 173 AD3d 1083, 104 NYS3d 655 [2d Dept 2019]; *Green v Masterson*, 172 AD3d 826, 98 NYS3d 443 [2d Dept 2019]; *Miron v Pappas*, 161 AD3d 1063, 77 NYS3d 163 [2d Dept 2018]). As there can be more than one proximate cause of a motor vehicle accident (*see Richardson v Cablevision Sys. Corp.*, *supra*; *Enriquez v Joseph*, 169 AD3d 1008, 94 NYS3d 599 [2d Dept 2019]; *Matias v Bello*, 165 AD3d 642, 84 NYS3d 551 [2d Dept 2018]), the issue of comparative fault is generally a question for the fact finder to determine (*see Vuksanaj v Abbott*, 159 AD3d 1031, 73 NYS3d 224 [2d Dept 2018]; *Ortiz v Welna*, 152 AD3d 709, 58 NYS3d 556 [2d Dept 2017]; *Twizer v Lavi*, 140 AD3d 736, 33 NYS3d 351 [2d Dept 2016]).

A failure to comply with Vehicle and Traffic Law constitutes negligence as a matter of law (*Kerolle v Nicholson*, 172 AD3d 1187, 101 NYS3d 387 [2d Dept 2019]; *Marks v Rieckhoff*, 172 AD3d 847, 101 NYS3d 63 [2d Dept 2019]; *Kaziu v Human Care Servs. for Families & Children, Inc.*, 167 AD3d 588, 90 NYS3d 66 [2d Dept 2018]). Pursuant to Vehicle and Traffic Law § 1142 (a), a driver entering an intersection controlled by a stop sign is obligated to stop and to yield the right-of-way to any vehicle that has entered the intersection or that is approaching so closely as to constitute an immediate hazard (*see Shvydkaya v Park Ave BMW Acura Motor Corp.*, 172 AD3d 1130 [2d Dept 2019]; *Hunt v New York City Tr. Auth.*, 166 AD3d 735, 87 NYS3d 563 [2d Dept 2018]; *Wolf v Cruickshank*, 144 AD3d 1144, 41 NYS3d 754 [2d Dept 2016]). Vehicle and Traffic Law § 1141 further requires a vehicle intending to turn left within an intersection must 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 (*see Ming-Fai Jon v Wager*, 165 AD3d 1253, 87 NYS3d 82 [2d Dept 2018]; *Giannone v Urdahl*, 165 AD3d 1062, 86 NYS3d 562 [2d Dept 2018]; *Lebron v Mensah*, 161 AD3d 972, 76 NYS3d 219 [2d Dept 2018]). In general, a driver is negligent as a matter of law for failing to yield the right-of-way after stopping at a stop sign controlling his or her lane of traffic (*see Shvydkaya v Park Ave BMW Acura Motor Corp.*, *supra*; *Enriquez v Joseph*, *supra*; *Hunt v New York City Tr. Auth.*, *supra*), or for attempting to make a left turn when it is not reasonably safe to do so (*see Foley v Santucci*, 135 AD3d 813, 23 NYS3d 338 [2d Dept 2016]; *Krajiniak v Jin Y Trading, Inc.*, 114 AD3d 910, 980 NYS2d 812 [2d Dept 2014]; *Ducie v Ippolito*, 95 AD3d 1067, 944 NYS2d 275 [2d Dept 2012]). Although the operator of a vehicle with the right-of-way is entitled to assume that other drivers will obey traffic laws requiring them to yield (*see Richardson v Cablevision Sys. Corp.*, *supra*; *Jeong Sook Lee-Son v Doe*, 170 AD3d 973, 96 NYS3d 302 [2d Dept 2019]; *Enriquez v Joseph*, *supra*), the driver with the right-of-

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way also has a duty to keep a proper lookout to avoid collisions with other vehicles (*see Matias v Bello, supra; Miron v Pappas, supra; Mark v New York City Tr. Auth.*, 150 AD3d 980, 55 NYS3d 128 [2d Dept 2017]). Nonetheless, a driver with the right-of-way who only has seconds to react to a vehicle which has failed to yield the right-of-way is not comparatively negligent for failing to avoid the collision (*see Jeong Sook Lee-Son v Doe, supra; Enrique v Joseph, supra; Rohn v Aly*, 167 AD3d 1054, 91 NYS3d 256 [2d Dept 2018]).

Although defendants submitted evidence that plaintiff failed to yield-the-right of way to defendant driver’s vehicle in violation of Vehicle and Traffic Law §§ 1141 and 1142 (a), their submissions failed to establish, prima facie, that defendant driver was not at fault in the happening of the accident (*see Wynter v City of New York*, 173 AD3d 1122, 104 NYS3d 645 [2d Dept 2019]; *Richardson v Cablevision Sys. Corp., supra; Matias v Bello, supra; White v Adom Rental Transp., Inc.*, 150 AD3d 938, 54 NYS3d 98 [2d Dept 2017]). In support of their motion, defendants submitted the deposition testimony of plaintiff and defendant driver, which provided conflicting evidence as to the facts surrounding the subject accident (*see Wynter v City of New York, supra; Richardson v Cablevision Sys. Corp., supra; Matias v Bello, supra; White v Adom Rental Transp., Inc., supra*). According to plaintiff’s testimony, defendant driver increased the speed of his vehicle and completed a lane change to pass a non-party vehicle in front of him before the collision occurred. To the contrary, defendant driver testified that he initially continued to maintain a speed of 43 or 44 miles per hour as he approached the subject intersection, and that there was no northbound traffic ahead of him. Defendant driver further testified that he applied the brakes and attempted to make a lane change to avoid the collision.

Accordingly, the motion by defendants for summary judgment dismissing the complaint is denied.

Dated: 10/10/19



HON. LINDA J. SCAVINO

____ FINAL DISPOSITION X NON-FINAL DISPOSITION