

Torres-Diaz v Quilla

2019 NY Slip Op 34686(U)

June 11, 2019

Supreme Court, Suffolk County

Docket Number: Index No. 604656/2018

Judge: Paul J. Baisley Jr

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Short Form Order

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

PRESENT:

HON. PAUL J. BAISLEY, JR., J.S.C.

-----X

JANET TORRES-DIAZ,

Plaintiff,

-against-

KYLIEANN QUILLA and HAYDEE GUTIERREZ,

Defendants.

-----X

INDEX NO.: 604656/2018

MOTION DATE: 5/2/19

MOTION SEQ. NO.: 002 MG

PLAINTIFF'S ATTORNEYS:

Siler & Ingber, LLP

301 Mineola Boulevard

Mineola, New York 11501

DEFENDANT'S ATTORNEYS:

Richard T. Lau & Associates

Attorneys for Quilla and Gutierrez

P.O. Box 9040

300 Jericho Turnpike, Suite 260

Jericho, New York 11753

Upon the following papers numbered 1 to 30 read on this motion for summary judgment; Notice of Motion/Order to Show Cause and supporting papers 1 - 15; ~~Notice of Cross Motion and supporting papers _____~~; Answering Affidavits and supporting papers 16 - 24; Replying Affidavits and supporting papers 25 - 30; Other _____; ~~(and after hearing counsel in support and opposed to the motion)~~ it is,

ORDERED that defendant's motion (motion sequence no. 002) for summary judgment with respect to the issue of liability is granted.

This matter arises out of a two-car motor vehicle accident that occurred on August 1, 2017 at the intersection of Brook Avenue and West William Street, Town of Islip, County of Suffolk, New York. At the time of the accident, the plaintiff Janet Torres-Diaz's (Torres-Diaz) vehicle was attempting to cross over Brook Avenue when it came into contact with a vehicle owned by the defendant Haydee Gutierrez and operated by the defendant Kylieann Quilla (Quilla) vehicle. Immediately prior to the accident, the Torres-Diaz vehicle had been traveling in a westbound direction on East William Street and the Quilla vehicle had been traveling in a southbound direction on Brook Avenue.

The defendant Quilla testified at a deposition on January 21, 2019. She described Brook Avenue as a two-way road with one lane of travel for northbound traffic and one lane of travel for southbound traffic. Prior to the collision, the Quilla vehicle was traveling in a southbound direction. There were no traffic control devices governing her lane of travel at the intersection with West William Street. There was a stop sign on William Street governing plaintiff's direction of travel. Prior to the accident, Quilla observed plaintiff's vehicle approaching from her left. Plaintiff's vehicle was two car lengths from the stop sign and the Quilla vehicle was four car lengths away from the intersection. Quilla observed the plaintiff's vehicle slow down and then accelerate. Quilla sounded the horn and applied the brake in an attempt to avoid the collision.

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A non-party witness, Ariel Martin (Martin) was deposed on November 8, 2018. She was traveling behind the Quilla vehicle on Brook Avenue for two minutes prior to the accident. At the moment of the impact the Quilla vehicle was moving straight on Brook Avenue. She observed the Torres-Diaz vehicle traveling on West William Street to her left. Martin testified that there was a stop sign governing plaintiff's lane of travel and that plaintiff never stopped at the stop sign.

Plaintiff Torres-Diaz testified at a deposition on January 21, 2019. Plaintiff described William Street as a two-way roadway with one lane in each direction. There is a stop sign governing her lane of travel at the intersection with Brook Avenue. It was her intention to cross over Brook Avenue onto William Street. Plaintiff testified that she stopped for thirty seconds before proceeding and that she never saw the Quilla vehicle prior to impact.

Defendant Quilla now moves for summary judgment pursuant to CPLR § R 3212 asserting that Quilla did not breach any duty owed to plaintiff. Quilla contends that the plaintiff Torres-Diaz was negligent *per se* in failing to yield the right of way in violation of Vehicle and Traffic Law §§1142 and 1172. In support of their application, Quilla submits copies of the pleadings, the deposition transcripts of Torres-Diaz, Quilla and Martin, and the police report.

In opposition to the motion, counsel for Torres-Diaz contends that the police accident report is inadmissible, that the non-party witness's deposition transcript is not yet admissible, and that there are questions of fact regarding the alleged negligence of the defendant Quilla.

Pursuant to Vehicle and Traffic Law §1142, a driver approaching a stop sign shall stop and, after having stopped, shall yield the right of way to any vehicle which has entered the intersection. A driver who fails to yield the right-of-way after stopping at a stop sign is in violation of Vehicle and Traffic Law §§1142(a) and 1172(a) and is negligent as a matter of law. (CPLR §1142; *Luke v. McFadden*, 199 AD3d 533, 987 NYS2d 909 [2d Dept.2014]).

The proponent of a summary judgment motion must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case. To grant summary judgment it must clearly appear that no material and triable issue of fact is presented (*Friends of Animals v. Associated Fur Mfrs.*, 46 NY 2d 1065, 416 NYS2d 790; *Sillman v. Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 165 NYS2d 498). The movant has the initial burden of proving entitlement to summary judgment (*Winegrad v. NYU Medical Center*, 64 NY2d 851, 487 NYS2d 316). Failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers (*Winegrad v. NYU Medical Center, supra*). Once such proof has been offered, the burden then shifts to the opposing party, who, in order to defeat the motion for summary judgment, must proffer evidence in admissible form...and must "show facts sufficient to require a trial of any issue of fact"(CPLR 3212[b]; *Zuckerman v. City of New York*, 49 NY2d 557, 427 NYS2d 595 [1980]). The opposing party must assemble, lay bare and reveal his proof in order to establish

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that the matters set forth in his pleadings are real and capable of being established (*Castro v. Liberty Bus Co.*, 79 AD2d 1014, 435 NYS2d 340 [2d Dept. 1981]).

The Court notes that the police report submitted by defendant was uncertified, and therefore, inadmissible. *See Han Hao Huang v. Doe*, 169 AD3d 1014(2d Dept. 2019). With respect to the non-party witness' deposition transcript, if a deponent refuses or otherwise fails to sign the deposition within 60 days, it may be used as though fully signed. CPLR 3116(a). The Court notes that the Martin transcript is certified and therefore qualifies as admissible evidence. (*See Rodriguez v. Rider Truck, Inc.*, 91 AD3d 935, 937 NYS2d 602 [2d Dept. 2012]).

The defendant Quilla has established her *prima facie* entitlement to judgment as a matter of law. She has demonstrated through the sworn testimony of the parties that Torres-Diaz violated Vehicle and Traffic Law §§1142(a) and 1172(a) by failing to yield the right of way to the Quilla vehicle.

The foregoing constitutes the order of the Court.

Dated: June 11, 2019



J.S.C.