Yahney v Stern
2019 NY Slip Op 34727(U)
June 21, 2019
Supreme Court, Suffolk County
Docket Number: Index No. 16-607479
Judge: Joseph A. Santorelli
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SHORT FORM ORDER **ORIGINAL**

INDEX No. 16-607479
CAL. No. 18-00887MV

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 10 - SUFFOLK COUNTY

PRESENT:

Hon. JOSEPH A. SANTORELLI
Justice of the Supreme Court

MOTION DATE 10-31-18
ADJ. DATE 12-6-18
Mot. Seq. # 001 - MG

---X

TODD H. YAHNEY,

Plaintiff,

- against -

NORMAN STERN, CLAUDIA STERN and JORDAN J. STERN,

Defendants.

---X

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Upon the following papers numbered 1 to 23 read on this motion for summary judgment : Notice of Motion/ Order to Show Cause and supporting papers 1-16 ; Notice of Cross Motion and supporting papers ___; Answering Affidavits and supporting papers 17-21 ; Replying Affidavits and supporting papers 22-23 ; Other ___; (~~and after hearing counsel in support and opposed to the motion~~) it is,

ORDERED that the motion by plaintiff Todd Yahney seeking summary judgment in his favor on the issue of negligence is granted.

Plaintiff Todd Yahney commenced this action to recover damages for injuries he allegedly sustained as a result of a motor vehicle accident that occurred at the intersection of Long Island Expressway North Service Road and Round Swamp Road in the Town of Huntington on January 12, 2015. Plaintiff, by his complaint, alleges that the vehicle owned by defendants Norman Stern and Claudia Stern and operated by defendant Jordan Stern collided with the front of his vehicle after it entered the intersection against a red traffic light. At the time of the accident, plaintiff's vehicle was traveling westbound on Long Island Expressway North Service Road ("North Service Road") and defendants' vehicle was traveling southbound on Round Swamp Road.

Plaintiff now moves for summary judgment in his favor on the issue of negligence on the basis that Jordan Stern's operation of the Stern vehicle was the sole proximate cause of the subject accident. Specifically, plaintiff alleges that Jordan Stern's failure to yield the right of way to his vehicle and entering the intersection against the red light controlling his direction of traffic was the sole cause of the accident. In support of the motion, plaintiff submits copies of the pleadings, the parties' deposition transcripts, his own affidavit, an uncertified copy of the police accident report, and photographs of the parties' vehicles following the subject accident. Defendants oppose the motion on the grounds that there are triable issues of material fact as to how the subject accident occurred, and as to whether plaintiff is at fault for the subject accident's occurrence. In opposition to the motion, defendants submit copies of the photographs of the parties' vehicles after the accident, and an uncertified transcript of a recorded statement by plaintiff.

A court's task on a motion for summary judgment is issue finding rather than issue determination (*see* ***Sillman v Twentieth Century Fox Film Corp.***, 3 NY2d 395, 165 NYS2d 498 [1957]), and it must view the evidence in the light most favorable to the party opposing the motion (*see* ***Boyce v Vazquez***, 249 AD2d 724, 671 NYS2d 815 [3d Dept 1998]). Therefore, in determining a motion for summary judgment, the facts alleged by the nonmoving party and all inferences that may be drawn are to be accepted as true (*see* ***Roth v Barreto***, 289 AD2d 557, 735 NYS2d 197 [2d Dept 2001]). In the first instance, the moving party bears the burden and must tender evidence sufficient to eliminate all material issues of fact (*see* ***Winegrad v New York Univ. Med. Ctr.***, 64 NY2d 851, 487 NYS2d 316 [1985]). However, 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 (***Rodriguez v City of New York***, 31 NY3d 312, 324, 76 NYS3d 898 [2018]). Once such showing has been made, the burden shifts to the nonmoving party to demonstrate the existence of material issues of fact (*see* ***Alvarez v Prospect Hosp.***, 68 NY2d 320, 508 NYS2d 923 [1986]). Mere conclusions and unsubstantiated allegations are insufficient to raise any triable issues of fact (*see* ***Zuckerman v City of New York***, 49 NY2d 557, 427 NYS2d 595 [1980]; ***Perez v Grace Episcopal Church***, 6 AD3d 596, 774 NYS2d 785 [2d Dept 2004]).

A violation of the Vehicle and Traffic Law constitutes negligence as a matter of law (*see* ***Colpan v Allied Cent. Ambulette, Inc.***, 97 AD3d 776, 949 NYS2d 124 [2d Dept 2012]; ***Vainer v DiSalvo***, 79 AD3d 1023, 914 NYS2d 236 [2d Dept 2010]; ***Klein v Crespo***, 50 AD3d 745, 855 NYS2d 633 [2d Dept 2008], *lv denied* 12 NY3d 704, 876 NYS2d 705 [2009]). The conduct of motorists at a traffic signal is governed by Vehicle and Traffic Law § 1111, and not the more general provisions of the Vehicle and Traffic Law, such as those set forth in §§ 1140 or 1141, which govern the conduct of drivers at intersections that are not controlled by traffic lights (*see* ***Dicke v Anci***, 31 AD3d 696, 821 NYS2d 93 [2d Dept 2006]; ***Saggio v Ladone***, 21 AD3d 407,799 NYS2d 586 [2d Dept 2005]; ***Rudolph v Kahn***, 4 AD3d 408, 771 NYS2d 370 [2d Dept 2004]). Section 1111 of the Vehicle and Traffic Law allows a driver approaching an intersection with a green traffic signal to proceed through the intersection, provided he or she yields the right of way to vehicles lawfully within the intersection, and exercise reasonable care under the circumstances to avoid a collision (*see* ***Tapia v Royal Tours Serv., Inc.***, 67 AD3d 894, 889 NYS2d 225 [2d Dept 2009]; ***Schiskie v Fernan***, 277 AD2d 441, 716 NYS2d [2d Dept 2000]; ***Siegel v Sweeney***, 266 AD2d 200, 697 NYS2d 317 [1999]; *see generally* ***Shea v Judson***, 283 NY 393, 28 NE2d 885 [1940]). A motorist facing a steady green light has the right to assume that the light is red for cross traffic and that such traffic will obey the law by stopping for the red light and remaining

stationary until the light has changed to green (*see* ***Baughman v Libasci***, 30 AD2d 696, 292 NYS2d 588 [2d Dept 1968]). However, a driver proceeding under a green light is not permitted to blindly and wantonly enter an intersection without keeping a proper lookout or employing a reasonable speed (*see* ***Nuziale v Paper Transp. of Green Bay Inc.***, 39 AD3d 833, 835 NYS2d 316 [2d Dept 2007]).

Plaintiff testified at an examination before trial that prior to the accident he was traveling, at approximately 40 miles per hour, downhill, in the westbound middle lane of North Service Road, and that he checked his speedometer as he approached the intersection. He further testified that when he was about 50 yards from the intersection of North Service Road and Round Swamp Road he observed the traffic light was green for his direction of travel, and that it remained green as he entered the intersection. Plaintiff also testified that there were no vehicles traveling in front of his vehicle, that his view of the intersection as well as Round Swamp Road was not obstructed, and that traffic was stopped in both directions on Round Swamp Road. He testified that he checked for traffic in both directions of Round Swamp Road before entering the intersection. He observed a vehicle stopped at the red traffic light in the northbound left lane of Round Swamp Road. He further testified that his vehicle had traveled through two lanes of traffic in the intersection when it was struck by the defendants' vehicle. Plaintiff later testified that he did not see the Stern vehicle prior to colliding with it, and he did not hear the sound of a horn blowing or tires screeching prior to the impact between his and defendants vehicles. The plaintiff tried to turn his steering wheel to the left to avoid the collision. He stated that the vehicle he originally observed stopped at the red traffic light on northbound Round Swamp Road remained stopped at the red traffic light.

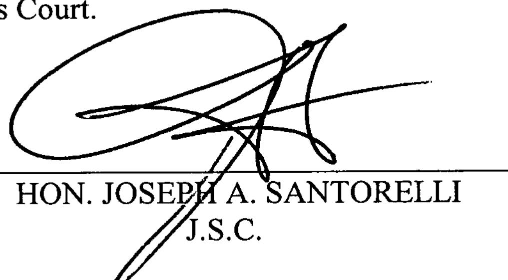
Defendant Jordan Stern testified at an examination before trial that he was operating the vehicle that was owned by his parents, defendants Norman and Claudia Stern, on the day of the accident. He was traveling westbound on Round Swamp Road, The intersection where the accident occurred is controlled by a traffic light. He stated that he does not remember whether he observed what color the traffic light for his direction of travel was prior to entering the intersection, and that he does not remember what his speed of travel was prior to entering the intersection. He also testified that he does not know what the speed limit is on Round Swamp Road, and that he does not remember whether any vehicles were traveling through the intersection prior to the accident or if there were any vehicles traveling in the same direction as his vehicle on Round Swamp Road. Jordan Stern further testified that he did not see plaintiff's vehicle prior to the collision. He learned of the accident when he felt the impact from the contact between his vehicle and plaintiff's vehicle. His vehicle was moving when the impact occurred. The defendant was looking straight ahead when the accident occurred.

Based upon the adduced evidence, plaintiff established a prima facie case that Jordan Stern's negligent operation of the Stern vehicle was the sole proximate cause of the subject accident (*see* Vehicle and Traffic Law § 1111 (d)(1); ***Lee v Mason***, 139 AD3d 807, 33 NYS3d 76 [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]; ***Pitt v Alpert***, 51 AD3d 650, 857 NYS2d 661 [2d Dept 2008]; ***Borges v Zukowski***, 22 AD3d 439, 801 NYS2d 544 [2d Dept 2005]). The record demonstrates that Jordan Stern proceeded into the intersection against the red light, without stopping, and collided with plaintiff's vehicle as it was traveling through the intersection. Furthermore, "[a] driver with the right of way who only has seconds to react to a vehicle which has failed to yield is not comparatively

negligent for failing to avoid the collision" (***Vainer v DiSalvo***, *supra* at 1024, *quoting* ***Yelder v Walters***, 64 AD3d 762, 764, 883 NYS2d 290 [2d Dept 2009]; *see* ***DeLuca v Cerda***, 60 AD3d 721, 875 NYS2d 520 [2d Dept 2009]). Since plaintiff had the right of way, he was entitled to assume that Jordan Stern would obey the traffic laws requiring him to yield the right of way to plaintiff's vehicle (*see* ***Ahern v Lanaia***, 85 AD3d 696, 924 NYS2d 802 [2d Dept 2011]; ***Almonte v Tobias***, 36 AD3d 636, 829 NYS2d 153 [2d Dept 2007]; ***Berner v Koegel***, 31 AD3d 591, 819 NYS2d 89 [2d Dept 2006]; *see also* Vehicle and Traffic Law § 1142 [a]). As a result, the evidence establishes, prima facie, that Jordan Stern was negligent as a matter of law (*see* ***Joaquin v Franco***, 116 AD3d 1009, 985 NYS2d 131 [2d Dept 2014]; ***Cohen v Stanley***, 262 AD2d 264, 690 NYS2d 736 [2d Dept 1999]).

In opposition, defendants have failed to submit any evidence in admissible form sufficient to raise a triable issue of fact on the issue of negligence (*see* ***Turner v Butler***, 139 AD3d 715, 32 NYS3d 174 [2d Dept 2016]; ***Hoffman v City of New York***, 137 AD3d 1078, 26 NYS3d 880 [2d Dept 2016]; ***Monteleone v Jung Pyo Hong***, *supra*; *cf.* ***Fobbs v Shore***, 171 AD3d 874, 95 NYS3d 883 [2d Dept 2019]). Defendants have not submitted any evidence to raise a triable issue of fact as to whether plaintiff had a red light when he entered the intersection in order to demonstrate that plaintiff may have violated the applicable Vehicle and Traffic Law (*see* ***Kaziu v Human Care Servs. for Families & Children, Inc.***, 167 AD3d 588, 90 NYS3d 66 [2d Dept 2018]; ***Chuachingco v Christ***, 132 AD3d 798, 18 NYS3d 425 [2d Dept 2015]; ***Fauvell v Samson***, 61 AD3d 714, 877 NYS2d 194 [2d Dept 2009]). Although Jordan Stern may not be able to recall the accident, defendants are not relieved of their obligation to provide some proof from which negligence can be reasonably inferred, and they have failed to do so (*see* ***Vega v Mitja***, 137 AD3d 1113, 27 NYS3d 672 [2d Dept 2016]; *compare* ***Napolitano v Sanderson***, 167 AD3d 1024, 88 NYS3d 354 [2d Dept 2018]). Rather, defendants have submitted a transcript of a recorded telephone conversation purported to be between plaintiff and a representative of defendants' insurance carrier. Yet, the transcript is uncertified, unsigned, and unsworn, and therefore, is inadmissible and without probative value (*see generally* ***Pavane v Marte***, 109 AD3d 970, 971 NYS2d 562 [2d Dept 2013]; ***Martinez v 123-16 Liberty Ave. Realty Corp.***, 47 AD3d 901, 850 NYS2d 201 [2d Dept 2008]; ***Lacgnino v Gonzalez***, 306 AD2d 250, 760 NYS2d 533 [2d Dept 2003]). Accordingly, plaintiff's motion for partial summary judgment in his favor on the issue of negligence is granted.

The foregoing constitutes the decision and Order of this Court.



Dated: JUN 2 1 2019

HON. JOSEPH A. SANTORELLI
J.S.C.