

O'Neill v Moran
2019 NY Slip Op 34813(U)
July 29, 2019
Supreme Court, Suffolk County
Docket Number: Index No. 17-606171
Judge: Joseph Farneti
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SHORT FORM ORDER

INDEX No. 17-606171CAL. No. 18-02273MVSUPREME COURT - STATE OF NEW YORK
I.A.S. PART 37 - SUFFOLK COUNTY**PRESENT:**Hon. JOSEPH FARNETI
Acting Justice of the Supreme CourtMOTION DATE 4-30-19ADJ. DATE 5-2-19

Mot. Seq. # 004 - MG

THOMAS ONEILL,

Plaintiff,

- against -

MEAGHAN MORAN, SCOTT MORAN and
JACKLYN YOUNG,

Defendants.

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Upon the following papers read on this e-filed motion for summary judgment: (1) Notice of Motion/Order to Show Cause by defendant, Jacklyn Young dated April 2, 2019, and supporting papers; (2) Affirmation in Opposition by plaintiff, dated April 18, 2019 and supporting papers; (3) Replying Affirmation by defendant, Jacklyn Young, dated May 1, 2019; (and after hearing counsels' oral arguments in support of and opposed to the motion); it is,

ORDERED that the motion by defendant Jacklyn Young for an Order, pursuant to CPLR 3212, granting summary judgment dismissing the complaint and any cross claims asserted against her, is granted.

This is an action to recover damages for personal injuries allegedly sustained by plaintiff as a result of a motor vehicle accident that occurred on Route 111, near the intersection with East Walnut Street, in the Town of Islip on December 22, 2016. It is undisputed that there were three vehicles

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involved in the accident. The accident allegedly occurred when a vehicle operated by defendant Meaghan Moran ("Moran") and owned by defendant Scott Moran made a left turn and collided with the vehicle operated and owned by defendant Jacklyn Young ("Young"). The force of the impact allegedly propelled Young's vehicle into the opposing lane of travel, where it collided with a vehicle operated and owned by plaintiff.

Young now moves for summary judgment dismissing the complaint and cross claims asserted against her, arguing that she is not negligent and that there is no triable issue of fact as to her liability for the accident. In support of her motion, Young submits, *inter alia*, copies of the pleadings and the parties' deposition testimony. Plaintiff opposes the motion with an affirmation from his attorney, *inter alia*, arguing that a triable issue exists as to whether Young was negligent in causing the accident.

At his deposition, plaintiff testified that prior to the accident he was traveling southbound on Route 111 for approximately one half mile on his way to Taco Bell. Plaintiff described Route 111 as having one lane in either direction with yellow double lines and no traffic control devices. He further stated that East Walnut Street was governed by a stop sign at the intersection with Route 111. Plaintiff testified that as he approached the intersection with East Walnut Street, he observed Young's headlights illuminating from the opposite lane of travel on Route 111, and that he observed Moran's vehicle headlights illuminating from the intersection of East Walnut Street. He testified that a split second later, he applied his brakes, turned the steering wheel to the right and that Young's vehicle struck the front driver's side of his vehicle. Plaintiff testified that approximately two seconds later, Moran's vehicle struck the front end of his vehicle. He testified that he did not observe Moran's vehicle proceed through the stop sign without stopping at the intersection with Route 111 prior to the accident. Plaintiff testified that the first impact was heavy, and was followed by a second heavy impact that caused his vehicle to "bounce around" and move to the southbound side lane of travel on Route 111.

At her deposition, Moran testified that on the day of the accident she was traveling westbound on East Walnut Street and came to a complete stop at a stop sign at the intersection with Route 111. Moran testified that Route 111 had one lane of travel in either direction and no traffic control devices. Moran testified that she was stopped for approximately three to four seconds, and looked to the left and the right for any oncoming vehicles. Moran testified that as she proceeded to make a left turn onto Route 111 the front end of Young's vehicle struck the middle of the driver's side of her vehicle, that the impact caused her vehicle to spin and move forward, and that after the collision her vehicle came to rest on the northwest corner of Walnut Street and Route 111, facing in the opposite direction. She testified that the accident happened in the northbound lane of Route 111, that her view was unobstructed, and that she did not observe Young's vehicle prior to the accident. Moran testified that she did not observe any impact between plaintiff's vehicle and Young's vehicle and that there was no second impact to her vehicle. Moran testified that she did not hear any horns or brakes screeching prior to the accident.

At her deposition, Young testified that just prior to her accident she was traveling northbound on Route 111 at approximately 35 miles per hour and observed Moran's vehicle approximately one to two feet away from the stop sign at the intersection with East Walnut Street. Young described Route 111 as running north and south with one lane of travel in either direction and no traffic control devices. She

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testified that approximately three to four seconds later, she observed Moran's vehicle enter the intersection with Route 111 without stopping at the stop sign, and that the front end of her vehicle struck the driver's side of Moran's vehicle. Young testified that she applied her brakes, turned her steering wheel to the right, and that her vehicle skidded but was unable to avoid the impact. She testified that the impact caused her vehicle to be pushed onto the southbound lane of Route 111, facing plaintiff's oncoming vehicle. According to Young, approximately one to two seconds later, the front end of plaintiff's vehicle struck the front end of her vehicle and that the impact caused her air bags to deploy. She further testified that she did not observe or hear any impact between plaintiff's vehicle and Moran vehicle's on the day of the accident.

It is well-settled that a party moving for summary judgment must make a *prima facie* showing of entitlement to judgment as matter of law, offering sufficient evidence in admissible form to demonstrate the absence of any material issues of fact (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 508 NYS2d 923 [1986]; *Zuckerman v City of New York*, 49 NY2d 557, 427 NYS2d 595 [1980]). The failure to make such a *prima facie* case showing requires the denial of the motion regardless of the sufficiency of the opposing papers (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 487 NYS2d 316 [1985]). However, upon the movant establishing a *prima facie* showing of entitlement to a summary judgment, the burden then shifts to the opponent to offer evidence in admissible form sufficient to establish a material issue of fact requiring a trial of the action (*Alvarez v Prospect Hosp.*, *supra*; *Zuckerman v City of New York*, *supra*).

Vehicle and Traffic Law § 1142 (a) requires a driver of a motor vehicle approaching a stop sign to stop and yield the right of way to any vehicle that has entered the intersection or is approaching so closely as to constitute an immediate hazard (*see Willis v Finks*, 7 AD3d 519, 775 NYS2d 587 [2d Dept 2004]; *Szcotka v Adler*, 291 AD2d 444, 737 NYS2d 121 [2d Dept 2002]). Vehicle and Traffic Law § 1172 requires an operator of any vehicle approaching a stop sign to stop at a clearly marked stop line or before entering the crosswalk so that he or she has a clear view of oncoming traffic before entering the intersection (*see Natoli v Peabody*, 27 NY2d 981, 318 NYS2d 741 [1970]; *Ahr v Karolewski*, 32 AD3d 805, 821 NYS2d 236 [2d Dept 2006]). A driver with a right of way is entitled to anticipate that the other driver will obey the traffic laws requiring him or her to yield (*see Laino v Lucchese*, 35 AD3d 672, 827 NYS2d 249 [2d Dept 2006]; *Bongiovi v Hoffman*, 18 AD3d 686, 795 NYS2d 354 [2d Dept 2005]).

Here, Young's submissions are sufficient to establish a *prima facie* case of entitlement to summary judgment. Young demonstrated that her vehicle was struck by Moran's vehicle in the intersection after Moran failed to yield the right of way to her approaching vehicle and that she was not comparatively at fault in the happening of the accident (*Enriquez v Joseph*, 169 AD3d 1008, 94 NYS3d 599 [2d Dept 2019]; *Bongiovi v Hoffman*, *supra*; *Botero v Erraez*, 289 AD2d 274, 734 NYS2d 565 [2d Dept 2001]). She testified that she had to immediately take evasive action to avoid being struck by Moran's vehicle before the collision (*see Bonilla v Gutierrez*, 81 AD3d 581, 915 NYS2d 634 [2d Dept 2011]). A driver with the right of way who has only seconds to react to a vehicle that has failed to yield

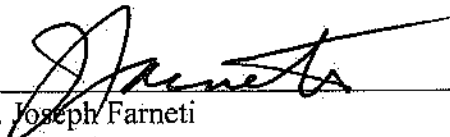
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is not comparatively negligent for failing to avoid the collision (*Yelder v Walters*, 64 AD3d 762, 883 NYS2d 290 [2d Dept 2009]). Here, the testimony shows Moran failed to see what she should have seen through the proper use of her senses (*Rumanov v Greenblatt*, 251 AD2d 566, 673 NYS2d 614 [2d Dept 1998]; *Nunziata v Birchell*, 238 AD2d 555, 656 NYS2d 383 [2d Dept 1997]).

In opposition, plaintiff failed to raise a triable issue of fact as to whether Young was comparatively at fault in causing the accident. Inasmuch as Young had the right of way, she was entitled to anticipate that Moran would obey the traffic laws requiring her to yield and allow Young's vehicle to pass prior to making a left turn.

Accordingly, the motion is granted.

Dated: July 29, 2019



Hon. Joseph Farneti
Acting Justice Supreme Court

____ FINAL DISPOSITION X NON-FINAL DISPOSITION