

Arvay v Swift

2019 NY Slip Op 34820(U)

July 31, 2019

Supreme Court, Suffolk County

Docket Number: Index No. 601514/2017

Judge: Linda Kevins

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INDEX No. 601514/2017
CAL No. _____

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

PRESENT:

Hon. LINDA KEVINS
Justice of the Supreme Court

-----X

ARVAY, LISA
Plaintiff,

-against-

DECISION AND ORDER
MOTION Seq. # 001 - MG

SWIFT, BRIDGET A. and SWIFT, CHRISTOPHER
Defendant.

-----X

The following papers have been read on this Motion by Plaintiff:

- Notice of Motion, Affirmation & Exhibits 1
- Affirmation in Opposition 2
- Reply Affirmation 3

Upon the foregoing papers, it is Ordered that this Motion is decided as follows:

Plaintiff seeks an Order pursuant to CPLR 3212 for summary judgment on the issue of liability. Defendants oppose such Motion.

Plaintiff commenced this action to recover for damages for personal injuries allegedly sustained as a result of a motor vehicle accident that occurred on April 1, 2016, at the intersection of North Country Road/Route 25A and Main Street, Town of Brookhaven, County of Suffolk, New York. The accident allegedly occurred when Defendant Bridget Swift, operating a motor vehicle owned by Defendant Christopher Swift, proceeded through a red traffic light and collided with Plaintiff's vehicle as it was traveling through the intersection.

Plaintiff now moves for an order granting summary judgment in her favor on the issue of liability on the ground Defendant Bridget Swift's vehicle struck her vehicle as it had the right of way in the intersection, and that Defendant Bridget Swift failed to stop at the red traffic light. In support of the motion, Plaintiff submits copies of the pleadings, Plaintiff's Affidavit, certified motor vehicle accident report, and overhead aerial map of incident location. Defendants have submitted an Affirmation in Opposition.

On a motion for summary judgment the movant bears the initial burden and must tender evidence sufficient to eliminate all material issues of fact (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851 [1985]). Once the movant meets this burden, the burden then shifts to the opposing party to demonstrate that there are material issues of fact; mere conclusions and unsubstantiated allegations are insufficient to raise any triable issues of fact (see *Zuckerman v City of New York*, 49 NY2d 557 [1980]; *Perez v Grace Episcopal Church*, 6 AD3d 596 [2004]). As the court's function on such a motion is to determine whether issues of fact exist, not to resolve issues of fact or to determine matters of credibility; the facts alleged by the opposing party and all inferences that may be drawn are to be accepted as true (see *Roth v Barreto*, 289 AD2d 557 [2d Dept 2001]; *O'Neill v Town of Fishkill*, 134 AD2d 487 [2d Dept 1987]).

Vehicle & Traffic Law 1110(a) sets forth that "[e]very person shall obey the instructions of any official traffic-control device applicable to him." Vehicle & Traffic Law 1111(d)(1) provides "[a] driver must stop when encountering a steady red light, either at a line marked on the pavement or before the crosswalk, or, if there is no crosswalk, where he has a clear view of traffic approaching on an intersecting highway at the point nearest the intersecting highway. He must remain until a green signal appears." *New York Vehicle and Traffic Law § 26:11 (2d ed.)*. A driver who proceeds through an intersection against a red light without stopping is negligent as a matter of law (see Vehicle and Traffic law § 1110(a) and 1111(d)(1); *Coumbes v Taylor*, 298 AD2d 350 [2d Dept 2002]; *Casanova v New York City Tr. Auth.*, 279 AD2d 495 [2d Dept 2001]). Moreover, the driver with the right of way is entitled to anticipate that the driver subject to the traffic control device would obey the traffic law (see *Luke v McFadden*, 119 AD3d 533 [2d Dept 2014]; *Gallagher v McCurty*, 85 AD3d 1109 [2d Dept 2011]; *Pollack v Margolin*, 84 AD3d 1341 [2d Dept 2011]).

In support of her application, Plaintiff submits her Affidavit wherein she states that on April 1, 2015, she was operating her vehicle going west on North Country Road/Route 25A. Plaintiff avers that before its intersection with Main Street, westbound North Country Road/Route 25A splits, enabling traffic to proceed either in the southern direction on North Country Road/Route 25A or in the northern direction on Main Street. Plaintiff states her intention was to proceed in the southern direction on North Country Road/Route 25A. Plaintiff alleges that immediately prior to the happening of the collision, Defendant Swift, was traveling in the northern direction on North Country Road/Route 25A, approaching its intersection with Main Street. Plaintiff avers that the northbound portion of North Country Road/Route 25A, at or near its intersection with Main Street, is controlled by a traffic light and consists of one right turn lane, which allows traffic to proceed eastbound on North Country Road, and one straight lane, which permits traffic to proceed northbound onto Main Street. Plaintiff claims Defendants' vehicle was travelling in the straight lane at the intersection of North Country Road and Main Street. See Plaintiff's Affidavit.

Plaintiff alleges that prior to entering the intersection, Plaintiffs vehicle was the second vehicle, fully stopped at the red traffic light controlling her direction of travel and when the light turned green, the vehicle in front of Plaintiff entered the intersection and successfully proceeded through it. Plaintiff submits that she then entered the intersection, travelling no more than 10 miles per hour with a steady green light in her direction of travel. Plaintiff alleges she was already in the intersection when Defendants vehicle went through the intersection and struck Plaintiffs vehicle.

Plaintiff alleges she first observed Defendants' vehicle after her vehicle had already entered the intersection, approximately one second prior to the impact. Plaintiff avers that she attempted to avoid the impact by applying her brakes, but the vehicle did not stop in time and she collided with Defendant's vehicle.

Here, Plaintiff has established her entitlement to summary judgment as a matter of law by submitting evidence demonstrating that she had the right of way and that, because Defendant Bridget Swift failed to obey the instructions of the traffic-control device, Defendant was negligent as a matter of law. Plaintiff further established that Defendant Bridget Swift's violation of Vehicle and Traffic Law §1110(d)(1) was the proximate cause of the accident (*see Rahaman v Abodeledhman*, 64 AD3d 553 [2d Dept 2009]; *Klein v Crespo*, 50 AD3d 745 [2d Dept 2008]). Although a driver with the right-of-way also has a duty to use reasonable care to avoid a collision, it has been recognized that a driver with the right-of-way who has only seconds to react to a vehicle which has failed to yield is not comparatively negligent for failing to avoid the collision (*see Jaramillo v Torres*, 60 AD3d 734 [2d Dept 2009]; *Yelder v Walters*, 64 AD3d 762 [2d Dept 2009]). Here, a review of the documents reveals that there was a green traffic control device governing Plaintiff's travel and she was the second vehicle to proceed as she entered the intersection of North Country Road/Route 25A and Main Street. Plaintiff further alleges that she attempted to avoid colliding with Defendants vehicle by stepping on the brake, but there was not enough time to stop.

With respect to Defendant's burden, "where a defendant fails to submit either his/her own affidavit, or that of another person with personal knowledge, in opposition to a motion for summary judgment on the issue of liability, the defendant has failed to raise a triable issue of fact, and a complete determination of the liability of both parties is appropriate." *Russo v Dement*, 61 Misc 3d 855 [Sup Ct 2018]. Here, Defendant in opposition, raises no triable issue of fact. Defendant, by attorney affirmation, sets forth conclusory and unsubstantiated allegations which fail to provide evidence providing a reason for Defendant's conduct or raise an issue of fact whether Plaintiff was comparatively at fault. *Id.* (*quoting Lopez v Dobbins*, 164 AD3d 776 [2d Dept 2018]).

Accordingly, the motion for summary judgment in favor of Plaintiff on the issue of liability is granted.

Accordingly, it is hereby

ORDERED, that Plaintiff's Motion is **GRANTED**; and it is further

ORDERED, that all Parties' Counsel and if no counsel then the Parties, are directed to appear before the Court in IAS Part 29, located at the Alan D. Oshrin Courthouse, One Court Street, Riverhead, New York 11901, on Tuesday, **AUGUST 27, 2019, at 9:30 A.M.**, for a compliance conference; and it is further

ORDERED, that non-appearance will not be countenanced by the Court and may subject the non-appearing Party to one or more of the sanctions pursuant to 22 NYCRR §§ 202.27 and 130-2; and it is further

ORDERED, that at the call of the calendar, if any Party does not appear or proceed or announce their readiness to proceed, the Court shall consider an Order pursuant to 22 NYCRR § 202.27 as follows: (a) if the Plaintiff appears but the Defendant does not, the Court shall consider granting judgment by default and order an inquest; (b) if the Defendant appears but the Plaintiff does not, the Court shall consider a dismissal of the action and order a severance of counterclaims; and (c) if no Party appears, the Court shall make such order as appears just; and it is further

ORDERED, that the Parties and their Counsel, if any, comply with Part 29 Court Rules, https://www.nycourts.gov/courts/10jd/suffolk/SC_Part_Rules/Kevins.pdf; and it is further

ORDERED, that Plaintiff(s) is/are directed to immediately serve a certified copy of this Order, pursuant to CPLR §§8019(c) and 2105, upon the Suffolk County Clerk; and it is further

ORDERED, that upon Entry of this Order by the Suffolk County Clerk, Plaintiff(s) is/are directed to serve, forthwith, a copy of this Order with Notice of Entry upon all parties and to promptly file the Affidavit(s) of Service with the Clerk of the Court.

Any requested relief not specifically granted herein is hereby DENIED.

This constitutes the Decision and Order of this Court.

Dated: July 31, 2019
Riverhead, New York



HON. LINDA KEVINS
J.S.C.

FINAL DISPOSITION X NON-FINAL DISPOSITION