

Jimenez v Saccheri

2019 NY Slip Op 35190(U)

October 17, 2019

Supreme Court, Queens County

Docket Number: Index No. 714478/2017

Judge: Chereé A. Buggs

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Short Form Order

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

Present: Hon. Chereé A. Buggs
Justice

IAS PART 30

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DARVINSON JIMENEZ,

Index No. 714478/2017

Plaintiff,

Motion Date:
September 4, 2019

-against-

Motion Cal. No.: 10

VITO SACCHERI,

Motion Seq. No.: 1

Defendant.
-----X

The following efile papers numbered 10-20 submitted and considered on this motion by plaintiff Darvinson Jimenez seeking an Order pursuant to Civil Practice Law and Rules (CPLR) 3212 granting him summary judgment on the issue of liability against defendant Vito Saccheri and dismissing defendant's affirmative defenses alleging comparative negligence, contributory negligence and culpable conduct.

	<u>Papers</u> <u>Numbered</u>
Notice of Motion - Affidavits - Exhibits	EF 10-18
Affirmation in Opposition-Affidavits-Exhibits.....	EF 19
Reply Affirmation-Affidavits-Exhibits.....	EF 20

On October 18, 2017, plaintiff Darvinson Jimenez (hereinafter "Jimenez") commenced this action with the filing of a summons and verified complaint. Jimenez alleged that on June 1, 2017 he was a bicyclist traveling at or near the intersection of Myrtle Avenue and Fresh Pond Road, County of Queens, State of New York, when defendant Vito Saccheri (hereinafter "Saccheri") opened his car door into the lane of travel of his bicycle, causing him to sustain personal injuries. Discovery is now complete with the plaintiff filing a Note of Issue on June 14, 2019. Jimenez makes this application for an Order pursuant to CPLR 3212 granting him summary judgment on the issue of liability against Saccheri and dismissing defendant's affirmative defenses alleging comparative negligence, contributory negligence and culpable conduct.

Plaintiff Darvinson Jimenez' deposition testimony

Jimenez gave deposition testimony on March 15, 2019. On the date of the accident, he was working as a deliveryman for a restaurant, using an electric bicycle. The accident occurred on Myrtle Avenue near the intersection of Fresh Pond Road. He stated that Myrtle Avenue is a two-way road with one lane of traffic in each direction, the lanes separated by a yellow line. There is also a lane for parked vehicles. On the side of the street that he was traveling on there were parked cars. Testimony relevant to the how the accident occurred according to Jimenez was as follows:

Q. Can you tell me how that accident occurred?

A. When I turned the person opened the door.

Q. You mentioned you turned. Where were you turning from and where were you going?

A. I turned from Myrtle Avenue from Fresh Pond Road towards Myrtle Avenue.

Q. Were you making a left or right?

A. Right turn.

Q. Can you tell me, had you made that turn before the accident occurred?

A. If I made the turn?

Q. You made the turn before the accident occurred, is that correct, onto Myrtle Avenue?

A. Yes.

Pl. ex "F", pg. 22, ln. 17-25, pg. 23, ln. 24-25, pg. 25, ln. 1-5

Jimenez continued his testimony related to the circumstances surrounding the accident.

Q. How long were you on Myrtle Avenue before the accident occurred?

A. About two to three seconds.

Pl. ex. "F" pg. 24, ln. 5-8.

He also stated that Saccheri's vehicle was parked on the corner in a no-standing space. Further testimony related to the accident was the following:

Q. What was the first indication you had that you were involved in an accident? Did you see something? Did you feel something?

A. I saw the door open in a split second.

Q. When you say "the door", which door of the vehicle are you referring to?

A. Left side, driver's side.

Pl. ex. "F", pg. 26, ln. 17-24.

He had been traveling at a speed of 5 to 10 miles per hour before the accident occurred, and had used his right turn signal prior to making the turn. The right side of his bike hit the door, and he claimed that his body came into contact with the door and he was injured.

Defendant Vito Saccheri's deposition testimony

Saccheri gave deposition testimony in this matter on March 15, 2019. Relevant testimony relating to how the accident happened is the following. He testified that he had stopped his car, a dark blue 2011 Nissan Murano at the location because he heard a noise in the motor, however he was not parking it. He recalled that the area where he stopped his vehicle had a no-parking sign.

Q: At the area where you stopped your car but just before the accident, were there any vehicles, buses, trucks, anything at all parked or stopped behind where you were in that area?

A: The street was completely clear.

Q: I'm asking, from the point you stopped your car where you said you were about 5 feet from fresh pond road which was behind your car at that point and you got out right away, did you look anywhere outside of your car before you got out by turning your head or looking in a mirror or anything at all?

A: I didn't look anywhere because I already knew passing by there was nobody around and only a second happened.

Q. At some point after the accident, did you speak with the man who had been on the bike?

A. Yes. I told him, I'm sorry, I didn't see you coming.

Pl. ex. "G", pg. 30 ln. 20, pg. 31 Ln 5.

Discussion

“Where there are no material and triable issues of fact, the motion for summary judgment should be granted....[t]he party making the motion for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law by offering sufficient evidence to demonstrate the absence of any material issue of fact and the party must do so by tender of evidentiary proof in admissible form.” (See *Dougherty v Kinard*, 215 AD2d 521 [2d Dept 1995]; see also *Friends of Animals, Inc. v Assoc. Fur Mfrs.*, 46 NY2d 1065 [1979].) “To be entitled to partial summary judgment a plaintiff does not bear the ... burden of establishing... the absence of his or her comparative fault.” (See *Rodriguez v City of New York*, 31 NY3d 312, 324–325 [2018].) “A plaintiff in a negligence action moving for summary judgment on the issue of liability must establish, prima facie, that the defendant breached a duty owed to the plaintiff and that the defendant’s negligence was a proximate cause of the alleged injuries... the issue of a plaintiff’s comparative negligence may be decided where, as here, the plaintiff specifically argued the absence of comparative fault in support of his [or her] motion.” See *Flores v Rubenstein*, 175 AD3d 1490 [2d Dept 2019] [internal quotations omitted].)

Jimenez argued that Saccheri violated Vehicle and Traffic Law 1214 by opening the door of his vehicle without first determining if it was safe to do so into a lane of traffic. The statute states the following:

“No person shall open the door of a motor vehicle on the side available to moving traffic unless and until it is reasonably safe to do so, and can be done without interfering with the movement of other traffic, nor shall any person leave a door open on the side of a vehicle available to moving traffic for a period of time longer than necessary to load or unload passengers.”

Jimenez also argued that Saccheri violated the New York City Traffic Rules, 34 RCNY §4-08(a), entitled “Parking, Stopping and Standing” which states the following:

“(3) Standing prohibited. When standing is prohibited by signs or rules, no person shall stop a vehicle, attended or unattended, except temporarily for the purpose of and while actually engaged in expeditiously receiving or discharging passengers.”

“(4) Parking prohibited. When parking is prohibited by signs or rules, no person shall stop a vehicle, attended or unattended, except temporarily for the purpose of and while expeditiously receiving or discharging passengers or loading or unloading property to or from the curb.”

Also, Jimenez argued that Saccheri violated the New York City Traffic Rules, 34 RCNY §4-12(c) which states the following:

“No person shall get out of any vehicle from the side facing on the traveled part of the street in such manner as to interfere with the right of the operator of an approaching vehicle or a bicycle.”


(See also *Abbas v Salavel*, 73 AD3d 1100 [2d Dept 2010]; *Montesinos v Cote*, 46 AD3d 774 [2d Dept 2007]).

Based upon the foregoing, Jimenez failed to establish his prima facie establishment to summary judgment as a matter of law. Under Vehicle and Traffic Law section 1231, the traffic laws also apply to persons riding bicycles. Jimenez failed to establish, prima facie, that he was not comparatively at fault in the happening of this occurrence. He failed to eliminate all triable issues of fact as to whether he exercised reasonable care while riding his bicycle (*see Flores v Rubenstein*, 175 AD3d 1490 [2d Dept 2019]). Since the plaintiff failed to meet his prima facie burden the Court need not address the merits of the opposition papers. (*Id.*)

Therefore, plaintiff’s motion is denied.

The foregoing constitutes the decision and Order of the Court.

Dated: October 17, 2019



Hon. Chereé A. Buggs, JSC

FILED
OCT 18 2019
COUNTY CLERK
QUEENS COUNTY