

EJI IM v Lan Jin

2019 NY Slip Op 35214(U)

June 28, 2019

Supreme Court, Queens County

Docket Number: Index No. 706363/2018

Judge: Leslie J. Purificacion

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

Part 39

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Index Number 706363/2018

EJI IM,

Plaintiff,

DECISION/ORDER

--against--

Motion Sequence: 1

LAN JIN AND JINAN HU,

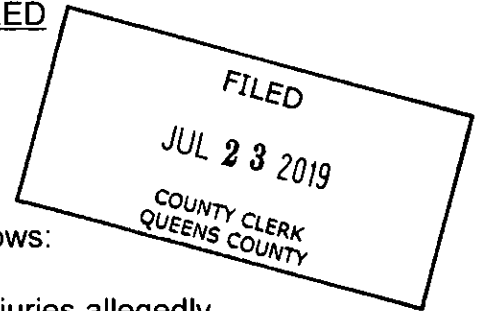
Defendants.

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The following papers numbered 1-9 read on plaintiff's motion seeking an order granting summary judgment on the issue of liability and striking the defendants' affirmative defense of comparative negligence.

PAPERS
NUMBERED

| | |
|---------------------------------------|-----|
| N.M., Aff., Exhibits and Service..... | 1-4 |
| Opp. Affs., and Service..... | 5-7 |
| Reply..... | 8-9 |



Upon the foregoing papers, the motion is decided as follows:

Plaintiff commenced this action to recover for personal injuries allegedly sustained as a result of a motor vehicle accident that occurred on January 18, 2018, at or near the intersection of 45th Avenue and 172nd Street in Queens County, New York. Plaintiff now moves for summary judgment on the issue of liability against the defendants and for an order striking the defendants' affirmative defense of comparative negligence.

In support of the motion, plaintiff submits an affidavit wherein she states that on January 18, 2019 at approximately 9:15 a.m., she was traveling on 45th Avenue near

the intersection of 172nd Street. She described the roadway as 45th Avenue is a two-way street with one lane of moving traffic in each direction and a parking lane on each side. At the intersection of 45th Avenue and 172nd Street, 45th Avenue is not controlled by any traffic devices and 172nd Street is controlled by a stop sign. Plaintiff claims that she was driving straight on 45th Avenue at approximately 20 miles per hour. She further claims that the defendant driver did not stop at the stop sign governing 172nd Street and entered the intersection causing a collision. Plaintiff avers that only one second elapsed from when defendants' vehicle entered the intersection to the collision. Plaintiff alleges she slammed on her brakes but could not avoid the impact.

The proponent of summary judgment motion must tender evidentiary proof in admissible form eliminating any material issues of fact from the case. If the proponent succeeds, the burden shifts to the party opposing the motion, who then must show the existence of material issues of fact by producing evidentiary proof in admissible form in support of his position (see Zuckerman v. City of New York, 49 N.Y.2d 557).

New York Vehicle and Traffic Law §1142 provides that the driver of a vehicle approaching a stop sign shall stop as required by VTL 1172 and after having stopped shall yield the right of way to any vehicle which has entered the intersection from another highway or which is approaching so closely on said highway as to constitute an immediate hazard during the time when such driver is moving across or within the intersection. In addition, a driver with the right of way is entitled to anticipate that the other driver will obey traffic laws that require him to yield (see Kann v Maggies Paratransit Corp., 63 AD3d 792; Palomo v Pozzi, 57 AD3d 498; Berner v Koegel, 31AD3d 591; Gabler v Marley Bldg. Supply Corp., 27 AD3d 519).

Plaintiff has tendered sufficient proof to establish that defendant driver violated Vehicle and Traffic Law Section 1142 and that her negligence was the proximate cause of this accident. Thus, the burden shifts to defendants to demonstrate the existence of genuine triable issues of fact as to their liability and whether plaintiff was comparatively negligent.

In opposition to the motion, defendants claim that the motion is premature as depositions have not yet been conducted. Defendants' also submit the affidavit of defendant driver Lan Jin wherein she states that on the day of the accident she was traveling on 172nd Street. As she approached the stop sign governing 172nd Street and 45th Avenue, defendant alleges she brought her vehicle to a complete stop at the stop sign behind the first line of the crosswalk. Defendant further alleges that she looked to her left and right before proceeding forward and saw the plaintiff's vehicle on her left traveling on 45th Avenue over one block away. Defendant then proceeded forward at approximately 5 miles per hour when the plaintiff's vehicle struck her vehicle on the front driver's side. Defendant avers that plaintiff's vehicle was traveling at a very high rate of speed and that her speeding was the cause of this accident.

The court finds that the defendants have failed to demonstrate that discovery would lead to facts essential to justify opposition to the motion that are exclusively within plaintiff's knowledge and control (see Rodriguez v Farrell, 115 AD3d 929). The court further finds that the affidavit of Lan Jin has failed to raise a triable issue of fact as to liability. Mrs. Lin stated that she saw the plaintiff's vehicle approaching the intersection but continued into the intersection anyway. Mrs. Jin's excuse that plaintiff was speeding is self-serving and speculative at best.

Accordingly, the plaintiff's motion for summary judgment on the issue of liability against the defendants is granted. The defendants' affirmative defense of comparative negligence is stricken.

This is the decision and order of the court.

Date:

JUN 28 2019

Hon. Leslie J. Purificacion, J.S.C.

FILED
JUL 23 2019
COUNTY CLERK
QUEENS COUNTY