

King v Craftline Cabinet Co.
2020 NY Slip Op 30439(U)
February 3, 2020
Supreme Court, New York County
Docket Number: 151402/2017
Judge: Lisa A. Sokoloff
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 21

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Kiayanna King,

Plaintiff,

DECISION AND ORDER

-against-

Index No. 151402/2017

Craftline Cabinet Co., Fernando Rameriz, Jr.,
New York City Transit Authority, d/b/a
MTA New York City Transit, Manhattan and Bronx
Surface Transportation Operating Authority,
MTA Bus Company and Manuel Torres,

Mot. Seq. 1

Defendants.

-----X

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion:

Papers	Numbered	NYSCEF #
Plaintiff's Motion/ Affirmations/Memo of Law	<u>1</u>	24-33
Defendant Craftline/Ramirez Affidavit in Limited Opposition	<u>2</u>	34
Defendant Transit Affidavit in Limited Opposition	<u>3</u>	35

LISA A. SOKOLOFF, J.

Plaintiff Kiayanna King commenced this action against Defendants for personal injuries sustained on September 9, 2016 while Plaintiff was a passenger in a bus owned by Defendant New York City Transit Authority (Transit) and operated by Defendant, Manuel Torres, that was involved in an accident with a truck owned by the Defendant Craftline Cabinet Co. and operated by Defendant, Fernando Rameriz, Jr.

Plaintiff moves for summary judgment on the issue of liability on the ground that the proximate cause of the accident was the violation of New York State Vehicle and Traffic Law (VTL) § 1128 by the respective Defendant drivers by making a lane change directly into each other.

The vehicles were traveling northbound on Third Avenue between 96th and 97th streets in Manhattan. According to the EBT of the Transit bus driver, after picking up passengers, he immediately turned on his blinker and had begun to move into the traffic lane to his left when the Craftline truck hit him. According to the EBT of the truck driver,

after crossing 96th street, he had turned on his blinker, and was moving into the lane of travel to his right at the time of impact. According to the police report, both vehicles were making lane changes "and collided with each other."

The front corner of the driver's side of the bus collided with the rear passenger side of the truck. The Transit bus driver testified that, at the time of impact, the bus was traveling three to five miles per hour and that the Craftline truck was traveling at 15 miles per hour. The truck driver testified that he was traveling at a rate of 20 miles per hour. The Transit bus driver further testified that he did not see the truck until the "last minute," a few seconds before the impact. The truck driver testified that he first saw the bus 15 to 20 seconds before the impact.

It is well-settled that the proponent of a motion for summary judgment must make a *prima facie* showing of entitlement to judgment as a matter of law by providing sufficient evidence to demonstrate the absence of material issues of fact (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). Failure to make a *prima facie* showing requires denial of the motion, regardless of the sufficiency of the opposing papers (*Alvarez v Prospect Hosp.*, at 324). Once this showing has been made, however, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]).

To prevail on a motion for summary judgment, the movant has the initial burden of establishing that the Defendant's violation of a traffic law was the sole proximate cause of the accident (*McDaniel v Codi Transp., Ltd.*, 149 AD3d 595 [1st Dept 2017]).

VTL §1128 (b) provides "[a] vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety."

A plaintiff is entitled to judgment as a matter of law on the issue of liability if he or she demonstrates that the proximate cause of an accident was the defendant driver's violation of New York State VTL § 1128 in making a lane change without first ascertaining that the lane change could be made safely (*Flores v City of New York*, 66 AD3d 599 [1st Dept 2009]; *Zummo v Holmes*, 57 AD3d 366 [1st Dept 2008]).

Plaintiff's counsel contends that the Defendants' negligence is irrefutable because the affidavit of Plaintiff and the Defendants' EBT transcripts demonstrate that both the Transit bus driver and Craftline truck driver violated VTL §1128 by changing lanes into each other. Plaintiff argues that there is no non-negligent explanation for the collision, nor anything in the Police Accident Report which supports a conclusion other than that Defendants were negligent. Finally, Plaintiff claims that the right of an innocent passenger to summary judgment is not restricted by potential issues of comparative fault as between two defendant drivers.

According to the Defendants, either driver may be at fault, both may be, or neither may be. There is no claim that Plaintiff passenger contributed to the accident.

The right of an innocent passenger to summary judgment on the issue of whether he or she was at fault in the happening of an accident is not restricted by potential issues of comparative negligence as between two defendant drivers (*Medina v Rodriguez*, 92 AD3d 850 [2nd Dept 2012]). Here, Plaintiff has made a *prima facie* showing that she did not engage in any culpable conduct that contributed to the happening of the accident. However, as Defendant Transit notes, Plaintiff would, at most, be entitled to summary judgment on her own lack of culpable conduct. Even an innocent passenger can only earn "a determination that she had no culpable conduct on the issue of liability irrespective of the unresolved issue of a defendant driver's negligence" (*Oluwatayo v Dulinayan*, 142 AD3d 113, 119 [1st Dept 2016]).

There is a significant distinction between granting a plaintiff summary judgment on her lack of culpable conduct on liability and granting a plaintiff summary judgment on a defendant's negligence. A grant of partial summary judgment against a defendant on liability in a negligence case is the equivalent of finding that the defendant owed the plaintiff a duty of care, the defendant breached that duty by its negligence, and such breach proximately caused the plaintiff injury (internal citation omitted). In contrast, a grant of partial summary judgment on the issue of the plaintiff's lack of fault or culpability is a much narrower finding. Such a finding merely establishes as a matter of law that the plaintiff is free of any negligence, as would be the case of an innocent passenger or driver.

(*Oluwatayo v Dulinayan*, at 118).

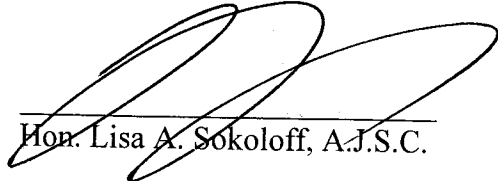
Plaintiff has established her lack of culpable conduct as an innocent passenger, which entitles her to summary judgment on lack of fault pursuant to CPLR § 3212 (g). Both Defendants conceded on the record that no culpable conduct is attributable to Plaintiff. However, Plaintiff has not established entitlement to summary judgment on liability against either Defendant driver because of the unresolved facts concerning the accident and which vehicle was responsible for the accident, particularly given the respective rates of speed of the drivers. The issues of negligence of the drivers must be determined by a trier of fact.

Accordingly, it is

ORDERED, that Plaintiff's motion is granted, only to the extent of finding no culpable conduct on the part of Plaintiff on the issue of liability, and is otherwise denied.

Dated: February 3, 2020
New York, New York

ENTER:


Hon. Lisa A. Sokoloff, A.J.S.C.

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	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE