

Walker v Baird

2020 NY Slip Op 31190(U)

May 1, 2020

Supreme Court, Kings County

Docket Number: 503774/2019

Judge: Devin P. Cohen

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

Supreme Court of the State of New York
County of Kings

Index Number 503774/2019

Part 91

DECISION/ORDER

SHAQUAN L. WALKER,

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

Plaintiff,

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	<u>1</u>
Order to Show Cause and Affidavits Annexed...	<u> </u>
Answering Affidavits.....	<u>2</u>
Replying Affidavits.....	<u>3</u>
Exhibits.....	<u> </u>
Other.....	<u> </u>

against

TREVOR A. BAIRD AND MICHELLE S. CHARLES,

Defendants.

Upon review of the foregoing documents, plaintiff's motion for summary judgment is decided as follows:

Factual Background

Plaintiff brings this action against defendants for injuries he allegedly sustained when, on January 13, 2019, plaintiff's vehicle came into contact with the vehicle operated by defendant Baird and owned by defendant Charles. Plaintiff states in his affidavit that, at 2:20 am on the date of the accident, he was traveling north on Rockaway Avenue, in Brooklyn, New York. Plaintiff further states that defendant Baird, who was in a vehicle traveling south on Rockaway Avenue, made a U turn into the northbound lane and made contact with plaintiff's vehicle. Plaintiff states that a double yellow line separates the northbound and southbound travel lanes of Rockaway Avenue at the location of the accident.

Defendant Baird submits an affidavit in opposition, in which he admits that he made a U-turn from the southbound parking lane, which was adjacent to the southbound travel lane. He also acknowledges that he struck plaintiff in the northbound travel lane. Defendant Baird explains that he activated his left turn blinker and pulled out of his parking spot in order to make

a U-turn so that he could travel northbound on Rockaway Avenue. He acknowledges that the northbound and southbound travel lanes of Rockaway Avenue are separated by a double yellow line.

Analysis

The moving party on a motion for summary judgment bears the initial burden of making a prima facie showing that there are no triable issues of material fact (*Giuffrida v Citibank*, 100 NY2d 72, 81 [2003]). Once a prima facie showing has been established, the burden shifts to the non-moving party to rebut the movant's showing such that a trial of the action is required (*Alvarez v Prospect Hospital*, 68 NY2d 320, 324 [1986]).

Plaintiff contends that defendant was negligent as a matter of law because, he claims, defendant violated Vehicle and Traffic Law § 1126(a), by crossing a double yellow line when there was no emergency (*Browne v Logan Bus Co., Inc.*, 156 AD3d 856, 857 [2d Dept 2017]). Defendant Baird admits that he crossed over the double yellow line, from the parking lane, and struck plaintiff's vehicle. Defendant Baird incorrectly argues that he did not violate VTL § 1126(a) because he was not trying to overtake or pass plaintiff, but his intention is irrelevant. Courts have held that crossing the double yellow line while making a U-turn or left turn into oncoming traffic violates VTL § 1126(a) (*see, e.g., Mack v Seabrook*, 161 AD3d 704, 705 [1st Dept 2018], lv to appeal denied, 32 NY3d 915 [2019]; *see also Kroizer v Einhorn*, 50 Misc 3d 1214[A], 2016 NY Slip Op 50104[U], *2 [Sup Ct, Kings County 2016]).

Moreover, defendant Baird's actions violate VTL § 1160(e), which states that "U-turns shall be made from and to that portion of the highway nearest the marked center line. Where more than one lane of a highway has been designated for left turns, U-turns shall be made only from the lane so designated that is adjacent to the marked center line." Defendant Baird admits

in his affidavit that he pulled out of the parking lane and directly made his U-turn to face northbound on Rockaway Avenue, which would have required him to cross over the adjacent southbound moving lane. Thus, defendant Baird did not, as required by the statute, turn from the “portion of the highway nearest to the marked center line”.

There are issues of fact as to whether defendants violated RCNY 4-05, because the parties do not establish whether or not the accident took place in a “business district” as defined by VTL § 105. Also, as defendants correctly argue, any violation of a New York City traffic rule is evidence of negligence, and not negligence per se (*Elliott v City of New York*, 95 NY2d 730, 736 [2001]). These issues of fact would not, by themselves, require a trial of defendants’ fault on liability, as will become clear below.

Defendants separately argue that the police report that plaintiff submits is inadmissible because it is not certified (*Pavane v Marte*, 109 AD3d 970, 971 [2d Dept 2013]). While defendants are correct, the police report is not necessary to establish defendants’ negligence because the parties do not dispute that defendant Baird made a U-turn from a parking lane, and crossed the double yellow line, causing contact with plaintiff.

In addition, defendants argue that the parties have not been deposed and that plaintiff’s affidavit does not provide certain information. The court recognizes the importance of discovery in motor vehicle cases and cautions parties from making summary judgment motions prematurely (*see, e.g., Corvino v Schineller*, 168 AD3d 812, 812-13 [2d Dept 2019]). However, in this case, defendant Baird has already admitted to crossing the double yellow line without emergency justification, and no further information will change that undisputed fact and its impact on defendants’ liability (*Rungoo v Leary*, 110 AD3d 781, 783 [2d Dept 2013]).

That said, defendant Baird states in his affidavit that plaintiff did not have his headlights

on at the time of the accident, and that defendant’s driver did not see plaintiff before the collision. Plaintiff disputes this in his own affidavit. These and any other issues of fact concerning plaintiff’s comparative fault, if any, will need to be adjudicated at trial (*Rodriguez v City of New York*, 31 NY3d 312, 324-25 [2018]).


Finally, plaintiff moves to strike defendants’ first, second, fourth, ninth, tenth, and eleventh affirmative defenses of comparative negligence, their eighth affirmative defense of failure to join necessary parties, their thirteenth affirmative defense of failure to state a cause of action, and their sixteenth affirmative defense of lack of personal jurisdiction. As explained above, the issue of plaintiff’s comparative negligence is reserved for trial. Also, as the court has determined that defendants are negligent per se, plaintiff has stated a cause of action for negligence. Additionally, defendants do not explain who else could be a necessary party to this action, or how this court does not have personal jurisdiction over them.

For the foregoing reasons, plaintiff’s motion for summary judgment is granted to the extent that this court finds defendants are negligent per se, and that defendants’ eighth, thirteenth, and sixteenth affirmative defenses are struck. Defendants’ remaining defenses, related to comparative fault, shall remain as issues in this action and subjects of discovery as this action proceeds, and shall be reserved for trial, as appropriate.

This constitutes the decision and order of the court.

May 1, 2020

DATE



DEVIN P. COHEN
Justice of the Supreme Court