

Etheridge v Fahim
2020 NY Slip Op 31351(U)
May 11, 2020
Supreme Court, Kings County
Docket Number: 506773/2018
Judge: Peter P. Sweeney
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS, PART 73

Index No.: 506773/2018
Motion Date: 3-2-20
Mot. Cal. No.:

-----X

BRANDON J. ETHERIDGE,
Plaintiff,

-against-

DECISION/ORDER

ZAKARIA EL FAHIM,
Defendant.

-----X

The following papers numbered 1 to 3 were read on this motion:

Papers:	Numbered:
Notice of Motion/Order to Show Cause	
Affidavits/Affirmations/Exhibits/Memo of Law.....	1
Answering Affirmations/Affidavits/Exhibits/Memo of Law.....	2
Reply Affirmations/Affidavits/Exhibits/Memo of Law.....	3
Other.....	

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

In this action to recover damages for personal injuries arising out of a motor vehicle accident, the defendant moves pursuant to CPLR 2221(d) granting plaintiff leave to reargue plaintiff s prior motion for partial summary judgment as to liability; and (2) upon reargument, for an order pursuant to CPLR 3212 granting the motion.

This action arises out of a motor vehicle accident that occurred on Ridgewood Avenue, at its intersection with Hemlock Street, in Brooklyn, New York. Traffic proceeding into the intersection on Hemlock Street, the roadway upon which the defendant was travelling, was controlled by a stop sign. There were no traffic control devices at the intersection controlling traffic on Ridgewood Avenue, the roadway upon which the plaintiff was travelling.

When the defendant was deposed on June 28, 2019, he testified that on the date of the accident, he was using his vehicle as a livery vehicle (he was driving for Uber) and had a

passenger in the car. He was traveling along Hemlock Street towards Ridgewood Avenue and confirmed that traffic on Hemlock Street proceeding into the intersection was controlled by a stop sign. He testified that he had stopped at the stop sign, but not at the stop line, drove a little bit more into the intersection and stopped a second time. He maintained that he looked to his right down Ridgewood Avenue both times and observed that there were no cars proceeding on Ridgewood approaching the intersection. He then proceeded into the intersection at which time the plaintiff's front into contact with the front right-hand side of his vehicle. He maintains that he never saw plaintiff's vehicle prior to the impact, which came from his right on Ridgewood.

Plaintiff never saw defendant's vehicle prior to the accident.

The Court denied plaintiff's motion for partial summary judgment on the issue of liability finding that there were issues of fact as to how the accident occurred. Plaintiff claims this was error.

Motions for reargument are addressed to the sound discretion of the court which decided the prior motion and may be granted upon a showing that the court overlooked or misapprehended the facts or law or for some other reason mistakenly arrived at its earlier decision" (*Grimm v. Bailey*, 105 A.D.3d 703,704; *see also* CPLR 2221(d)). Inasmuch as the Court is now convinced that it overlooked and misapprehended certain facts in arriving at its decision, plaintiff's motion for reargument is granted. Upon reargument, plaintiff's motion for partial summary judgment on the issue of liability is granted.

The record on the prior motion demonstrated as a matter of law that the defendant violated VTL 1142(a). The Court is now convinced that there is no other reasonable construction of the record. VTL 1142(a) provides:

Except when directed to proceed by a police officer, every driver of a vehicle approaching a stop sign shall stop as required by

section eleven hundred seventy-two 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.

“A driver who fails to yield the right of way after stopping at a stop sign controlling traffic is in violation of Vehicle and Traffic Law § 1142(a) and is negligent as a matter of law” (*Laino v. Lucchese*, 35 A.D.3d 672, 672, 827 N.Y.S.2d 249; *see Fuertes v. City of New York*, 146 A.D.3d 936, 937, 45 N.Y.S.3d 562; *Francavilla v. Doyno*, 96 A.D.3d 714, 715, 945 N.Y.S.2d 425). The fact that the defendant testified that he stopped at the stop sign is not dispositive since the evidence establishes that he failed to yield after initially stopping (*see Kraynova v. Lowy*, 166 A.D.3d 600, 602, 87 N.Y.S.3d 653; *Hatton v. Lara*, 142 A.D.3d 1047, 1048, 37 N.Y.S.3d 604; *Lilaj v. Ferentinos*, 126 A.D.3d 947, 7 N.Y.S.3d 172; *Williams v. Hayes*, 103 A.D.3d 713, 714, 959 N.Y.S.2d 713). “A driver with the right-of-way is entitled to anticipate that a motorist will obey traffic laws which require him or her to yield” (*Fuertes v. City of New York*, 146 A.D.3d at 937, 45 N.Y.S.3d 562; *Luke v. McFadden*, 119 A.D.3d 533, 987 N.Y.S.2d 909; *Francavilla v. Doyno*, 96 A.D.3d at 715, 945 N.Y.S.2d 425). “Although a driver with a right-of-way also has a duty to use reasonable care to avoid a collision, ... [as here], 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” (*Yelder v. Walters*, 64 A.D.3d 762, 764, 883 N.Y.S.2d 290 [citations omitted]; *see Giwa v. Bloom*, 154 A.D.3d 921, 921–922, 62 N.Y.S.3d 527; *Fuertes v. City of New York*, 146 A.D.3d at 937, 45 N.Y.S.3d 562; *Bennett v. Granata*, 118 A.D.3d 652, 653, 987 N.Y.S.2d 424).

Defendant failed to raise a triable issue of fact.

Accordingly, it is hereby

ORDRED that plaintiff's motion for reargument is granted, and upon reargument, plaintiff's motion for partial summary judgment on the issue of liability is **GRANTED**. This court's prior decision dated November 25, 2019 is recalled and vacated.

This constitutes the decision and order of the Court.

Dated: May 11, 2020



PETER P. SWEENEY, J.S.C.

Note: This signature was generated electronically pursuant to Administrative Order 86/20 dated April 20, 2020