

Bailey v Williams
2020 NY Slip Op 31639(U)
May 28, 2020
Supreme Court, Kings County
Docket Number: 515770/2018
Judge: Lorna J. McAllister
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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: Part 10**

TAHIRA BAILEY,

Plaintiff(s),

-against-

MARGARITA WILLIAMS,

Defendant(s).

Index No.: 515770/2018

Mot. Seq. # 4

DECISION / ORDER

Present:

Hon. Lorna J. McAllister

A.J.S.C.

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

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	1-2
Order to Show cause and Affidavits Annexed.....	
Answering Affidavits.....	3
Replying Affidavits.....	4
Exhibits.....	
Other:.....	

Upon the foregoing cited papers, and after oral argument, the Decision/Order on this motion is as follows:

The plaintiff Tahira Bailey ("Bailey") has moved pursuant to CPLR § 3212, for an Order awarding summary judgment to the plaintiff and against the defendant Margarita Williams ("Williams") as to the issue of liability, as well as dismissing the defendant's affirmative defenses related to liability. Defendant opposes the motion upon the grounds that there are material issues of fact regarding the liability of the defendant, as well as whether the plaintiff was negligent for the incident that occurred.

Background

In the within action, the plaintiff seeks to recover damages for personal injuries allegedly sustained in a motor vehicle accident on March 8, 2017 which occurred on 57th Avenue near its intersection with 90th Street, in the County of Queens, New York. The plaintiff alleged that the defendant's vehicle crossed into the lane in which the plaintiff was traveling and struck the passenger side of the plaintiff's vehicle.

This action by plaintiff was commenced by the filing of a summons and verified complaint on or about August 2, 2018. Issue was joined by the service of defendant's verified answer on or about September 27, 2018. A Preliminary Conference was held on May 24, 2019 and a Compliance Conference was conducted on May 24, 2019, as well on September 19, 2019. Depositions of the parties were conducted on October 14, 2019. An Independent Medical Examination of the plaintiff was held on November 8, 2019. A Note of Issue was filed on behalf of the plaintiff on November 8, 2019.

A prior motion for summary judgment in which the plaintiff sought the same relief was denied by the Hon. Judge Wavny Toussaint of this Court in an order dated January 16, 2019, as being premature, with leave to renew upon completion of depositions.

Plaintiff's contentions

Plaintiff alleges that on March 8, 2017 she was lawfully operating her vehicle in the left lane on 57th Avenue in the direction of 90th Street when the defendant crossed over into the lane of traffic plaintiff was traveling in on 57th Avenue and struck her vehicle.

Prior to the incident, the plaintiff alleges that she left the Queens Center Mall parking garage and made a left turn onto 57th Avenue. Plaintiff maintains that she was proceeding in the far left lane which was to the left of the double yellow line ¹ when the defendant's vehicle went over the double yellow line, at which point the driver's side of the defendant's vehicle came into contact with the plaintiff's vehicle on the passenger front side. Plaintiff maintains that defendant did not yield the right of way to the plaintiff nor wait for the plaintiff to pass before entering the left lane from the center lane.

Plaintiff maintains that the defendant has offered contradictory explanations as to what transpired in this matter. This would include whether the plaintiff came into the defendant's lane as opposed to the defendant going into plaintiff's lane; that the plaintiff was driving at an excessive rate of speed; not seeing the plaintiff's vehicle before contact; as well as inaccuracies as to the point of contact and defendant's rate of speed.

Plaintiff asserts that the defendant in failing to yield the right of way and striking the plaintiff's vehicle on the passenger side while making an unsafe lane change was negligent as a matter of law. Plaintiff alleges that the defendant violated several sections of the NY Vehicle and Traffic Law (VTL) as well as the New York City Traffic Regulations. This includes an allegation that the defendant violated VTL § 1128(a) by not safely changing lanes as the statute provides that a vehicle shall be driven within a lane and shall not be moved from such lane until the driver has ascertained that the movement can be made with safety. In addition, the plaintiff

¹ Mall personnel had placed orange safety cones on the road which created an extra lane of travel to the left of the double yellow line.

maintains that the defendant violated V.T.L. § 1180(a) by driving at a speed greater than was reasonable and prudent under the conditions.

Defendant's contentions

In opposing the plaintiff's motion, the defendant offers the affidavit of Ms. Williams, as well as her deposition testimony. Defendant maintains that at the location of the accident, 57th Street has four lanes of travel (two northbound lanes and two southbound lanes). At the time of the accident, cones were being utilized by personnel at the Queens Center Mall to expand the right northbound lane to allow vehicles who are traveling in a southbound direction to utilize the lane as a newly opened left lane. Defendant asserts that prior to the incident, she carefully switched lanes into the newly opened left lane at which time the plaintiff struck her vehicle near the left rear wheel.

Discussion

This Court has reviewed the submission of counsel for the respective parties and considered the arguments presented herein, as well as the applicable law, in making this determination with respect to plaintiff's motion for summary judgment as to the issue of liability in this matter.

At issue before this Court is whether based upon the submissions of the parties and the evidence introduced a finding could be made that there are no issues of fact as to the liability of the parties with respect to the accident that occurred on March 8, 2017.

In reaching this determination, this Court considered the contention by the plaintiff that the defendant has allegedly offered contradictory accounts in her affidavit, in her deposition testimony, as well as what appears in the MV-104, which contradictions should have a negative impact upon assessing her credibility in this matter. However, based upon the various accounts that have been offered by the parties, in which a collision occurred between two vehicles that were traveling in the same direction and had changed lanes immediately prior to the incident, this Court cannot definitively determine that the plaintiff did not bear some percentage of fault for the happening of the accident. A trial is necessary to determine whether or not the applicable VTL statutes and NYC Traffic Regulations were violated, and if so, which party was negligent.

“Contrary to the plaintiff’s contention, the defendant’s negligence and the plaintiff’s freedom from negligence have not been established as a matter of law. Here, there are as yet undetermined issues of fact concerning the reasonableness of the defendant’s conduct under the circumstances and ability to avoid the collision, as well as questions regarding the extent to which the plaintiff’s own behavior may have contributed to the accident. Because these issues are unresolved, the granting of summary judgment is inappropriate” (*Rios v. Nicoletta*, 119 AD2d 562, 500 NYS2d 730 [2nd Dept. 1986]).

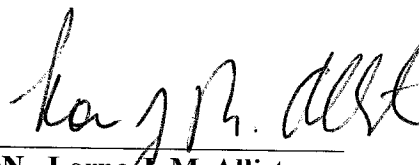
In cases arising out of motor vehicle accidents, the existence of fact issues regarding the comparative negligence of the drivers involved in the collision will preclude the granting of summary judgment in favor of a driver. There is a question of fact as to whether each of the parties exercised reasonable care under the circumstances (see *Perla v. Wilson*, 287 AD2d 606, 732 NYS2d 35 [2nd Dept. 2001]).

Conclusion

The motion by plaintiff, pursuant to CPLR § 3212, for an Order awarding summary judgment to the plaintiff and against the defendant as to the issue of liability, pursuant to CPLR § 3212, as well as dismissing all of the defendant's affirmative defenses related to liability is denied.

This constitutes the Decision and Order of the Court.

Dated: May 28, 2020



HON. Lorna J. McAllister
A.J.S.C.