

De Pina v Jerrick Assoc., Inc.
2020 NY Slip Op 33367(U)
October 7, 2020
Supreme Court, Kings County
Docket Number: 520412/2017
Judge: Richard Velasquez
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At an IAS Term, Part 66 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 7th day of OCTOBER, 2020

PRESENT:

HON. RICHARD VELASQUEZ

Justice.

-----X
MIOSOTI A. LIRIANO DE PINA,

Plaintiff,

-against-

Index No.: 520412/2017
Decision and Order

JERRICK ASSOCIATES, INC. and DARYL M. OSBORNE,

Defendants,
-----X

The following papers NYSCEF Doc #'s 24 to 37 read on this motion:

<u>Papers</u>	<u>NYSCEF DOC NO.'s</u>
Notice of Motion/Order to Show Cause Affidavits (Affirmations) Annexed _____	24-34
Opposing Affidavits (Affirmations) _____	35-36
Reply Affidavits _____	37

After having heard Oral Argument on OCTOBER 7, 2020 and upon review of the foregoing submissions herein the court finds as follows:

Defendants, ERRICK ASSOCIATES, INC. and DARYL M. OSBORNE, move pursuant to CPLR 3212, for an Order granting summary judgment in their favor and dismissing all claims. Plaintiff, opposes the same contending there are issues of fact for the jury. (MS#2).

ANALYSIS

It is well established that a moving party for summary judgment must make a prima facie showing of entitlement as a matter of law, offering sufficient evidence to demonstrate the absence of any material issue of fact. *Winegrad v. New York Univ. Med. Center*, 64 NY2d 851, 853 (1985). Once there is a *prima facie* showing, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form to establish material issues of fact, which require a trial of the action. *Zuckerman v. City of New York*, 49 NY2d 557 (1980); *Alvarez v. Prospect Hosp.*, 68 NY2d 320 (1986). However, where the moving party fails to make a prima facie showing, the motion must be denied regardless of the sufficiency of the opposing party's papers. A motion for summary judgment will be granted "if, upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing the judgment in favor of any party". CPLR 3212 (b). The "motion shall be denied if any party shall show facts sufficient to require a trial of any issue of fact." *Id.*

It is well established that "where a driver enters an intersection with the right-of-way....and it is undisputed that the other vehicle entered the intersection from a perpendicular side street which was controlled by a stop sign and collided with the side of the other vehicle that had the right-of-way...under no view of these facts could the driver with the right of way be found to have acted negligently..." (see *Perez v Brux Cab Corp.*, 251 AD2d 157 [1998]; *Namismak v Martin*, 244 AD2d 258, 260 [1997]); quoting *Rivera v. Water Boy, Inc.*, 144 AD3d 884, 884–85, 41 NYS3d 545 (NY App Div 2016).

In the present case, the defendant established their prima facie entitlement to judgment as a matter of law on the issue of liability by demonstrating that the plaintiff, who either failed to stop at a stop sign or, upon stopping, failed to yield the right of way to the defendant's vehicle, was the sole proximate cause of the accident (*see Vehicle and Traffic Law § 1142[a]*; *Bongiovi v. Hoffman*, 18 AD3d 686, 687, 795 NYS2d 354; *Willis v. Fink*, 7 AD3d 519, 520, 775 NYS2d 587; *cf. Rossani v. Rana*, 8 AD3d 548, 549, 779 NYS2d 211). In the present case, the defendant established prima facie entitlement to judgment as a matter of law by establishing that the plaintiff's vehicle proceeded into the intersection controlled by a stop sign without yielding the right-of-way to the defendant's approaching vehicle in violation of Vehicle and Traffic Law § 1142(a). The evidence submitted by the defendant in support of their motion established, prima facie, that the plaintiff failed to properly observe and yield to cross traffic before proceeding into the intersection (*see Mohammad v. Ning*, 72 AD3d 913, 914, 899 NYS2d 356; *Exime v. Williams*, 45 AD3d 633, 634, 845 NYS2d 450; *Hull v. Spagnoli*, 44 AD3d 1007, 1007, 844 NYS2d 416; *Gergis v. Miccio*, 39 AD3d 468, 468–469, 834 NYS2d 253; *Bongiovi v. Hoffman*, 18 AD3d 686, 687, 795 NYS2d 354), and that this was the sole proximate cause of the accident.

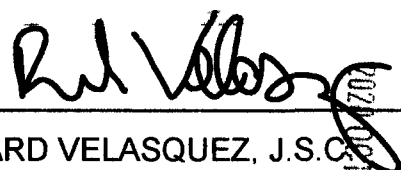
In opposition to the defendant's prima facie showing, the plaintiff failed to raise a triable issue of fact. “[A] driver who fails to yield the right-of-way after stopping at a stop sign controlling traffic is in violation of Vehicle and Traffic Law § 1142(a) and is negligent as a matter of law” (*Mohammad v. Ning*, 72 AD3d at 914–915, 899 NYS2d 356, quoting *Gergis v. Miccio*, 39 AD3d at 468, 834 NYS2d 253; *see Exime v. Williams*, 45 AD3d at 633, 845 NYS2d 450; *Marcel v. Chief Energy Corp.*, 38 AD3d 502,

503, 832 NYS2d 61); quoting, *Briggs v. Russo*, 98 AD3d 547, 547–48, 949 NYS2d 719, 721 (2d Dep’t 2012). Therefore, the question of whether the plaintiff stopped the vehicle at the stop sign is not dispositive, since the evidence established that plaintiff failed to yield the right-of-way even if plaintiff did stop (see *Mohammad v. Ning*, 72 AD3d at 915, 899 NYS.2d 356; *Exime v. Williams*, 45 AD3d at 634, 845 NYS2d 450; *McCain v. Larosa*, 41 AD3d 792, 793, 838 NYS2d 663; *Morgan v. Hachmann*, 9 AD3d 400, 400, 780 NYS2d 33); quoting *Briggs v. Russo*, 98 AD3d 547, 548, 949 NYS2d 719, 721 (2d Dep’t 2012). Additionally, the “driver who had the right of way was entitled to anticipate that the driver with the stop sign would obey the traffic law requiring them to yield” (*Hull v. Spagnoli*, 44 AD3d 1007, 1007, 844 NYS2d 416; see *Mohammad v. Ning*, 72 AD3d at 914, 899 NYS2d 356; *McCain v. Larosa*, 41 AD3d 792, 793, 838 NYS2d 663; *Gergis v. Miccio*, 39 AD3d at 468, 834 NYS2d 253); quoting, *Briggs v. Russo*, 98 AD3d 547, 548, 949 NYS2d 719, 722 (2d Dep’t 2012).

Accordingly, the defendant’s motion for summary judgment as to liability is hereby granted, for the reasons stated above. (MS#2).

This constitutes the Decision/Order of the Court.

Date: OCTOBER 7, 2020


 RICHARD VELASQUEZ, J.S.C.
OCT 07 2020
 SO ORDERED
 Hon. Richard Velasquez

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 KINGS COUNTY CLERK
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