

Coffey v Parasram

2020 NY Slip Op 34986(U)

March 9, 2020

Supreme Court, Suffolk County

Docket Number: Index No. 18-613593

Judge: David T. Reilly

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SHORT FORM ORDER

INDEX No. 18-613593
CAL. No. 19-01611MV

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 30 - SUFFOLK COUNTY

PRESENT:

Hon. DAVID T. REILLY
Justice of the Supreme Court

MOTION DATE 10-23-19
ADJ. DATE 10-23-19
Mot. Seq. # 001 - MG

-----X

TERENCE COFFEY,
Plaintiff,

- against -

RAJPAUL PARASRAM,
Defendant.

-----X

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Upon the following papers numbered read on this e-filed motion for summary judgment: Notice of Motion/ Order to Show Cause and supporting papers by plaintiff, dated September 17, 2019; Notice of Cross Motion and supporting papers by defendant, dated October 1, 2019; Answering Affidavits and supporting papers by plaintiff, dated October 1, 2019; Replying Affidavits and supporting papers by defendant, dated October 1, 2019; Other by plaintiff, dated October 1, 2019; ~~(and after hearing counsel in support and opposed to the motion)~~ it is,

ORDERED that the motion by plaintiff for summary judgment in his favor on the issue of defendant's negligence is granted.

This is an action to recover damages for injuries allegedly sustained by plaintiff Terrence Coffey as a result of a motor vehicle accident, which allegedly occurred at approximately 7:05 a.m., on July 5, 2018 at the intersection of Long Island Avenue and Rodeo Drive in Islip, New York when a vehicle operated and owned by defendant Rajpaul Parasram attempted to make a left turn and struck plaintiff's vehicle.

Plaintiff now moves for summary judgment in his favor on the issue of liability on the ground that defendant violated Vehicle and Traffic Law §1141 by making a left turn into the path of his vehicle traveling with the right-of-way. In support of his motion, plaintiff submits, among other things, his affidavit and the transcript of defendant's deposition testimony. Defendant does not dispute his negligence.

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In his affidavit, plaintiff avers that there were no traffic control devices at the subject intersection. He contends that prior to the accident, his vehicle was traveling westbound on Long Island Avenue, and defendant's vehicle was traveling eastbound on Long Island Avenue. He further contends that the accident occurred when defendant's vehicle attempted to make a left turn onto Rodeo Drive and struck his vehicle, which was already in the subject intersection.

The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law by tendering evidence in admissible form sufficient to eliminate any material issues of fact from the case (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 508 NYS2d 923 [1986]; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 87 NYS2d 316 [1985]). The movant has the initial burden of proving entitlement to summary judgment (*Winegrad v New York Univ. Med. Ctr.*, *supra*). Once the movant demonstrates a prima facie entitlement to judgment as a matter of law, the burden shifts to the party opposing the motion to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action (*see Vega v Restani Constr. Corp.*, 18 NY3d 499, 942 NYS2d 13 [2012]; *Alvarez v Prospect Hosp.*, *supra*; *Zuckerman v City of New York*, 49 NY2d 557, 427 NYS2d 595 [1980]; *see also* CPLR 3212 [b]). The failure to make a prima facie showing requires a denial of the motion, regardless of the sufficiency of the opposing papers (*see Winegrad v New York Univ. Med. Ctr.*, *supra*). In deciding the motion, the court must view all evidence in the light most favorable to the nonmoving party (*see Matter of New York City Asbestos Litig.*, 33 NY3d 20, 99 NYS3d 734 [2019]; *Vega v Restani Constr. Corp.*, *supra*).

To establish prima facie entitlement to judgment as a matter of law on the issue of liability, a plaintiff is no longer required to show freedom from comparative fault (*see Rodriguez v City of New York*, 31 NY3d 312, 76 NYS3d 898 [2018]; *see Simon v Rent-A-Center E., Inc.*, ___ AD3d ___, 2020 NY Slip Op 01379 [2d Dept 2020]; *Samouhi v Retamales*, ___ AD3d ___, 2020 NY Slip Op 01378 [2d Dept 2020]). A violation of the Vehicle and Traffic Law constitutes negligence as a matter of law (*see Simon v Rent-A-Center E., Inc.*, *supra*; *Edwards v J & D Express Serv. Corp.*, ___ AD3d ___, 2020 NY Slip Op 01145 [2d Dept 2020]; *Spratley v Lafortune*, 176 AD3d 1247, 109 NYS3d 667 [2d Dept 2019]). Pursuant to Vehicle and Traffic Law § 1141, a vehicle intending to turn left within an intersection must yield the right-of-way to any vehicle approaching from the opposite direction which is within the intersection or so close as to constitute an immediate hazard (*see Brodney v Picini*, 172 AD3d 673, 99 NYS3d 399 [2d Dept 2019]; *Ming-Fai Jon v Wager*, 165 AD3d 1253, 87 NYS3d 82 [2d Dept 2018]; *Giannone v Urdahl*, 165 AD3d 1062, 86 NYS3d 562 [2d Dept 2018]). Although a driver with the right-of-way is entitled to anticipate that other drivers will obey traffic laws requiring them to yield to him or her, a driver with the right-of-way still has a duty to use reasonable care to avoid a collision (*see Ballentine v Perrone*, 179 AD3d 993, 114 NYS3d 696 [2d Dept 2020]; *Fernandez v American United Transp., Inc.*, 177 AD3d 704, 113 NYS3d 145 [2d Dept 2019]; *Jeong Sook Lee-Son v Doe*, 170 AD3d 973, 96 NYS3d 302 [2d Dept 2019]). Nonetheless, a driver with the right-of-way, who only has seconds to react to a vehicle which has failed to yield, is not comparatively negligent for failing to avoid the collision (*see Balladares v City of New York*, 177 AD3d 942, 114 NYS3d 448 [2d Dept 2019]; *Fernandez v American United Transp., Inc.*, *supra*; *Enriquez v Joseph*, 169 AD3d 1008, 94 NYS3d 599 [2d Dept 2019]). Further, a driver is negligent if he or she fails to see that which, through the proper use of his or her senses, should have been seen (*see Shvydkaya v Park Ave. BMW Acura Motor Corp.*, 172 AD3d 1130, 100 NYS3d 320 [2d Dept 2019];

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Aponte v Vani, 155 AD3d 929, 64 NYS3d 123 [2d Dept 2017]; *Pivetz v Brusco*, 145 AD3d 806, 43 NYS3d 457 [2d Dept 2016]).

Plaintiff established his prima facie entitlement to summary judgment by demonstrating that defendant was negligent in violating Vehicle and Traffic Law § 1141 (see *Ming-Fai Jon v Wager, supra*; *Giannone v Urdahl, supra*; *Yu Mei Liu v Weihong Liu*, 163 AD3d 611, 81 NYS3d 75 [2d Dept 2018]; *Shashaty v Gavitt*, 158 AD3d 830, 71 NYS3d 560 [2d Dept 2018]; *Smith v Fuentes*, 158 AD3d 731, 68 NYS3d 739 [2d Dept 2018]; *Sirlin v Schreib*, 117 AD3d 819, 985 NYS2d 688 [2d Dept 2014]). As previously indicated, plaintiff avers that defendant made a left turn directly into the path of his oncoming vehicle, which was already in the intersection. Moreover, defendant admitted that prior to the accident, he had difficulty seeing in front of him due to sun glare, and he did not observe plaintiff's vehicle. As defendant does not dispute his negligence, he failed to raise a triable issue of fact (see *Alvarez v Prospect Hosp., supra*; *Ming-Fai Jon v Wager, supra*; *Giannone v Urdahl, supra*).

Accordingly, the motion by plaintiff for summary judgment on the issue of liability is granted.

Dated: March 9, 2020



J.S.C.
HON. DAVID T. REILLY

____ FINAL DISPOSITION X NON-FINAL DISPOSITION