

Young v Bjork

2020 NY Slip Op 35049(U)

October 8, 2020

Supreme Court, Orange County

Docket Number: Index No. EF001408-2019

Judge: Maria S. Vazquez-Doles

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This opinion is uncorrected and not selected for official publication.

At a term of the IAS Part of the Supreme Court of the State of New York, held in and for the County of Orange located at 285 Main Street, Goshen, New York 10924 on the 8th day of October, 2020.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

BERNICE YOUNG,

PLAINTIFF,

-AGAINST-

JESSANDRA BJORK, LAURA BJORK,
(ANA MARIA MONTANO & HARRY THOMAS) removed
DEFENDANTS.

VAZQUEZ-DOLES, J.S.C.

To commence the statutory time for appeals as of right (CPLR 5513 [a]), you are advised to serve a copy of this order, with notice of entry, on all parties.

DECISION & ORDER
Index No.EF001408-2019
Motion Date: 7/29/20
Motion seq. #1

The following papers numbered 1 -10 were read on Plaintiff's motion for partial summary judgment on the issue of liability;

Notice of Motion /Affirmation of Richard Bernsley, Esq./Exhibits A - F	1 - 8
Affirmation of Tara McCoy-Evans, Esq.....	9
Affirmation in Reply of Richard Bernsley, Esq.	10

This is an action in negligence arising out of a motor vehicle collision which occurred on November 21, 2018 in the parking lot of 360 Route 211E, Town of Wallkill, New York, at approximately 7:10pm. Issue was joined on or about April 1, 2019 by service of a verified answer. On March 11, 2020 Plaintiff filed a discontinuance as to Defendants Ana Montano and Harry Thomas. Plaintiff alleges that she *was a passenger* in a taxi (2100 Ford) owned by Defendant Thomas and driven by Defendant Montano when Defendant Jessandra Bjork disregarded a stop sign and collided with Plaintiff. Defendant Laura Bjork is the owner of the 2011 Kia vehicle.

By the instant motion, Plaintiff seeks partial summary judgment on the issue of liability, and a determination that Jessandra Bjork was 100% responsible for the accident. In support of the motion, Plaintiff submits an Affidavit from Sandra Glover, a front seat passenger of the taxi who witnessed the event. Ms Glover avers that the Bjork vehicle advanced to the intersection,

failed to stop at the stop sign, and then proceeded to make a left turn. Plaintiff further submits the transcript testimony of Montano, which confirms that Ms Bjork failed to stop at the stop sign and hit the rear passenger side of the taxi before driving off. Ms Bjork was later called to the Town of Wallkill Police department as part of the accident investigation and was cited for Failure to Yield and Disregarding a traffic control device. Plaintiff submits a certified copy of the accident report as proof of this investigation. Plaintiff argues that she is an innocent passenger, entitled to summary judgment, and was in no way at fault for the happening of the accident. Plaintiff relies upon *Romaine v City of New York*, 177 Ad3d 590[2nd Dept. 2019] in support of her argument.

Defendant opposes this motion and argues that there are issues of fact which preclude summary judgment. Defendant points to her deposition testimony at pages 9-22 wherein she testified that she stopped at the stop sign for 5 seconds before moving forward. In essence, Defendant argues that the driver of the Taxi may have some culpability so summary judgment should not be granted.

Upon a review of all the papers submitted, Plaintiff's motion must be granted. Plaintiff has made a *prima facie* showing of entitlement to summary judgment as a matter of law, and Defendants have failed to raise a triable issue of fact. The issue of failing to stop and failing to yield the right of way was squarely addressed in the case of *Rahaman v Abodeledhman*, 64 AD3d 552, 553 [2d Dept 2009]. In that case, the Court held, "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" (citing *Klein v Crespo*, 50 AD3d 745, 745 [2008])." *Rahaman v Abodeledhman*, 64 AD3d 552, 553 [2d Dept 2009]. The Court there further added, "[a] driver is required to see that which through proper use of his or her senses he

or she should have seen, and a driver who has the right-of-way is entitled to anticipate that the other motorist will obey the traffic law requiring him or her to yield (id at 745-746)". *Rahaman v Abodeledhman*, 64 AD3d 552, 553 [2d Dept 2009]. Thus Defendant's arguments that she stopped at the stop sign for 5 seconds is not sufficient to deny summary judgment to the Plaintiff, because Defendant also did not yield the right of way.

Furthermore, the Plaintiff in this instant action was an innocent passenger in the vehicle which was hit by Defendant. The Court in *Romaine v City of New York* addressed this issue and held that Supreme Court should have granted summary judgment in favor of Plaintiff when it stated;

"The Supreme Court should not have denied the plaintiffs' motion, in effect, for summary judgment against the defendants on the issue of whether the injured plaintiff was at fault in the happening of the accident. The right of an innocent passenger to summary judgment on the issue of whether he or she was at fault in the happening of an accident is not restricted by potential issues of comparative negligence as between two defendant drivers (see CPLR 3212 [g]; *Jung v Glover*, 169 AD3d 782, 783 [2019]; *Phillip v D&D Carting Co., Inc.*, 136 AD3d 18, 24-25 [2015]; *Anzel v Pistorino*, 105 AD3d 784, 786 [2013]; *Medina v Rodriguez*, 92 AD3d 850, 850 [2012]; *Garcia v Tri-County Ambulette Serv.*, 282 AD2d 206, 207 [2001]; *Silberman v Surrey Cadillac Limousine Serv.*, 109 AD2d 833, 833-834 [1985]). Here, the plaintiffs made a prima facie showing of entitlement to summary judgment on their motion, and in opposition, the defendants failed to raise a triable issue of fact (see generally *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). It is uncontested that the injured plaintiff was a passenger seated in the rear passenger seat of the Freed vehicle. While both drivers involved in the accident submitted affidavits in which each maintained that they were free from fault, neither driver suggested that the injured plaintiff bore any fault in the happening of the accident (see *Phillip v D&D Carting Co., Inc.*, 136 AD3d at 25)." *Romaine v City of New York*, 177 AD3d 590, 591 [2d Dept 2019].

Based upon the above, it is hereby

ORDERED that Plaintiff's motion for summary judgment on the issue of liability is granted, and it is further

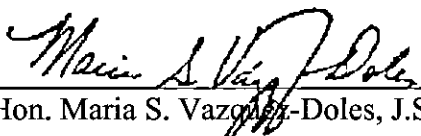
ORDERED that upon review of the record, Plaintiff, Bernice Young was an innocent passenger and bore no "fault in the happening of the accident. (Citation omitted)". *Romaine v City of New York*, 177 AD3d 590, 591 [2d Dept 2019], and it is further

ORDERED that all parties appear as previously scheduled for a virtual settlement conference on October 22, 2020 at 3:45 p.m..

The foregoing constitutes the Decision and Order of the Court.

Dated: October 8th, 2020
Goshen, New York

Enter,



Hon. Maria S. Vazquez-Doles, J.S.C.

To: Counsel of record via e-mail.