

Atwell v Howse

2020 NY Slip Op 35367(U)

August 31, 2020

Supreme Court, Kings County

Docket Number: Index No. 519370/2016

Judge: Richard Velasquez

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

KINGS COUNTY CLERK
FILED

2020 SEP -9 PM 4:43

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 31st day of AUGUST, 2020

PRESENT:
HON. RICHARD VELASQUEZ

Justice.

-----X
EARL ATWELL,

Plaintiff,

-against-

Index No.: 519370/2016
Decision and Order

WILLIE HOWSE AND KR CAR SERVICE, INC.,

Defendants,
-----X

The following papers NYSCEF Doc #'s 64 to 76 read on this motion:

<u>Papers</u>	<u>NYSCEF DOC NO.'s</u>
Notice of Motion/Order to Show Cause Affidavits (Affirmations) Annexed_____	64-69
Opposing Affidavits (Affirmations)_____	73-75
Reply Affidavits_____	76

After having heard Oral Argument on AUGUST 10, 2020 and upon review of the foregoing submissions herein the court finds as follows:

Plaintiff moves for summary judgment pursuant to CPLR 3212 on liability, contending there are no issues of fact. (MS#4). Defendant opposes the same, contending plaintiff's own testimony raises issues of fact.

In the present case, the plaintiff's affidavit establishes that the plaintiff proceeded through a green light at the intersection and was hit by the defendant. Here, the plaintiff

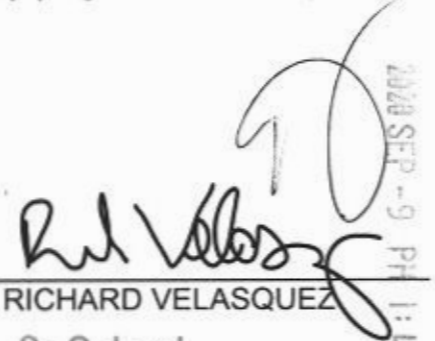
established his prima facie entitlement to judgment as a matter of law by demonstrating that their vehicle had a green light when it entered the intersection. It is well established "that failure to stop at a red traffic light entitles the moving party to summary judgment in its favor." (See, *Carpio v Leahy Mechanical Corp*; 30 AD3d 554 (2nd Dept 2006); *Shapiro v Munoz*; 813 NYS2d 755 (2nd Dept 2006); *Iqbal v Petrov*; 9 AD3d 416 (2nd Dept 2004); *Ermendi v Holland*, 297 AD2d 627 (2nd Dept 2002); *Casanova v New York City Tr. Auth.*, 279 AD2d 495 (2nd Dept 2001). "Where, as here, a moving party has made a prima facie showing of entitlement to relief, the party opposing the motion must produce evidentiary proof to establish the existence of material fact" (*Boz v. Berger*, 268 AD2d 453 (2nd Dep't. 2000)..

In opposition, defendant, (the driver) fails to raise a triable issue of fact, nor will they be able to raise one as they have been precluded from submitting any affidavits or testimony in opposition for failing to appear for deposition. Additionally, allegations regarding plaintiff's comparative fault, if any, does not preclude granting of summary judgment in plaintiff's favor. "To be entitled to partial summary judgment a plaintiff does not bear the double burden of establishing a prima facie case of defendant's liability and the absence of his or her own comparative fault." *Quoting Rodriguez v. City of New York*, 31 NY3d 312, 324–25, 101 NE3d 366, 374 (2018).

Accordingly, the plaintiff's motion for summary judgment on liability is hereby granted, for the reasons stated above. (MS#40

This constitutes the Decision/Order of the court.

Dated: Brooklyn, New York
August 31, 2020


HON. RICHARD VELASQUEZ
So Ordered
Hon. Richard Velasquez

AUG 31 2020

2020 SEP -9 PM 1:43
FILED