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| Ramdeen v Baychu |
| 2021 NY Slip Op 30300(U) |
| February 1, 2021 |
| Supreme Court, Kings County |
| Docket Number: 513203/2018 |
| 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 1st day of JFEBRUARY, 2021

P R E S E N T:
HON. RICHARD VELASQUEZ, Justice.

-----X
MALINIE RAMDEEN,

Plaintiff,

Index No.: 513203/2018
Decision and Order

-against-

ALFRED A BAYCHU, CANDASARI, A.T.B. CAR AND
LIMOUSINE SERVICE, INC.,

Defendants,

-----X

The following papers NYSCEF Doc #'s 88 to 105 read on this motion:

| <u>Papers</u> | <u>NYSCEF DOC NO.'s</u> |
|--|-------------------------|
| Notice of Motion/Order to Show Cause Affidavits (Affirmations) Annexed_____ | 88-103 |
| Opposing Affidavits (Affirmations)_____ | 105 |

After having heard Oral Argument on FEBRUARY 1, 2021 and upon review of the foregoing submissions herein the court finds as follows:

Defendant ALFRED A. BAYCHU moves pursuant to CPLR 2221(a) and (d) for an order granting leave to re-argue this court's decision dated August 11, 2020 which denied defendant ALFRED A. BAYCHU motion for summary judgment on the issue of liability.

ARGUMENTS

Defendants contend that that there are no material questions of law or fact on the issue of liability, because the undisputed evidence shows the defendant had the right of

way and plaintiff had a stop sign and the sole proximate cause of this accident, there are no issues of fact.

Plaintiff contends in opposition that the court did not err in its prior decision.

ANALYSIS

CPLR 2221 in pertinent part states: “(d) A motion for leave to reargue: 1. shall be identified specifically as such; 2. shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion, but shall not include any matters of fact not offered on the prior motion; and 3. shall be made within thirty days after service of a copy of the order determining the prior motion and written notice of its entry. CPLR 2221(d)(2) articulates the standards previously outlined in the caselaw. A motion to reargue, it says: “shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion but shall not include any matters of fact not offered on the prior motion. CPLR 2221. Additionally, A court has inherent discretionary power to vacate an order or judgment in the interests of substantial justice. See *Woodson v. Mendon Leasing Corp.*, 100 NY2d 62, 760 NYS2d 727, 790 NE2d 1156 (2003).

In the present case, defendant contends that in deciding the previous motion, the Court overlooked or misapprehended relevant facts or misapplied controlling principles of law. The Court agrees.

In the present case, The defendant ALFRED A. BAYCHU established his prima facie entitlement to judgment as a matter of law by establishing that the co-defendant CANDASARI vehicle, the vehicle plaintiff was a passenger in 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 his motion established, prima facie, that the co-defendant CANDASARI failed to stop at the stop sign and to properly observe and yield to cross traffic before proceeding into the intersection; specifically plaintiff's testimony that the driver of the vehicle she was in co-defendant CANDASARI ran a stop sign and proceeded 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. Thus, the question of whether the co-defendant stopped their vehicle at the stop sign is not dispositive, since the evidence established that plaintiff failed to yield the right-of-way even if they 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 (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 (2012).

In the present case, just like the case referenced above it is undisputed that the defendant ALFRED A. BAYCHU driver had the right-of-way and the other vehicle

operated by the co-defendant CANDASARI entered the intersection from a perpendicular side street which was controlled by a stop sign. In opposition plaintiff fails to raise a triable issue of fact. Plaintiff contends that the court was correct and that there can be more than one proximate cause of an accident. However, by plaintiff's own admission co-defendant CANDASARI ran the stop sign and proceeded into the intersection. Additionally, "to be entitled to partial summary judgment a movant does not bear the double burden of establishing a prima facie case of 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 defendant's ALFRED A. BAYCHU motion to reargue is granted and upon reargument defendant ALFRED A. BAYCHU motion for summary judgment on liability is hereby granted.

This constitutes the Decision/Order of the court.

Dated: Brooklyn, New York
February 1, 2021

ENTER FORTHWITH:



HON. RICHARD VELASQUEZ