

Higgins v Massay

2021 NY Slip Op 30468(U)

February 18, 2021

Supreme Court, Kings County

Docket Number: 508690/2020

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 18th day of FEBRUARY, 2021

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

-----X

KALEISHA R. HIGGINS,

Plaintiff,

Index No.: 508690/2020
Decision and Order

-against-

GILLIAN M. MASSAY AND CHRISTOPHER M. JAMES,

Defendants,

-----X

The following papers NYSCEF Doc #'s 8 to 20 read on this motion:

<u>Papers</u>	<u>NYSCEF DOC NO.'s</u>
Notice of Motion/Order to Show Cause Affidavits (Affirmations) Annexed_____	8-14
Opposing Affidavits (Affirmations)_____	16
Reply Affidavits (Affirmations)_____	20

After having heard Oral Argument on FEBRUARY 18, 2021 and upon review of the foregoing submissions herein the court finds as follows:

Plaintiff moves pursuant to CPLR 3212, for an Order granting summary judgment on liability. Plaintiff also moves pursuant to CPLR 3211(b) for an order striking the affirmative defenses of comparative negligence. (MS#1). Defendant, opposes the same contending there are issues of fact for the jury.

This action arises out of a motor vehicle accident which occurred on August 31, 2019 at the intersection of Wortman Avenue and Elton Street in Brooklyn, New York. It

is alleged that defendant was at a stop sign on Elton Street and plaintiff was traveling with the right-of-way on Wortman Avenue when defendant's car collided with plaintiff's car.

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.*

In the present case, The plaintiff established her prima facie entitlement to judgment as a matter of law by establishing that the defendant's vehicle proceeded into the intersection controlled by a stop sign without yielding the right-of-way to the plaintiff's approaching vehicle in violation of Vehicle and Traffic Law § 1142(a). The evidence submitted by the plaintiff in support of her motion established, prima facie, that

the defendant failed to properly observe and yield to cross traffic before proceeding into the intersection (see *Mohammad v. Ning*, 72 A.D.3d 913, 914, 899 N.Y.S.2d 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, the defendant failed to raise a triable issue of fact. Defendant contends that, contrary to the plaintiffs claim that defendant did stop at the stop sign and proceeded when it was safe and it was plaintiff that failed to see what there was to be seen. “However, ‘[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).

Thus, the question of whether the defendant stopped their vehicle at the stop sign is not dispositive, since the evidence established that defendant failed to yield the right-of-way even if they did stop (see *Mohammad v. Ning*, 72 AD3d at 915, 899 NYS2d 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 NYS.2d 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 plaintiff driver had the right-of-way and the other vehicle operated by the defendant entered the intersection from a perpendicular side street which was controlled by a stop sign and plaintiff’s vehicle that had the right of way. In opposition defendant fails to raise a triable issue of fact. Defendant contends that plaintiff was negligent in failing to “see what should be seen and to exercise reasonable care under the circumstances to avoid an accident” (*Balducci v Velasquez*, 92 AD3d 626, 628 [2012]). Additionally, under *Rodriguez*, a plaintiff’s comparative fault (if any) relates to the issue of damages. A plaintiff seeking summary judgment on the issue of “liability” post-*Rodriguez* is therefore seeking findings that, as a matter of law, the defendant was negligent and that such negligence was a proximate cause of the plaintiff’s injuries, see *Castillo v. Slupecki*, 63 Misc 3d 325, 329–30, 93 NYS3d 823, 826–27 (NY Sup Ct 2019). 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). Plaintiff’s request to strike the defendants affirmative defenses is hereby denied. “Issues of comparative negligence is generally a

question of fact for a trier of fact.” *Calderon-Scotti v. Rosenstein*, 119 AD3d 722 (2d Dept. 2014).

Accordingly, the plaintiff’s motion for summary judgment as to liability of the defendant is hereby granted, for the reasons stated above. Plaintiff’s request to strike the affirmative defenses is hereby denied. (MS#1).

This constitutes the Decision/Order of the court.

Dated: Brooklyn, New York
February 18, 2021

ENTER FORTHWITH:



HON. RICHARD VELASQUEZ