

Etienne v Lynch

2021 NY Slip Op 31328(U)

April 14, 2021

Supreme Court, Kings County

Docket Number: 522208/2018

Judge: Lara J. Genovesi

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At an IAS Term, Part 34 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse thereof at 360 Adams St., Brooklyn, New York on the 14th day of April, 2021.

PRESENT:

HON. LARA J. GENOVESI,
J.S.C.

-----X

STEVE ETIENNE,

Index No.: 522208/2018

Plaintiff,

DECISION & ORDER

-against-

PETER J. LYNCH,

Defendant.

-----X

Recitation, as required by CPLR §2219(a), of the papers considered in the review of this motion:

	<u>NYSCEF Doc. No.:</u>
Notice of Motion/Cross Motion/Order to Show Cause and Affidavits (Affirmations) Annexed _____	_____ 10, 11
Opposing Affidavits (Affirmations) _____	_____ 24
Reply Affidavits (Affirmations) _____	_____ 27

Introduction

Plaintiff, Steve Etienne, moves, by notice of motion, sequence number one, pursuant to CPLR § 3212, for an order granting summary judgment on the issue of liability and dismissing the defendants' affirmative defenses, directing this action to

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proceed to trial on the issue of damages only and for such other and further relief as the Court deems proper and just. Defendant Peter J. Lynch opposes this motion.

Background

This action involves a motor vehicle accident on November 25, 2017, near the intersection of Albemarle Road and Veronica Place in Brooklyn, New York. Albemarle Road and Veronica Place are each one-way streets with a parking lane on either side. Plaintiff drove his vehicle east on Albemarle Road, which is not controlled by a traffic control signal at its intersection with Veronica Place. Defendant was driving his vehicle south on Veronica Place, which is controlled by a stop sign at the intersection. As plaintiff proceeded through the intersection, defendant's vehicle struck the front driver's side of plaintiff's vehicle.

Plaintiff testified at an examination before trial (EBT) on October 29, 2019. Plaintiff testified that he was diagnosed with memory loss following the accident and "can't remember a lot" (*see* NYSCEF Doc. # 15, Plaintiff EBT at 56, 57). This intersection has a stop sign for vehicles traveling on Veronica Place and no traffic control device on Albemarle Road (*see id.* at 58, 66). Plaintiff does not recall seeing any double-parked vehicles at the intersection and nothing was obstructing plaintiff's view of vehicles traveling on Veronica Place (*see id.* at 52, 67). Plaintiff does not recall seeing any vehicles traveling south on Veronica Place prior to entering the intersection and the intersection appeared clear (*see id.* at 60, 61). Plaintiff was driving "approximately 20 to 25 miles" per hour (*id.* at 86). Plaintiff did not see defendant's vehicle prior to the impact and defendant's vehicle "just jumped out of nowhere" (*id.* at 65). Plaintiff "tried to stop

the car, I tried to brake and turn the car so the guy wouldn't hit me" (*id.* at 64). The front of defendant's vehicle struck the front driver's side of plaintiff's vehicle (*see id.* at 68, 72).

Defendant testified at an EBT on October 29, 2019. Defendant had a stop sign. (*see* NYSCEF Doc. # 16, Defendant EBT at 12). He made a "complete stop" behind the white stop line in the street for "over thirty seconds" (*id.* at 29, 37, 54). From the white stop line, the view of oncoming traffic on Albemarle Road was obstructed by double-parked vehicles (*see id.* at 54). After defendant stopped, he had to "inch[]" forward to proceed through the intersection (*id.* at 30, 53). Defendant did not make a second complete stop (*see id.* at 60). Defendant did not see plaintiff's vehicle before the impact (*see id.* at 33, 66). He "edge[d] my way a little bit" through the intersection, defendant heard the sound of tires "screeching," and plaintiff's vehicle struck the passenger side of defendant's vehicle (*id.* at 32-35, 39). Defendant testified that he told the police officer who arrived at the scene that plaintiff's vehicle was traveling "excessively fast" (*id.* at 38). Neither party submitted the Police Accident Report.

In support of its motion, plaintiff provided a copy of dashboard camera video footage captured from plaintiff's vehicle (*see* NYSCEF Doc. # 17, Video). The video shows defendant at 00:02 accelerating through the intersection, and the time of the accident is at 00:03 (*see id.*). Although defendant testified that he stopped and then inched forward through the intersection, even presuming he stopped, it is clear from the video that defendant thereafter rolled through the intersection. Plaintiff also annexed three color images downloaded from Google Maps purportedly depicting the intersection

between Albemarle Road and Veronica Place (*see* NYSCEF Doc. # 18, photographs).

The first image, dated September 2017, shows the intersection from Veronica Place, which shows a stop sign on either side of the road and a white stop line. The third image shows the intersection from Albemarle Road, which does not have a traffic control device.

Plaintiff commenced this action by the filing of the summons and complaint on November 5, 2018 (*see* NYSCEF Doc. # 1). Issue was joined on December 27, 2018 (*see* NYSCEF Doc. # 4).

Discussion

Summary Judgment

“[T]he proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact” (*Stonehill Capital Mgmt., LLC v. Bank of the W.*, 28 N.Y.3d 439, 68 N.E.3d 683 [2016], citing *Alvarez v. Prospect Hospital*, 68 N.Y.2d 320, 501 N.E.2d 572 [1986]). Failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers (*see Chiara v. Town of New Castle*, 126 A.D.3d 111, 2 N.Y.S.3d 132 [2 Dept., 2015], citing *Vega v. Restani Const. Corp.*, 18 N.Y.3d 499, 965 N.E.2d 240 [2012]; *see also Lee v. Nassau Health Care Corp.*, 162 A.D.3d 628, 78 N.Y.S.3d 239 [2 Dept., 2018]).

Since there can be more than one proximate cause of an accident, a defendant moving for summary judgment has the burden of establishing freedom from comparative negligence as a matter of law “In order for a defendant driver to establish entitlement to

summary judgment on the issue of liability in a motor vehicle collision case, the driver must demonstrate, prima facie, inter alia, that he or she kept the proper lookout, or that his or her alleged negligence, if any, did not contribute to the accident". The issue of comparative fault is generally a question for the trier of fact.

(*Ballentine v. Perrone*, 179 A.D.3d 993, 114 N.Y.S.3d 696 [2 Dept., 2020] [internal citation omitted]).

"A plaintiff does not need to demonstrate the absence of their own comparative negligence to be entitled to partial summary judgment as to a defendant's liability (*see Rodriguez v City of New York*, 31 N.Y.3d 312, 76 N.Y.S.3d 898 [2018 N.Y. Slip Op. 02287]). However, the issue of a plaintiff's comparative negligence may be decided in the context of a summary judgment motion where the plaintiff moved for summary judgment dismissing a defendant's affirmative defense of comparative negligence (*see Poon v. Nisanov*, 162 A.D.3d 804, 808, 79 N.Y.S.3d 227 [2 Dept., 2018]).

Once a moving party has made a prima facie showing of its entitlement to summary judgment, the burden shifts to the opposing party 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 Fairlane Fin. Corp. v. Longspaugh*, 144 A.D.3d 858, 41 N.Y.S.3d 284 [2 Dept., 2016], citing *Alvarez v. Prospect Hospital*, 68 N.Y.2d 320, *supra*; *see also Hoover v. New Holland N. Am., Inc.*, 23 N.Y.3d 41, 11 N.E.3d 693 [2014]).

Vehicle Traffic Law § 1172(a) states:

Except when directed to proceed by a police officer, every driver of a vehicle approaching a stop sign shall stop at a clearly marked stop line, but if none, then shall stop before entering the crosswalk on the near side of the intersection, or

in the event there is no crosswalk, at the point nearest the intersecting roadway where the driver has a view of the approaching traffic on the intersecting roadway before entering the intersection and the right to proceed shall be subject to the provisions of section eleven hundred forty-two.

(VTL § 1172(a)).

Vehicle Traffic Law § 1142(a) states:

Except when directed to proceed by a police officer, every driver of a vehicle approaching a stop sign shall stop as required by section eleven hundred seventy-two and after having stopped shall yield the right of way to any vehicle which has entered the intersection from another highway or which is approaching so closely on said highway as to constitute an immediate hazard during the time when such driver is moving across or within the intersection.

(VTL § 1142(a)).

Here, plaintiff established the prima facie showing of entitlement to judgment as a matter of law as to liability by establishing that defendant negligently drove his vehicle into the intersection without yielding the right-of-way to the plaintiff's approaching vehicle. Plaintiff testified that defendant's vehicle "jumped out of nowhere" (Plaintiff EBT at 65). Defendant, as the vehicle approaching a stop sign, was required to yield the right of way to plaintiff before proceeding through the intersection. In support of its motion, plaintiff submitted a copy of dashboard camera video footage captured from her vehicle. At 00:03, the video shows defendant's vehicle proceeding through the intersection without yielding the right of way to plaintiff's vehicle. Thus, plaintiff demonstrated that defendant "negligently drove into the intersection on a street controlled by a stop sign without yielding the right-of-way to the plaintiff's vehicle" (*Mastricova v.*

Ruderman, 164 A.D.3d 1435, 82 N.Y.S.3d 546 [2 Dept., 2018], *citing*, *Amalfitano v. Rocco*, 110 A.D.3d 939, 954 N.Y.S.2d 644 [2 Dept., 2012]; *Czarnecki v. Corso*, 81 A.D.3d 774, 916 N.Y.S.2d 828 [2 Dept., 2011]; *Mohammad v. Ning*, 72 A.D.3d 913, 899 N.Y.S.2d 356 [2 Dept., 2010]; *see also Cruz v. DiSalvo*, 188 A.D.3d 986, 135 N.Y.S.3d 447 [2 Dept., 2020]). In opposition, defendant failed to rebut plaintiff's prima facie showing. "While defendant claims that he stopped at the controlling stop sign, the question of whether he stopped at the stop sign is not dispositive, since the evidence established that he failed to yield, even if he did stop" (*Czarnecki v. Corso*, 81 A.D.3d 774, *supra*, *citing*, *Thompson v. Schmitt*, 74 A.D.3d 789, 902 N.Y.S.2d 606 [2 Dept., 2010]; *Mohammad v. Ning*, 72 A.D.3d 913, *supra*; *Khan v. Nelson*, 68 A.D.3d 1062, 892 N.Y.S.2d 167 [2 Dept., 2009]; *Rahaman v. Abodeledhman*, 64 A.D.3d 552, 883 N.Y.S.2d 259 [2 Dept., 2009]).

Plaintiff further established that he is free from comparative fault. Plaintiff testified that, although he has memory loss, he was not speeding (*see* Plaintiff EBT at 86). A review of the video indicates that plaintiff's visibility of defendant's vehicle is at 00:02 and the accident occurred at 00:03, leaving plaintiff with one second to react (*see* Video; *see also Green v. Masterson*, 172 A.D.3d 826, 98 N.Y.S.3d 443 [2 Dept., 2019]; *Abodea v. Junel*, 114 A.D.3d 818, 980 N.Y.S.2d 564 [2 Dept., 2014]). "Since the defendant admitted at his deposition that he did not see the plaintiff's vehicle prior to the collision, his assertions that the plaintiff may have been speeding or negligent in failing to take evasive action were speculative" (*Czarnecki v. Corso*, 81 A.D.3d 774, *supra*, *citing*, *Stanford v. Dushey*, 71 A.D.3d 988, 900 N.Y.S.2d 64 [2 Dept., 2010]). Defendant

was "required to see that which through proper use of his or her senses he or she should have seen," and plaintiff "is entitled to anticipate that the other motorist will obey the traffic law requiring him or her to yield" (*Klein v. Crespo*, 50 A.D.3d 745, 855 N.Y.S.2d 633 [2 Dept., 2008]). Therefore, defendant failed to raise a triable issue of fact as to the comparative negligence of plaintiff (*see Gergis v. Miccio*, 39 A.D.3d 468, 834 N.Y.S.2d 253 [2 Dept., 2007]).

Conclusion

Accordingly, plaintiff's motion for summary judgment as to liability is granted.

This constitutes the decision and order of this case.

ENTER:



Hon. Lara J. Genovesi
J.S.C.

To:

Mari Milorava-Kelman
Cherny & Podolsky, PLLC
Attorneys for Plaintiff
2681 East 14th Street
Brooklyn, New York 11235

David C. Haber
Cobert Haber & Haber, LLP
Attorneys for Defendant
200 Garden City Plaza, Suite 103
Garden City, New York 11530

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