

Batista v Akram
2021 NY Slip Op 31763(U)
May 24, 2021
Supreme Court, New York County
Docket Number: 158579/2018
Judge: J. Machelie Sweeting
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. J. MACHELLE SWEETING PART 62

Justice

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STEPHANIE BATISTA, GUILLERMO HERNANDEZ,

Plaintiff,

- v -

ZAHID AKRAM, MOHAMMAD GONDAL, VERNAL
GUILLORY, THE CITY OF NEW YORK, NEW YORK CITY
SANITATION

Defendant.

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INDEX NO. 158579/2018

MOTION DATE 12/09/2020

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 21, 22, 23, 24, 25, 26, 27, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41

were read on this motion to/for

JUDGMENT – SUMMARY

In the underlying action, plaintiffs STEPHANIE BATISTA and GUILLERMO HERNANDEZ (collectively “plaintiffs”) seek to recover monetary damages for personal injuries allegedly sustained on January 4, 2018, as a result of an alleged accident on West 158th Street in the County, City and State of New York involving a vehicle owned and operated by the City and a taxi owned by MOHAMMAD A. GONDAL (the “Owner”) and driven by defendant ZAHID AKRAM (the “Taxi Driver”). Plaintiffs were passengers in the Driver Akram’s taxi.

Pending before the court is a motion wherein the Driver and Owner (collectively referred to as the “movants”) seek an order pursuant to CPLR §3212 dismissing the complaint, and all claims and cross-claims against them. The movants allege that they are entitled to summary judgment because the plaintiffs and defendants VERNAL J. GUILLORY, THE CITY OF NEW YORK and NEW YORK CITY SANITATION (collectively, the “City”) failed to establish liability on the part of the movants for this alleged accident. In the alternative, the movants seek

an order, pursuant to CPLR §3212 and §3211, granting summary judgment in the movants' favor on the grounds that the City is negligent as a matter of law, with a percentage of negligence to be determined at the time of trial. The movants also seek an order dismissing one or more causes of action pursuant to CPLR §3211 (a)(1) and CPLR §3211 (a)(7). Upon the foregoing documents, this motion is GRANTED.

The function of the court when presented with a motion for summary judgment is one of issue finding, not issue determination (Sillman v. Twentieth Century-Fox Film Corp., 3 N.Y.2d 395 [NY Ct. of Appeals 1957]; Weiner v. Ga-Ro Die Cutting, Inc., 104 A.D.2d331 [1st Dept. 1985]). The proponent of a motion for summary judgment must tender sufficient evidence to show the absence of any material issue of fact and the right to entitlement to judgment as a matter of law (Alvarez v. Prospect Hospital, 68 N.Y.2d 320 [NY Ct. of Appeals 1986]; Winegrad v. New York University Medical Center, 64 N.Y.2d 851 [NY Ct. of Appeals 1985]). Summary judgment is a drastic remedy that deprives a litigant of his or her day in court. Therefore, the party opposing a motion for summary judgment is entitled to all favorable inferences that can be drawn from the evidence submitted and the papers will be scrutinized carefully in a light most favorable to the non-moving party (Assaf v. Ropog Cab Corp., 153 A.D.2d 520 [1st Dept. 1989]). Summary judgment will only be granted if there are no material, triable issues of fact (Sillman v. Twentieth Century-Fox Film Corp., 3 N.Y.2d 395 [NY Ct. of Appeals 1957]).

It is undisputed in this case that 158th Street in Manhattan is a two-way street, with one sole lane heading eastbound and one sole lane heading westbound. On January 4, 2018, the taxi was heading westbound and the City vehicle was heading eastbound. Near where 158th Street intersects Riverside Drive, there was a vehicle stopped in the eastbound lane, blocking the way of the City vehicle. The City vehicle attempted to go around the stopped vehicle by crossing into

the other lane (i.e., into the westbound lane). There, in the westbound lane, the City vehicle collided with the taxi, which was travelling westbound.

Movants argue that “Defendant Driver could not possibly contribute to the accident at issue” because he was merely driving straight (westbound) on 158th Street within the speed limit when the City vehicle suddenly crossed into the westbound lane and collided with the taxi.

In their opposition papers, plaintiffs do not assert any material arguments in opposition to movants’ motion, but instead argue that if this Court grants summary judgment to movants and determines that the City was the sole proximate cause of the accident, then the plaintiffs should be granted summary judgment against the City on the issue of liability. Additionally, plaintiffs argue that the court should strike that portion of the City’s Answer and Affirmative Defenses alleging contributory negligence or culpable conduct on the plaintiffs’ behalf.

The City argues that there are questions of fact as to whether the City driver was negligent, as Vehicle and Traffic Law (“VTL”) §1128(a) provides that a vehicle shall not move from a lane until the driver has first ascertained that such movement can be made with safely; and VTL §1124 prohibits vehicles from driving to the left side of the center of the roadway in overtaking and passing another vehicle unless the left side is free of oncoming traffic. Here, the City driver (defendant Vernal Guillory) testified that there was no vehicle approaching in the westbound lane as he changed lanes and that he did not see the taxi until he was passing the vehicle stopped in front of him. Accordingly, the City argues, the City driver, Guillory, did not violate the VTL and there is a question of fact as to his negligence.

The City also argues that the taxi driver may himself be negligent because he failed to sound his horn or turn his vehicle onto the roadway shoulder to avoid the collision. They argue that “there was space to the right of the Taxi Driver Akram’s vehicle affording him room to

move to avoid the collision” in that there was a bicycle lane to Akram’s right, and that Akram “did not turn quickly or far enough to avoid the collision.” The City further argues that it is a question of fact for the jury whether Akram (who testified that he was driving at or near the speed limit) was driving too fast under the circumstances.

The City’s arguments are both unpersuasive and unavailing. See Castro v Hatim, 174 AD3d 464 (Sup. Ct. App. Div. 1st Dept 2019) (“The [...] evidence shows that plaintiff's SUV struck the rear of defendant’s tractor-trailer as plaintiff was attempting to merge into defendant’s truck's lane of traffic. Thus, plaintiff violated her ‘duty not to enter a lane of moving traffic until it was safe to do so’ [...] “and [her] failure to heed this duty constitutes negligence per se” [internal citations omitted]); Carthen v Sherman, 169 AD3d 416 (Sup. Ct. Ap. Div. 1st Dept 2019) (“In support of his motion, [defendant] Sherman [showed] that Jackson merged from the right lane of the Henry Hudson Parkway into Sherman's middle lane [...] By the foregoing, Sherman made out a prima facie showing of entitlement to summary judgment based upon Jackson's violation of Vehicle and Traffic Law §1128(a)"); Silverio v Ford Motor Co., 168 AD3d 608 (Sup. Ct. Ap. Div. 1st Dept 2019) (“Plaintiff made a prima facie showing of negligence on the part of defendant Gaines by submitting Gaines's deposition testimony, which stated that the accident at issue occurred when Gaines changed lanes into a lane of moving traffic (see Vehicle and Traffic Law § 1128(a)"); Flores v City of New York, 66 AD3d 599 (Sup. CT. App. Div. 1st Dept 2009) (“In opposition, defendants failed to raise an issue of fact. Defendant Lang never disputed in his affidavit that the accident occurred when he pulled out of a parking spot into plaintiff's lane of traffic [...] Defendants also failed to raise an issue of fact as to comparative negligence on the part of plaintiff. Indeed, there was no indication that plaintiff was speeding prior to the accident or that he contributed in any way to the accident [...] Lang's assertion in his affidavit that plaintiff's

vehicle struck his vehicle from behind on his driver's side wheel well, is not sufficient to raise a triable issue as to whether plaintiff was comparatively negligent. As plaintiff asserts, she had the right of way [...]”).

Here, the plaintiffs and the taxi driver, all testify that the taxi driver was driving at or under the speed limit, and that the accident happened in the matter of a few seconds. Given the above, there is no indication that the taxi driver could have avoided the accident. Further, despite the City driver’s assertion that at the time he moved into the westbound lane it was safe for him to do so, it is clear from the fact that the collision occurred that it was not actually safe.

Accordingly, this motion is GRANTED with respect to the movant Zahid Akram the taxi Driver and Mohammad Gondal, the Owner. The Complaint and all Claims and Cross-Claims against said movants are DISMISSED WITH PREJUDICE.

This is the decision of the court.

<u>5/24/2021</u>			
DATE		HON. J. MACHELLE SWEETING, J.S.C.	
CHECK ONE:	☐ CASE DISPOSED	☒ NON-FINAL DISPOSITION	
	☒ GRANTED ☐ DENIED	☐ GRANTED IN PART	☐ OTHER
APPLICATION:	☐ SETTLE ORDER	☐ SUBMIT ORDER	
CHECK IF APPROPRIATE:	☐ INCLUDES TRANSFER/REASSIGN	☐ FIDUCIARY APPOINTMENT	☐ REFERENCE