

Garcia v Espinoza

2021 NY Slip Op 33361(U)

September 30, 2021

Supreme Court, Westchester County

Docket Number: Index No. 51603/2019

Judge: James W. Hubert

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
ELBA GARCIA,

Plaintiff,

Index No.: 51603/2019

-against-

DECISION & ORDER

OSCAR ESPINOZA,

Motion Seq. #1

Defendant.
-----X

Hubert, J.S.C.

This is an action to recover damages for personal injuries allegedly sustained by Plaintiff Elba Garcia as a result of a motor vehicle accident that occurred on May 22, 2018, at approximately 6:55 a.m. at the intersection of Aqueduct Street and North Highland Avenue in Ossining, New York.

Plaintiff alleges that she was driving eastbound on Aqueduct Street, approaching North Highland Avenue, which is a two-way roadway with two lanes of travel in each direction. Plaintiff states that as she approached the intersection, she slowed her vehicle and came to a complete stop at a stop sign. Plaintiff activated her left-turn signal, allegedly looked both ways on North Highland Avenue, and proceeded to turn left when she collided with Defendant Oscar Espinoza's vehicle. In a sworn affidavit, Plaintiff also states that she observed Defendant's vehicle approaching North Highland Avenue from Denny Street--a road opposite North Highland Avenue that is also controlled by a stop sign--and Defendant's vehicle proceeded straight through the stop sign without stopping, and struck her vehicle on the front driver's side.

At her deposition, Plaintiff testified that she first saw Defendant's vehicle when she was beginning to turn; that a portion of her vehicle had crossed the yellow line; and she braked and stopped her car in the intersection and was completely stopped when the collision occurred.

At his deposition, Defendant testified that he was driving on Denny Street, stopped at the stop sign intersecting with North Highland Avenue (opposite Aqueduct Street), saw no traffic, and turned left onto North Highland Avenue when “the lady hit me on the driver's side.”

On this motion, Plaintiff moves for partial summary judgment pursuant to CPLR § 3212 on the issue of liability against Defendant and for an Order striking Defendants’ first affirmative defense (culpable conduct) and second affirmative defense (failure to wear seat belt) pursuant to CPLR § 3211(b). In support of her motion, Plaintiff has submitted a copy of the pleadings, a certified copy of the police accident report, copies of both Plaintiff’s and Defendant’s deposition testimony, photographs of the subject intersection, photographs of the alleged damage to both vehicles involved in the accident, and a sworn affidavit attesting to the facts of the accident.

Plaintiff contends that Defendant’s liability for the subject collision is “crystal clear” since he “unquestionably” violated VTL §§ 1141 and 1172 in failing to yield the right of way to Plaintiff’s vehicle, which Plaintiff alleges was well within the middle of the intersection prior to the collision.

In order to make a prima facie showing of entitlement to judgment as a matter of law, the moving party must tender sufficient evidence to demonstrate the absence of any material issues of fact. *Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324, 508 N.Y.S.2d 923 (1986). The parties’ competing contentions must be viewed in a light most favorable to the non-moving party. *De Lourdes Torres v. Jones*, 26 N.Y.3d 742, 763, 27 N.Y.S.3d 468 (2016). If the moving party meets its burden, the burden shifts to the non-moving party to establish, through admissible evidence, the existence of disputed issues of material fact for trial. CPLR § 3212 (b); *Zuckerman v. New York*, 49 N.Y.2d 557, 560, 427 N.Y.S.2d 595 (1980). The non-moving party must produce evidence in the record and may not rely on conclusory statements or contentions. *Id.* Instead,

the opponent of a motion must lay bare affirmative proof sufficient to establish that real defenses exist warranting a trial. Summary judgment is a drastic remedy that should not be granted where there is any doubt as to the existence of a triable issue of fact, but “only the existence of a bona fide issue raised by evidentiary facts and not one based on conclusory or irrelevant allegations will suffice to defeat summary judgment.” *Rotuba Extruders, Inc. v. Ceppos*, 46 N.Y.2d 223, 231, 413 N.Y.S.2d 141 (1978).

Additionally, it is not the function of the court to make credibility determinations or findings of fact, but rather to identify material triable issues of fact. *Vega v. Restani Constr. Corp.*, 18 N.Y.3d 499, 505, 942 N.Y.S.2d 13, 16 (2012), citing *Sillman v. Twentieth Century Fox Film Corp.*, 3 N.Y.2d 395, 165 N.Y.S.2d 498 (1957). If the moving party fails to sustain its burden, the court need not address the sufficiency of the opposing party’s proof. *Grant v. 132 W. 125 Co., LLC*, 180 A.D.3d 1005, 120 N.Y.S.3d 345 (2d Dep’t 2020).

VTL § 1141 provides in relevant part, that “[t]he driver of a vehicle intending to turn to the left within an intersection. . . shall yield the right of way to any vehicle approaching from the opposite direction which is within the intersection or so close as to constitute an immediate hazard. VTL § 1172(a) provides that every driver of a vehicle approaching a stop sign shall stop at a clearly marked stop line.

A violation of the Vehicle and Traffic Law constitutes negligence as a matter of law. *Joaquin v. Franco*, 116 A.D.3d 1009, 985 N.Y.S.2d 131 (2d Dept 2014). A plaintiff is entitled to judgment as a matter of law on the issue of liability if he or she demonstrates that the sole proximate cause of an accident was the defendant driver's violation of VTL § 1141 in turning left directly into the path of the plaintiff's oncoming vehicle which was lawfully present in the intersection. See *Ahern v. Lanaia*, 85 A.D.3d 696, 924 N.Y.S.2d 802 (2011).

As noted above, in support of her motion for summary judgment, Plaintiff has submitted both her own deposition testimony as well as the Defendant's deposition testimony, which contain conflicting information as to the happening of the accident, including which vehicle entered the intersection first. Both Plaintiff and Defendant allege that they stopped at the respective stop signs, looked both ways, and saw no oncoming traffic prior to entering the intersection. Additionally, the certified police report, submitted by Plaintiff herself, indicates that "[b]oth vehicles were making left hand turns onto North Highland Ave at the same time and collided in the middle of North Highland Ave." Thus, Plaintiff has not established, *prima facie*, that she had the right-of-way. *See Gause v. Martinez*, 91 A.D.3d 595, 597, 936 N.Y.S.2d 272 (2d Dep't 2012)(denying summary judgment where one vehicle made a left turn in front of another and there was "conflicting testimony as to the facts surrounding the accident, including, but not limited to, the issue concerning who entered the intersection first").

Similarly, with respect to the Defendant's alleged violation of VTL § 1172, the Court notes that Plaintiff testified at her deposition that the Defendant failed to stop at the stop sign controlling Denny Street, and Defendant testified that he did stop at the stop sign. Thus, there is also a triable issue of fact with respect to the Defendant's alleged violation of VTL §1172. Plaintiff has therefore failed to meet her initial burden of establishing the absence of any triable issues of fact.

Accordingly, it is hereby:

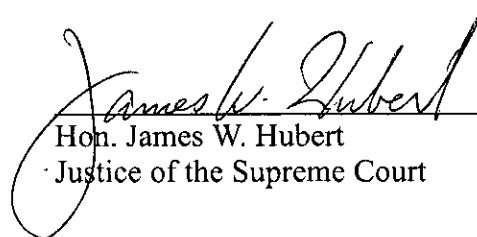
ORDERED, that Plaintiff's motion for partial summary judgment on the issue of liability is denied; and it is further

ORDERED, that Plaintiff's motion to dismiss Defendant's second affirmative defense is dismissed as there is no disputed issue of fact as to whether Plaintiff was wearing a seatbelt; and it is further

ORDERED, that Plaintiff's motion is otherwise denied.

The foregoing constitutes the Decision and Order of the Court.

Dated: White Plains, New York
September 30, 2021



Hon. James W. Hubert
Justice of the Supreme Court