

Cortez v Merolle

2021 NY Slip Op 33445(U)

June 15, 2021

Supreme Court, Orange County

Docket Number: Index No. EF004344-2019

Judge: Catherine M. Bartlett

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SUPREME COURT-STATE OF NEW YORK
IAS PART-ORANGE COUNTY

Present: HON. CATHERINE M. BARTLETT, A.J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

-----x
MIGUEL A. CORTEZ,

Plaintiff,

-against-

UMBERT J. MEROLLE,

Defendant.

To commence the statutory time period for appeals as of right (CPLR 5513 [a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

Index No. EF004344-2019
Motion Date: June 7, 2021
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The following papers numbered 1 to 4 were read on Plaintiff's motion for partial summary judgment on liability:

Notice of Motion - Affirmation / Exhibits	1-2
Affirmation in Opposition / Exhibit	3
Reply Affirmation	4

Upon the foregoing papers it is ORDERED that the motion is disposed of as follows:

A. Factual Background

This is a personal injury action arising out of a motor vehicle accident that occurred on January 7, 2019 at the intersection of Windsor Highway and Highwood Drive in the Town of New Windsor, New York. Plaintiff Miguel Cortez was traveling south on Windsor Highway. Defendant Umbert Merolle was traveling north on Windsor Highway. The accident occurred when Defendant attempted to turn left onto Highwood Drive.

Plaintiff testified that he was driving 40 miles per hour in a 40 m.p.h. zone when he saw the Defendant's vehicle, for the first time, suddenly entering his lane from the oncoming lane of traffic. Plaintiff braked hard, and within one second struck the right front portion of Defendant's vehicle.

At his deposition, Defendant testified:

Q What portion of your vehicle made contact with that other vehicle ?

A The front of my vehicle. (Tr. 22)

....

Q When was the first time that you saw the other vehicle before the impact ?

A Just before the impact.

Q How long, a split second before, a few seconds before –

A A couple of seconds before.

Q At the moment of the impact, where was your vehicle...?

A I was partially in the oncoming lane.

Q The front of your vehicle was partially in the oncoming lane.

A The front of my vehicle was in the oncoming lane.

Q As you were making the left turn ?

A While making the left turn. (Tr. 23)

....

Q Did you do anything in the operation of your motor vehicle to avoid the accident ?

A When I saw it, I tried to go back into – into the other lane. I just didn't have time.
(Tr. 28)

....

Q In your opinion, is there anything that the other vehicle could have done to avoid the impact ?

A I don't think so. I don't know. I mean it's tough to say. I didn't see him swerve. He didn't try to move to the side. He hit me straight on. He didn't – he didn't make a move to avoid the impact. (Tr. 31)

B. Legal Analysis

Vehicle and Traffic Law §1141 provides:

The driver of a vehicle intending to turn 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.

In *Yu Mei Liu v. Weihong Liu*, 163 AD3d 611 (2d Dept. 2018), driver Harris proceeding straight through an intersection had only one second to react when driver Liu attempted to turn left across oncoming traffic. The Second Department wrote:

“The driver of a vehicle intending to turn 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” (Vehicle and Traffic Law §1141). “The operator of a vehicle with the right-of-way is entitled to assume that the opposing driver will obey the traffic laws requiring him to yield” [cit.om.]. “Although a driver with a right-of-way also has a duty to use reasonable care to avoid a collision, ... a driver with the right-of-way who has only seconds to react to a vehicle which has failed to yield is not comparatively negligent for failing to avoid the collision” [cit.om.].

Id., 163 AD3d at 612. The Court held that Harris demonstrated *prima facie* entitlement to summary judgment by showing that “Liu violated Vehicle and Traffic Law §1141 when he made a left turn directly into their vehicle, and that this violation was the sole proximate cause of the subject accident, as Harris stated in his affidavit that he had only one second to react once Liu made a sudden left turn.” *Id.*, at 612-613.

A left-turning operator's failure to yield the right-of-way to an oncoming vehicle in violation of VTL §1141 constitutes negligence as a matter of law. Although the oncoming driver is obligated to use reasonable care to avoid a collision, he is entitled to anticipate that the operator turning left will obey traffic laws which required him to yield, and may not be deemed comparatively negligent when he is faced with an emergency and afforded only seconds to react to a vehicle that has unlawfully turned left into his path. *See, Rohn v. Aly*, 167 AD3d 1054, 1055-56 (2d Dept. 2018); *Yu Mei Liu v. Weihong Liu, supra*; *Giwa v. Bloom*, 154 AD3d 921, 922-923 (2d Dept. 2017); *Foley v. Santucci*, 135 AD3d 813, 813-814 (2d Dept. 2016); *Carroll-Batista v. Bennett*, 122 AD3d 661, 662 (2d Dept. 2014); *Simeone v. Cianciolo*, 118 AD3d 864, 865 (2d Dept. 2014); *Loch v. Garber*, 69 AD3d 814, 815-816 (2d Dept. 2010); *Moreno v. Gomez*, 58 AD3d 611, 612 (2d Dept. 2009); *Almonte v. Tobias*, 36 AD3d 636 (2d Dept. 2007); *Gabler v. Marly Building Supply Corp.*, 27 AD3d 519, 520 (2d Dept. 2006); *Cadeau v. Gregorio*, 104 AD3d 464, 464-465 (1st Dept. 2013).

In this case, the evidence indisputably demonstrates that Defendant violated VTL §1141. As Defendant attempted to turn left at the intersection across oncoming traffic, he collided in Plaintiff's lane with Plaintiff's oncoming vehicle. The fact that the collision occurred just a second or two after Defendant commenced his turn, when only the front portion of his vehicle had crossed over into Plaintiff's lane, unequivocally shows that Plaintiff's vehicle was "within the intersection or so close as to constitute an immediate hazard," and accordingly that Defendant violated Section 1141 by failing to yield the right-of-way.

Furthermore, there is no evidentiary basis for any finding that Plaintiff was comparatively negligent for failing to avoid the collision. Plaintiff was operating his vehicle within the speed limit. When Defendant suddenly entered his lane, Plaintiff had only a second to react, braked hard, but was unable to avoid contact with Defendant's vehicle. Contrary to Defendant's suggestion, Plaintiff was not comparatively negligent in failing to see Defendant's vehicle as it was approaching the intersection northbound on Windsor Highway before commencing the left turn. Plaintiff was entitled to assume that northbound traffic would not enter his lane, the southbound lane, without obeying the traffic laws requiring it to yield the right-of-way. Even if Plaintiff had looked over at the northbound lane as he was approaching the intersection and seen Defendant's vehicle, he would have been entitled to assume that Defendant would yield the right-of-way. When Defendant failed to do so, in violation of VTL §1141, it was too late for Plaintiff to take evasive measures. As a matter of law, Defendant's negligence in violating Section 1141 was the sole proximate cause of the accident.

It is therefore

ORDERED, that Plaintiff's motion for partial summary judgment on the issue of Defendant's liability is granted.

The foregoing constitutes the decision and order of the Court.

Dated: June 16, 2021 E N T E R
Goshen, New York



HON. CATHERINE M. BARTLETT, A.J.S.C.