Kaur v Coley
2021 NY Slip Op 33456(U)
June 30, 2021
Supreme Court, Suffolk County
Docket Number: Index No. 602522/2019
Judge: George Nolan
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SHORT FORM ORDER

INDEX No. 602522/2019
CAL. No. 202000811MV

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 55 - SUFFOLK COUNTY

PRESENT:

Hon. GEORGE M. NOLAN
Justice of the Supreme Court

MOTION DATE 3/4/21
ADJ. DATE
Mot. Seq. # 002 MD

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BALWINDER KAUR,

Plaintiff,

- against -

JEREMY R. COLEY,

Defendant.

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Upon the following papers read on this motion for summary judgment : Notice of Motion/ Order to Show Cause and supporting papers by defendant, dated January 20, 2021 ; Notice of Cross Motion and supporting papers ___; Answering Affidavits and supporting papers by plaintiff, dated February 24, 2021 ; Replying Affidavits and supporting papers by defendant, dated March 3, 2021 ; Other ___; it is

ORDERED that the motion by defendant Jeremy Coley seeking summary judgment dismissing the complaint is denied.

Plaintiff Balwinder Kaur commenced this action to recover damages for injuries he allegedly sustained as a result of a motor vehicle accident that occurred at the intersection of Pinelawn Road and North Service Road in the Town of Huntington on March 1, 2016. Plaintiff, by her complaint, alleges that the vehicle owned and operated by defendant struck the front driver's side of her vehicle as she was in the process of making a left turn from Pinelawn Road onto North Service Road when it failed to yield the right of way to her vehicle. At the time of the accident, plaintiff was traveling northbound on Pinelawn Road and defendant was traveling southbound on Pinelawn Road.

Defendant now moves for summary judgment contending that he did not breach any duty owed to plaintiff, and that his conduct was not the proximate cause of the subject accident. In particular, defendant argues that plaintiff failed to yield the right of way to his vehicle when she entered the intersection in violation of Vehicle and Traffic Law § 1141. In support of the motion, defendant submits

copies of the pleadings, the parties' deposition transcript, and an uncertified copy of the police accident report. Plaintiff opposes the motion on the grounds that defendant failed to meet his prima facie burden and that there are triable issue of fact as to the subject accident's happening.

A court's task on a motion for summary judgment is issue finding rather than issue determination (*see* ***Sillman v Twentieth Century Fox Film Corp.***, 3 NY2d 395, 165 NYS2d 498 [1957]), and it must view the evidence in the light most favorable to the party opposing the motion (*see* ***Boyce v Vazquez***, 249 AD2d 724, 671 NYS2d 815 [3d Dept 1998]). Therefore, in determining a motion for summary judgment, the facts alleged by the nonmoving party and all inferences that may be drawn are to be accepted as true (*see* ***Roth v Barreto***, 289 AD2d 557, 735 NYS2d 197 [2d Dept 2001]). In the first instance, the moving party bears the burden and must tender evidence sufficient to eliminate all material issues of fact (*see* ***Winegrad v New York Univ. Med. Ctr.***, 64 NY2d 851, 487 NYS2d 316 [1985]). However, 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 (***Rodriguez v City of New York***, 31 NY3d 312, 324, 76 NYS3d 898 [2018]). Once such showing has been made, the burden shifts to the nonmoving party to demonstrate the existence of material issues of fact (*see* ***Alvarez v Prospect Hosp.***, 68 NY2d 320, 508 NYS2d 923 [1986]). Mere conclusions and unsubstantiated allegations are insufficient to raise any triable issues of fact (*see* ***Zuckerman v City of New York***, 49 NY2d 557, 427 NYS2d 595 [1980]; ***Perez v Grace Episcopal Church***, 6 AD3d 596, 774 NYS2d 785 [2d Dept 2004]).

Since there can be more than one proximate cause of an accident (***Cox v Nunez***, 23 AD3d 427, 427, 805 NYS2d 604 [2d Dept 2005]), a defendant must establish that he did not owe plaintiff a duty of care and is free from fault in the happening of the subject accident to obtain summary judgment (*see* ***Flores v Westchester County Bee Line***, 186 AD3d 676, 126 NYS2d 922 [2d Dept 2020]; ***Boulos v Lerner-Harrington***, 124 AD3d 709, 2 NYS3d 526 [2d Dept 2015]). Vehicle and Traffic Law § 1141 states, in pertinent part, that "[a] 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" (*see* ***Gabler v Marly Bldg. Supply Corp.***, 27 AD3d 519, 813 NYS2d 120 [2d Dept 2006]). A driver with the right of way is entitled to anticipate that the driver of the other vehicle will obey the traffic laws that require him or her to yield the right of way (*see* ***Kucar v Town of Huntington***, 81 AD3d 784, 917 NYS2d 646 [2d Dept 2011]; ***Kann v Maggies Paratransit Corp.***, 63 AD3d 792, 882 NYS2d 129 [2d Dept 2009]; ***Berner v Koegel***, 31 AD3d 591, 819 NYS2d 89 [2d dept 2006]). However, a driver with the right of way has a duty to exercise reasonable care to avoid a collision with another vehicle already in the intersection (*see* ***Todd v Godek***, 71 AD3d 872, 895 NYS2d 861[2d Dept 2010]; ***Demant v Rochevet***, 43 AD3d 981, 842 NYS2d 74 [2d Dept 2007]). Further, a driver is negligent when an accident occurs because he or she failed to see that which through the proper use of his or her senses he or she should have seen (*see* ***Laino v Lucchese***, 35 AD3d 672, 827 NYS2d 249 [2d Dept 2006]; ***Bongiovi v Hoffman***, 18 AD3d 686, 795 NYS2d 354 [2d Dept 2005]; ***Bolta v Lohan***, 242 AD2d 356, 661 NYS2d 286 [2d Dept 1997]).

Plaintiff testified at an examination before trial that prior to the accident she made a left turn onto Pinelawn Road after exiting the parking lot of the Estee Lauder warehouse, her place of employment, that she entered into the right lane of Pinelawn Road, but immediately moved into the left lane to make a left turn onto North Service Road, and that she was traveling approximately 20 to 25 miles per hour.

She testified that there was no traffic light controlling her direction of travel at the intersection, and that as soon as she made a left turn onto North Service Road her vehicle was struck by defendant's vehicle. Plaintiff further testified that she did not see defendant's vehicle prior to the accident's occurrence, but that "his vehicle must have come from the back and fast," and that she realized she had been involved in an accident when her vehicle's airbags deployed, striking her in the face.

Defendant testified at an examination before trial that prior to the accident he was traveling straight on Pinelawn Road, heading home from work, that he was traveling in the left lane, and that he did not change lanes prior to the subject accident's occurrence. He testified that the traffic light was green as he approached the intersection, that his rate of speed was "probably less than 30 mph" as he approached the intersection, that he observed plaintiff's vehicle stopped at the red light on the opposite of Pinelawn Road in the turning lane as he approached the intersection, that the traffic light turned yellow as he was going through the intersection, and that his vehicle was struck once in the front driver's side, causing it to strike the guard rail on the southbound side of Pinelawn Road and the vehicle's airbags to deploy. Defendant further testified that he was unable to avoid the accident because he did not observe plaintiff's vehicle move from its stopped position at the red traffic light, and that he did not hear any horns blowing or tires screeching prior to the impact.

Here, although defendant submitted evidence that plaintiff failed to yield the right of way in violation of Vehicle and Traffic Law § 1141, he failed to establish his entitlement to judgment as a matter of law dismissing the complaint, since he did not demonstrate, prima facie, that plaintiff's failure to yield was the sole proximate cause of the subject accident, or that he was completely free from fault in the subject accident's occurrence (*see* ***Tornabene v Seickel***, 186 AD3d 645, 129 NYS3d 110 [2d Dept 2020]; ***Sirot v Troiano***, 66 AD3d 763, 886 NYS2d 504 [2d Dept 2009]; ***Nevarez v S.R.M. Mgt. Corp.***, 58 AD3d 295, 298, 867 NYS2d 431 [1st Dept 2008]). Moreover, "[a] driver who lawfully enters an intersection may still be found partially at fault for an accident if he or she fails to use reasonable care to avoid a collision with another vehicle in the intersection" (***Siegel v Sweeney***, 266 AD2d 200, 202, 697 NYS2d 317 [2d Dept 1999]). Thus, there are issues of fact as to whether defendant used reasonable care to avoid the collision (*see* ***M.M.T. v Relyea***, 177 AD3d 1013, 114 NYS3d 385 [2d Dept 2019]; ***Bullock v Calabretta***, 119 AD3d 884, 989 NYS2d 862 [2d Dept 2014]; ***Demant v Rochevert***, 43 AD3d 981, 842 NYS2d 74 [2d Dept 2007]). In light of the foregoing, the Court need not consider the sufficiency of the opposition papers (*see* ***Alvarez v Prospect Hosp.***, 68 NY2d 320, 508 NYS2d 923 [1986]; ***Volpetti v Yoon Kap***, 28 AD3d 750, 814 NYS2d 237 [2d Dept 2006]). Accordingly, defendant's motion for summary judgment dismissing the complaint is denied.

Dated: Jun 30, 2021

J.S.C.

HON. GEORGE NOLAN

____ **FINAL DISPOSITION** __X__ **NON-FINAL DISPOSITION**