

Appelbaum v Knapp

2021 NY Slip Op 33643(U)

March 3, 2021

Supreme Court, Orange County

Docket Number: Index No. EF 008693-2019

Judge: Robert A. Onofry

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This opinion is uncorrected and not selected for official publication.

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

Present: HON. ROBERT A. ONOFRY, J.S.C.

SUPREME COURT : ORANGE COUNTY

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DAVID M. APPELBAUM,
Plaintiff,

- against -

ISABEL M. KNAPP,
Defendant.

-----X

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. EF 008693-2019

DECISION AND ORDER

Motion Date: December 29, 2020

The following papers numbered 1 to 5 were read and considered on a motion by the Plaintiff, pursuant to CPLR § 3212, for summary judgment on the issue of liability.

Notice of Motion- O'Connor Affirmation- Appelbaum Affidavit-
Sotto Affidavit- Exhibits A-F 1-5

Upon the foregoing papers, it is hereby,

ORDERED, that the motion is granted.

Factual/Procedural Background

The Plaintiff David Appelbaum commenced this action to recover damages arising from a motor vehicle accident.

According to a police report of the accident, the Plaintiff's vehicle struck a vehicle being driven by the Defendant Isabel Knapp after the Defendant failed to stop at a stop sign and violated the Plaintiff's right of way.

Disclosure is complete.

The Plaintiff now moves for summary judgment on the issue of liability.

The motion is granted.

Discussion/Legal Analysis

A party seeking summary judgment bears the initial burden of establishing a *prima facie* entitlement to judgment as a matter of law by tendering competent evidence in admissible form sufficient to eliminate any triable, material issues of fact from the case. If the moving party fails to meet this burden, the papers submitted in opposition need not be considered. If the moving party makes such a *prima facie* showing, the burden shifts to the opposing party to demonstrate the existence of an issue of fact requiring a trial. *Phillip v. D & D Carting Co., Inc.*, 136 A.D.3d 18 [2nd Dept. 2015]; *Dempster v. Liotti*, 86 A.D.3d 169 [2nd Dept. 2011].

A violation of the Vehicle and Traffic Law constitutes negligence as a matter of law. *Adobea v. Junel*, 114 A.D.3d 818 [2nd Dept. 2014]. The driver with the right-of-way is entitled to anticipate that the other motorist will obey traffic laws which require him or her to yield. *Adobea v. Junel*, 114 A.D.3d 818 [2nd Dept. 2014].

Relevant to the case at bar, Vehicle and Traffic Law § 1142 provides: “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.”

To prevail on a motion for summary judgment on the issue of liability in a negligence case, the movant need no longer demonstrate that he or she was free from comparative fault.

Davis v. Commack Hotel, LLC, 174 A.D.3d 501 [2nd Dept. 2019].

Here, the Plaintiff submitted competent evidence in admissible form sufficient to demonstrate, *prima facie*, that the Defendant was negligent in the happening of the accident, to wit: that she violated Vehicle and Traffic Law § 1142.

In opposition, the Defendant failed to raise a triable issue of fact. Indeed, the Defendant did not oppose the motion.

Thus, the Plaintiff is granted summary judgment on the issue of liability.

Further, and based upon the foregoing, it appears that the case is trial ready. Thus, absent good cause shown, a trial on damages shall proceed as hereinafter set forth.

Accordingly, and for the reasons cited herein, it is hereby,

ORDERED, that the motion is granted; and it is further,

ORDERED that the parties are directed to appear for Jury Selection on Monday, April 19, 2021, at 9:30 a.m., at the Orange County Supreme Courthouse, 285 Main Street, Goshen, New York, for the purpose of conducting the in person damage phase of the trial; and it is further

ORDERED, that, consistent therewith, a separate trial order shall be issued by the Court to address various pre-trial issues including, *inter alia*, motions in limine and proposed jury instructions.

The foregoing constitutes the decision and order of the court.

Dated: March 3, 2021
Goshen, New York

ENTER



HON. ROBERT A. ONOFRY, J.S.C.

TO: O'CONNOR & PARTNERS, PLLC
Attorneys for the Plaintiff
255 Wall Street
Kingston, New York 12401

Pillinger Miller Tarallo LLP
Attorneys for the Defendant
Office & P.O. Address
555 Taxter Road, 5th Floor
Elmsford, New York 10523