

Israel v Lanning

2021 NY Slip Op 33718(U)

January 22, 2021

Supreme Court, Westchester County

Docket Number: Index No. 52265/2020

Judge: James W. Hubert

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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DAVID ISRAEL,

Plaintiff,

DECISION & ORDER

- against -

Index No. 52265/2020

MARTIN LANNING and MARY LANNING,

Motion Seq. #1

Defendants.

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Hubert, J.S.C.

This action involves a motor vehicle accident that occurred on March 11, 2017, on Route 172 at the northbound entrance ramp to I-684 in Bedford, New York. Plaintiff states that he was driving westbound on Route 172 when a jeep traveling eastbound on Route 172 suddenly turned left onto the entrance ramp to I-684, directly in front of his vehicle. The jeep was operated by Defendant Martin Lanning (“the Defendant”) and owned by Defendant Mary Lanning. Plaintiff states that he “slammed on his brakes” and turned hard to avoid a collision, but his vehicle nevertheless collided with the rear passenger side of the Jeep. Plaintiff further states that the force of the collision spun his vehicle around and the airbags deployed as a result of the impact.

On this motion, Plaintiff moves for an Order awarding partial summary judgment on the issue of liability pursuant to CPLR § 3212 and dismissing various of the Defendant’s affirmative defenses. Plaintiff argues that the responsibility for the collision lies squarely with the Defendant, and “there was nothing plaintiff could have done to avoid having his vehicle struck under the circumstances.” In support of his motion, Plaintiff relies on his own affidavit and a certified copy of the police report. In his affidavit, Plaintiff states, *inter alia*, that it was a bright and clear morning, visibility was excellent, and the roadway was dry, and that “without any

warning, a Jeep traveling eastbound on Route 172, initiated a left turn across [his] path of travel, in an attempt to access the northbound on-ramp of Interstate 684.”

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 nonmoving party to establish, through admissible evidence, that there are disputed issues of material facts 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 that are not credible. However, if the moving party fails to sustain its burden, the court need not address the adequacy or 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).

Plaintiff contends that Defendant violated various sections of the Vehicle & Traffic Law, including VTL §§ 1140, 1141 and 1163. VTL § 1141 provides 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.”

“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 or her to yield.” *Gause v. Martinez*, 91 A.D.3d 595, 596, 936 N.Y.S.2d 272 (2012). “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.” *Yelder v. Walters*, 64 A.D.3d 762, 764, 883 N.Y.S.2d 290 (2d Dep’t 2009)(citations omitted).

Here, Plaintiff has demonstrated, prima facie, that Defendant was negligent in violating VTL § 1141 by making a left turn into the path of oncoming traffic without yielding the right-of-way to Plaintiff. *See Ming-Fai Jon v. Wager*, 165 A.D.3d 1253, 87 N.Y.S.3d 82 (2d Dep’t 2018)(plaintiffs established prima facie entitlement to judgment as a matter of law by demonstrating that Defendant violated VTL § 1141 when she turned left directly into the path of plaintiff’s motorcycle); *Spratley v. Lafortune*, 176 A.D.3d 1247, 109 N.Y.S.3d 667 (2d Dep’t 2019)(defendant’s vehicle entered the intersection without yielding the right-of-way to plaintiff’s vehicle in violation of VTL § 1142(a), thereby striking plaintiff’s vehicle as it proceeded through the intersection).

In his affidavit in opposition, Defendant states that he was traveling eastbound on Route 172, and upon reaching the intersection with the northbound entrance ramp to I-684, the light was green in his direction, and further avers that he intended to make a left turn to enter I-684 northbound, and had almost completed his turn when he felt an impact at the rear passenger side wheel. Defendant further states: “Although I had looked straight down South Bedford Road [Route 172] prior to making the left turn, I did not see plaintiff’s vehicle prior to making the left turn.”

These facts do not raise an issue of fact in opposition to Plaintiff’s prima facie showing that Defendant violated VTL §1141. *Cf. Brodney v. Picinic*, 172 A.D.3d 673, 99 N.Y.S.3d 399 (2d Dep’t 2019)(defendant raised an issue of fact in opposition to plaintiff’s showing that she had

violated VTL § 1141 by showing that plaintiff's vehicle was "traveling toward her at such an excessive rate of speed that she was unable to avoid the impact").

Plaintiff also moves to dismiss Defendants' fourth, fifth, eighth, ninth, tenth, twelfth, fourteenth and fifteenth affirmative defenses. Defendant's fourth and fifth affirmative defenses, alleging culpable conduct of the Plaintiff, contributory negligence, assumption of risk, and failure to wear a seatbelt, are dismissed. Defendant has failed to raise a triable issue of fact with respect to any culpable conduct by the Plaintiff. The Court also notes that Plaintiff averred in his affidavit that he was wearing a seat belt. *See Rockman v. Brosnan*, 242 A.D.2d 695, 663 N.Y.S.2d 53 (2d Dep't 1997). Defendant's eighth, ninth, tenth, twelfth, and fifteenth affirmative defenses based on improper venue, statute of limitations, failure to state a cause of action, the emergency doctrine, and the actions of a third party are also dismissed on the grounds that there is no support in the record to substantiate these defenses, and Defendant has not otherwise raised triable issues of fact. With respect to Defendant's argument that this motion is premature since discovery is not complete, the Court notes that a trial readiness order has been entered in this case. This issue is therefore academic.

Accordingly, it is hereby:

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

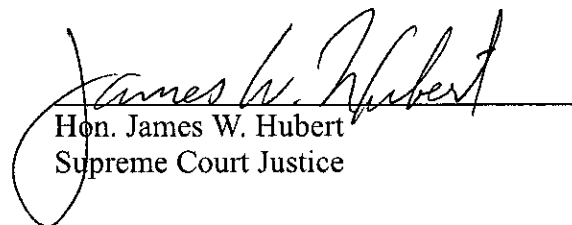
ORDERED, that Plaintiff's motion to dismiss Defendants' affirmative defenses is granted to the extent set forth above; and it is further

ORDERED, that Plaintiff shall serve a copy of this Order with notice of entry within thirty days; and it is further

ORDERED, that this matter shall be set down for trial for an assessment of damages only, as directed by the Court, in view of the ongoing public health emergency.

The foregoing constitutes the Decision & Order of this Court.

Dated: White Plains, New York
January 22, 2021


Hon. James W. Hubert
Supreme Court Justice