Torto v Matatov
2021 NY Slip Op 33973(U)
December 30, 2021
Supreme Court, Queens County
Docket Number: Index No. 704479/2019
Judge: Maurice E. Muir

Short Form Order

NEW YORK SUPREME COURT – QUEENS COUNTY

Present: HONORABLE MAURICE E. MUIR
Justice

GABRIELA G. TORTO,

Plaintiff,

-against-

LEV MATATOV,

Defendant.

IAS Part - 42

Index No.: 704479/2019

Motion Date: 8/26/21

Motion Cal. No. 31

Motion Seq. No. 1

The following electronically filed ("EF") documents read on this motion by Gabriela G. Torto ("Ms. Torto" or "plaintiff") for an Order pursuant to CPLR § 3212 granting partial summary judgment on the issue of liability against Lev Matatov ("Mr. Matatov" or "defendant"); and dismissing the defendant's affirmative defenses of culpable conduct on the part of the plaintiff.

	Papers Numbered
Notice of Motion-Affirmation- Exhibits-Service.....	EF 9 - 21
Affirmation in Opposition-Exhibits-Service.....	EF 24 - 28
Reply Affirmation-Service.....	EF 29 - 30

Upon the foregoing papers, it is ordered that this motion is determined as follows:

This is an action to recover damages for personal injuries allegedly sustained by Ms. Torto in a motor vehicle collision on June 6, 2017. As a result, on March 14, 2019, the plaintiff commenced the instant action against the defendant; and on or about April 23, 2019, issue was joined, wherein the defendant interposed an answer with three affirmative defenses (e.g., comparative negligence, collateral source rule and serious injury threshold, etc.). On June 22, 2021, the plaintiff filed the instant motion for summary judgment, pursuant to CPLR § 3212. In support of the instant motion, the plaintiff testified, at the deposition, that on June 6, 2017, at

approximately 7:00 p.m., she was traveling on 76th Avenue, through its intersection with 170th Street, in Queens, New York, without a stop sign for her direction of travel, when Mr. Matatov's vehicle, which maintained a stop sign for his direction of travel, failed to yield the right of way, entering the intersection and crashing into her vehicle -- on the driver's side, causing her vehicle to spin out of control. In opposition, Mr. Matatov testified, at the deposition, that on the day in question he had brought his vehicle to a stop at the stop sign; and while stopped at the stop sign for approximately three seconds, he looked both to his right and left to check for traffic and observed a parked white minivan on his right. Nonetheless, he was still able to see down 76th street on his right. Mr. Matatov also testified that he did not see any oncoming vehicles; and he also testified that he was in the middle of intersection when the accident took place.

It is well settled law that "[a] driver who fails to yield the right of way after stopping at a stop sign controlling traffic is in violation of Vehicle and Traffic Law § 1142(a) and is negligent as a matter of law" (*Balladares v. City of New York,* 177 AD3d 942 [2d Dept 2019]; *Laino v. Lucches*, 35 AD3d 672 [2d Dept 2006]; *see also Fuertes v. City of New York*, 146 AD3d 936, 937 [2d Dept 2017]; *Francavilla v. Doyno*, 96 AD3d 714, 715 [2d Dept 2012]). Further, the question of whether the driver stopped at the stop sign is not dispositive where the evidence establishes that the driver failed to yield after initially stopping (*see Kraynova v. Lowy,* 166 AD3d 600, 602 [2d Dept 2018]; *Hatton v. Lara*, 142 AD3d 1047, 1048 [2d Dept 2016]; *Lilaj v. Ferentinos*, 126 AD3d 947 [2d Dept 2015]; *Williams v. Hayes*, 103 AD3d 713, 714 [2d Dept 2013]). Moreover, "[a] driver with the right-of-way is entitled to anticipate that a motorist will obey traffic laws which require him or her to yield" (*Fuertes v. City of New York*, 146 AD3d at 937; *Luke v. McFadden*, 119 AD3d 533 [2d Dept 2014]; *Francavilla v. Doyno*, 96 AD3d at 714). "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 AD3d 762, 764 [2d Dept 2009] [citations omitted]; *see Giwa v. Bloom,* 154 AD3d 921, 921-922 [2d Dept 2017]; *Fuertes v. City of New York*, 146 AD3d at 937; *Bennett v. Granata*, 118 AD3d 652, 653 [2d Dept 2014]).

Here, the plaintiff established, prima facie, her entitlement to judgment as a matter of law by demonstrating that the defendant, who was faced with a stop sign at an intersection, negligently drove the vehicle into the intersection in which the plaintiff was traveling in her

vehicle, without yielding the right-of-way to the plaintiff, and that this was the sole proximate cause of the accident. The question of whether defendant stopped at the stop sign on 178th Street is not dispositive, since the evidence established that, even if he did stop, he failed to yield to the vehicle driven by plaintiff, who had the right-of-way. (*Fernandez v. American United Transportation, Inc.*, 177 AD3d 704 [2d Dept 2019]; *Kraynova v. Lowy*, 166 AD3d 600, 602 [2d Dept 2018]; *Fuertes v. City of New York*, 146 AD3d at 936, 937 [2d Dept 2017]; *Hatton v. Lara*, 142 AD3d 1047, 1048 [2d Dept 2016]). As discussed above, pursuant to VTL §1142(a), "a driver entering an intersection controlled by a stop sign must yield the right-of-way to any other vehicle that is already in the intersection or that is approaching so closely as to constitute an immediate hazard." As a general matter, a driver who fails to yield the right-of-way after stopping at a stop sign is in violation of VTL §1142(a) and is negligent as a matter of law (*see Balladares v. City of New York,* 177 AD3d 942 [2d Dept 2019]; *Hunt v. New York City Transit Authority*, 166 AD3d 735 [2d Dept 2018]; *Fernandez v. American United Transportation, Inc.*, 177 AD3d 704 [2d Dept 2019]).

Moreover, the plaintiff has established her entitlement to strike a portion of the defendant's first affirmative defense. "CPLR § 3211(b), provides that '[a] party may move for judgment dismissing one or more defenses, on the ground that a defense is not stated or has no merit.' When moving to dismiss, the plaintiff bears the burden of demonstrating that the affirmative defenses 'are without merit as a matter of law because they either do not apply under the factual circumstances of [the] case, or fail to state a defense'" (*Shah v. Mitra*, 171 AD3d 971 [2d Dept 2019], quoting *Bank of Am., N.A. v. 414 Midland Ave. Assoc., LLC*, 78 AD3d 746, 748 [2d Dept 2010]). On a motion pursuant to CPLR § 3211(b), the court should apply the same standard it applies to a motion to dismiss pursuant to CPLR § 3211(a)(7), and the factual assertions of the defense will be accepted as true. "Moreover, if there is any doubt as to the availability of a defense, it should not be dismissed" (*Shah v. Mitra*, 171 AD3d 971 [2d Dept 2019], quoting *Wells Fargo Bank, N.A. v. Rios*, 160 AD3d 912, 913 [2d Dept 2018]). Here, the court finds that the plaintiff has demonstrated that the defendant's first affirmative defense based upon culpable conduct, comparative negligence, and assumption of the risk lacks merit. As discussed, 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 AD3d 762, 764 [2d Dept 2009]; *Giwa v. Bloom,* 154 AD3d 921, 921-922 [2d Dept 2017]; *Fuertes v. City of New York*, 146 AD3d at 937; *Bennett v. Granata*, 118 AD3d 652, 653 [2d Dept 2014]).

Accordingly, it is hereby

ORDERED that branch of plaintiff's motion for summary judgment as to liability, pursuant to CPLR § 3212, is granted; and it is further,

ORDERED that branch of plaintiff's motion to strike the defendant's first affirmative defense is granted only to the extent that culpable conduct, comparative negligence, and assumption of the risk are dismissed not plaintiff's failure to wear a seatbelt; and it is further,

ORDERED that plaintiff shall serve a copy of this decision and order with notice of entry upon the defendant on or before January 31, 2022.

The foregoing constitutes the decision and order of the court.

Dated: December 30, 2021
Long Island City, New York

Maurice E. Muir

MAURICE E. MUIR, J.S.C.