

Espinal v Maye

2021 NY Slip Op 33982(U)

April 28, 2021

Supreme Court, Queens County

Docket Number: Index No. 715846/2019

Judge: Chereé A. Buggs

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Short Form Order

NEW YORK SUPREME COURT-QUEENS COUNTY

Present: **HONORABLE CHEREÉ A. BUGGS**
Justice

IAS PART 30

FILED

**4/29/2021
10:16 AM**

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DILEXIS DEL CARMEN ESPINAL,

Index No.: 715846/2019

Plaintiff,

Motion
Date: April 28, 2021

**COUNTY CLERK
QUEENS COUNTY**

-against-

Motion Cal. No.: 6

DARRYLE MAYE and RELIANT
TRANSPORTATION INC.,

Motion Sequence No.: 3

Defendants.
-----X

The following efile papers numbered 30-37, 41-42, 44-45 submitted and considered on this motion by plaintiff Dilexis Del Carmen Espinal (hereinafter "Espinal") seeking an Order pursuant to Civil Practice Law and Rules ("CPLR") 3212 granting partial summary judgment on the issue of liability against defendants Darryle Maye (hereinafter "Maye") and Reliant Transportation, Inc. (hereinafter "Reliant") herein; and for such other and further relief as may be just, proper and equitable.

Papers
Numbered

Notice of Motion-Affidavits-Exhibits.....	EF 30-37
Affirmation in Opposition-Affidavits-Exhibits.....	EF 41-42
Reply Affirmation-Affidavits-Exhibits.....	EF 44-45

Plaintiff's motion is granted as follows:

This personal injury action was commenced by Espinal with the filing of a summons and verified complaint on September 16, 2019. Espinal claimed that she sustained serious injuries in a motor vehicle accident which occurred on October 4, 2018 at the intersection of Sutphin Boulevard and Archer Avenue, County of Queens, State of New York due to the negligence of the defendants in, among other things, the operation and ownership of their vehicle. Maye and Reliant appeared in the action with the filing of a verified answer with affirmative defenses on October 29, 2019. As a second affirmative defense Maye and Reliant alleged that "any injuries sustained by the plaintiff was caused solely and wholly by reason of the carelessness and negligence of the plaintiff in that she did not take the usual necessary and proper precaution for her own safety and plaintiff was otherwise negligent and careless in the premises." As a third affirmative defense, Maye and Reliant asserted

that “whatever injuries and/or damages were sustained by the plaintiff at the time and place alleged in the complaint, were due in whole or in part as a result of the assumption of risk (primary and/or express and/or implied) comparative negligence, contributory negligence and culpable conduct of the plaintiff, and that such negligence, conduct and risk assumption reduces, mitigates and/or bars plaintiff’s recovery.” As a fourth affirmative defense, Maye and Reliant denied any liability, and argued that in accordance with CPLR Articles 14 and 16, if they are found responsible, “plaintiff’s damages were caused by her own culpable conduct and/or the culpable conduct and/or acts of others.”

Now, Espinal moves for partial summary judgment pursuant to CPLR 3212 on the issue of liability. In support of the motion, Espinal submitted the pleadings, party deposition transcripts with marked exhibits, and a police report. A Note of Issue has not been filed.

Espinal gave virtual sworn testimony on April 23, 2020. She testified that on the date of the accident, she was seatbelted, driving her vehicle, a 2006 Honda Odyssey, with her two daughters inside. She described the intersection where the accident happened. The accident occurred on Sutphin Boulevard and 91st Street, Queens. She testified that prior to the accident she was traveling on Sutphin Boulevard headed toward Jamaica Avenue. There is a traffic light at the intersection. Her vehicle was stopped at the intersection due to the red traffic light and traffic ahead of her as well as other vehicles, when the vehicle owned by Reliant and driven by Maye came into contact with her vehicle in the rear. The other vehicle was described as a full size bus. Espinal asserted that her vehicle was stopped for at least 30 seconds prior to the other vehicle coming into contact with her vehicle.

Maye testified in sum and substance at his virtual deposition held on November 16, 2020, that at the time of the accident, he was working for Reliant driving a shuttle bus which transported students from Queens College to the Long Island Railroad Station located near the aforementioned intersection. While attempting to make a left-hand turn at the aforementioned intersection, he came into contact with Espinal’s vehicle, striking it in the rear. He stated that the Honda minivan was stopped with cars in front of it, which were stopped for the traffic light ahead, which was red. He stated that the minivan had crossed through the intersection but it had to stop in the crosswalk due to traffic and the red light. Maye attempted to make a wide left turn to the right of the minivan however he stated the back wheel of the bus hit the rear of the other vehicle.

Law and Application

On a motion for summary judgment, the party moving for summary judgment must establish the entitlement to judgment as a matter of law by tendering evidence in admissible form, eliminating any material triable issues of fact from the case. (*Alvarez v Prospect Hospital*, 68 NY2d 320 [1986]; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851 [1985].) In determining a motion for summary judgment, evidence must be viewed in a light most favorable to the nonmoving party, and all reasonable inferences must be resolved in favor of the nonmoving party (*see Adams v Bruno*, 124 AD3d 566 [2d Dept 2015]). Summary judgment eliminates cases from the Court’s trial calendar

which can be properly resolved by the Court as a matter of law (*Andre v Pomeroy*, 35 NY2d 361 [1974]).

“[T]o be entitled to summary judgment on the issue of liability, a plaintiff is no longer required to show freedom from comparative fault in establishing his or her prima facie case” (*Heard v Schade*, 172 AD3d 1335 [2d Dept 2019]; *see Rodriguez v City of New York*, 31 NY3d 312 [2018]; *Edgerton v City of New York*, 160 AD3d 809 [2d Dept 2018]). Under Vehicle and Traffic Law §1129(a), a driver of a motor vehicle must not follow another vehicle so closely than is reasonable and prudent under the existing traffic conditions. “A rear-end collision with a stopped or stopping vehicle creates a prima facie case of negligence with respect to the operator of the moving vehicle and imposes a duty on the operator of the moving vehicle to come forward with an adequate non-negligent explanation for the accident” (*Shirman v Lawal*, 69 AD3d 838 [2d Dept 2010]; *see also Samouhi v Retamales*, 180 AD3d 1099 [2d Dept 2020]; *Sayed v Murray*, 109 AD3d 464 [2d Dept 2013]).

New York State Vehicle and Traffic Law section 1141 states the following:

“Vehicle turning left. The driver of a vehicle intending to turn to the left within an intersection or into an alley, private road, or driveway 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.”

New York State Vehicle and Traffic Law section 1163(a) states the following:

“Turning movements and required signals. No person shall turn a vehicle at an intersection unless the vehicle is in proper position upon the roadway as required in section eleven hundred sixty, or turn a vehicle to enter a private road or driveway, or otherwise turn a vehicle from a direct course or move right or left upon a roadway unless and until such movement can be made with reasonable safety. No person shall so turn any vehicle without giving an appropriate signal in the manner hereinafter provided.”

Upon the Court’s review of the documentary evidence submitted by Espinal, the Court finds that she established her entitlement to judgment as a matter of law with her factual showing that defendant driver Maye’s negligent operation of his vehicle was the proximate cause of the accident (*see Zuckerman v City of New York*, 49 NY2d 557 [1980]; *Rodriguez v City of New York*, 31 NY3d 312 [2018]). Espinal demonstrated that the Maye attempted to make a left turn at the aforementioned intersection when it was not reasonably safe to do so, violating Vehicle Traffic Law sections 1129, 1141 and 1163(a) (*see generally Jung v Glover*, 169 AD3d 782 [2d Dept 2019]). Maye was negligent in failing to see that which he should have seen under the circumstances, and he was required to ascertain that traffic was clear before attempting to make a left turn, thus Maye

was the sole proximate cause of the accident (*see Lebron v Mensah*, 161 AD3d 973 [2d Dept 2018]; *compare Katikireddy v Espinal*, 137 AD3d 866 [2d Dept 2016].)

Maye and Reliant submitted opposition to the motion, arguing that Espinal was comparatively at fault because her vehicle was in the cross-walk when Maye was attempting to make the left-turn. Maye and Reliant asserted that Espinal interfered with Maye's ability to execute the left turn. The Court finds the opposition failed to demonstrate a triable issue of fact. Maye testified that he saw Espinal's vehicle stopped in the cross-walk and still attempted to make the left turn, albeit unsuccessfully, causing the accident. Maye also testified that Espinal's vehicle was stopped in the cross-walk due to traffic ahead of it and the red light, which is why when he did not see her vehicle move up, he attempted to make the wide left turn on the side of Espinal's vehicle. Although not specifically requested in the papers, the Court searches the record, and grants such further relief, and Maye and Reliant's third and fourth affirmative defenses which are related to Espinal's comparative fault/culpable conduct are dismissed.

Therefore, plaintiff's motion for partial summary judgment pursuant to CPLR 3212 on the issue of liability is granted, and defendants' third and fourth affirmative defenses are dismissed. Upon the completion of discovery on the issue of damages, the filing of a Note of Issue and Certificate of Readiness, along with the appropriate fees, this matter shall proceed to trial on the issue of damages only.

The foregoing constitutes the decision and Order of the Court.

Dated: April 28, 2021



Hon. Chereé A. Buggs, JSC

FILED

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**COUNTY CLERK
QUEENS COUNTY**