

Gray v Lopez

2022 NY Slip Op 31252(U)

January 18, 2022

Supreme Court, Suffolk County

Docket Number: Index No. 620760/2016

Judge: Linda Kevins

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SHORT FORM ORDER

INDEX No. 620760/2016

CAL. No. _____

**SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 29 - SUFFOLK COUNTY**

P R E S E N T:

HON. LINDA KEVINS
Justice of the Supreme Court

MOTION SUBMIT DATE: 09/07/21
MOT. SEQ. # 004 - MD
MOT. SEQ. # 005 - XMotD

-----X

JEFFREY S. GRAY,
Plaintiff,

- against -

JUAN LOPEZ, EDWIN BARRERA as
ADMINISTRATOR OF THE ESTATE OF
ARQUIMEDES A. BARRERA, MAYRA Y.
MADRID RODRIGUEZ, JOSE E. MADRID.

Defendants.

-----X

Upon the following papers e-filed and read on this motion for summary judgment : Notice of Motion and supporting papers by defendants Rodriguez and Madrid, dated May 4, 2021 ; Answering Affidavits and supporting papers by defendant Lopez,, dated June 24, 2021; Replying Affidavits and supporting papers by Rodriguez and Madrid, dated July 1, 2021; Notice of Cross Motion and supporting papers by plaintiff, dated July 1, 2021; Answering Affidavits and supporting papers by defendants Rodriguez and Madrid, dated July 6, 2021; by defendant Lopez, dated July 12, 2021; Other _____; ~~(and after hearing counsel in support and opposed to the motion)~~ it is,

ORDERED that the motion (seq. 004) by defendants Mayra Madrid Rodriguez and Jose Madrid and the cross-motion (seq. 005) by plaintiff are consolidated for the purposes of this determination; and it is further

ORDERED that the motion (seq. 004) by defendants Mayra Madrid Rodriguez and Jose Madrid for an order granting them summary judgment dismissing the complaint as against them is denied; and it is further

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ORDERED that plaintiff's cross motion (seq. 005) for an order granting him partial summary judgment on the issue of liability against defendant Juan Lopez is granted; and it is further

ORDERED that, if applicable, the movant is directed to promptly serve upon the Suffolk County Clerk, notice pursuant to CPLR §8019 [c] together with a copy of this Order and payment of any required fees; and it is further

ORDERED that upon Entry of this Order, plaintiff is directed to promptly serve a copy of this Order with Notice of Entry upon all parties and to promptly file the affidavits of service with the Clerk of the Court.

This is an action to recover damages for personal injuries allegedly sustained by plaintiff as a result of a motor vehicle accident that occurred on September 26, 2016 at approximately 6:00 p.m. The accident allegedly happened when a vehicle driven by defendant Juan Lopez collided with the rear of plaintiff's vehicle causing it to be pushed into a vehicle driven by defendant Mayra Madrid Rodriguez. Initially, the Court notes that the undersigned issued an order on April 26, 2021 substituting defendant Edwin Barrera as administrator of the estate of Arquimedes Barrera, and that prior to same, the motion by defendants Rodriguez and Madrid for summary judgment was denied without prejudice to renew upon substitution.

Defendants Mayra Madrid Rodriguez and Jose Madrid now renew their motion for summary judgment dismissing the complaint as against them on the grounds that the driver, Mayra Madrid Rodriguez, did not operate her vehicle in an unreasonable manner and she was not a proximate cause of the subject accident or plaintiff's alleged injuries. In support of the motion, Rodriguez submits a statement of material facts, copies of the pleadings, the transcripts of deposition testimony of the parties and a police accident report. The Court notes that the police accident report submitted by the moving defendants is not certified, nor does the police officer state that he witnessed the accident. Consequently, the police report constitutes hearsay and is, thus, inadmissible (*see Ganchrow v Kremer*, 157 AD3d 771 69 NYS 3d 352 [2d Dept 2018]; *Jiang-Hong Chen v Heart Tr., Inc.*, 143 AD3d 945, 39 NYS3d 504 [2d Dept 2016]; *Allstate Ins. Co. v Ramlall*, 132 AD3d 617, 17 NYS3d 308 [2d Dept 2015]; *Lacagnino v Gonzalez*, 306 AD2d 250, 760 NYS2d 533 [2d Dept 2003]).

It is well settled that a party moving for summary judgment must make prima facie showing of entitlement to judgment as a matter of law, offering sufficient evidence to demonstrate the absence of any material issues of fact (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 508 NYS2d 923 [1986]; *Zuckerman v City of New York*, 49 NY2d 557, 427 NYS2d 595 [1980]). Once such a showing has been made, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 508 NYS2d 923; *Zuckerman v City of New York*, 49 NY2d 557, 427 NYS2d 595).

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A defendant moving for summary judgment in a negligence action has the burden of establishing, prima facie, that he or she was not at fault in the happening of the subject accident (*Martinez v Allen*, 163 AD3d 951, 82 NYS3d 130 [2d Dept 2018]; *Miller v United Parcel Service, Inc.*, 131 AD3d 1023, 16 NYS3d 265 [2d Dept 2015]; *Boulos v Lerner-Harrington*, 124 AD3d 709, 2 NYS3d 526 [2d Dept 2015]). “There can be more than one proximate cause of an accident” (*Cox v Nunez*, 23 AD3d 427, 427, 805 NYS2d 604 [2d Dept 2005]), and it is generally for the trier of fact to determine the issue of proximate cause (*Kalland v Hungry Harbor Assoc., LLC*, 84 AD3d 889, 922 NYS2d 550 [2d Dept 2011]).

Plaintiff testified that on the date of the accident he was driving on Stein Drive at a rate of speed of 30 m.p.h., and that he did not know if he was traveling north or south. He testified that Stein Drive has two lanes of travel and that one is for northbound traffic and the other lane is for southbound traffic. He testified that he observed a reddish SUV approaching from the opposite direction on Stein Drive approximately 24 feet away. Plaintiff testified that there are no traffic signals on Stein drive, but there is a stop sign on Oklahoma Avenue, and that he did not observe a white Tacoma truck, now known to be defendant Lopez’ vehicle, as he was driving through the intersection. He testified that he felt an impact to the rear-driver’s side of his vehicle causing the front of his vehicle to move to the left and cross over the opposite lane of travel where it struck the reddish SUV, now known to be the vehicle driven by defendant Mayra Madrid Rodriguez. Plaintiff testified that the front of his vehicle struck the driver and passenger door of the Rodriguez vehicle, and that it seemed to be driving at the same rate of speed that he was traveling, which he testified to as 30 m.p.h.

Defendant Juan Lopez testified that on the date of the accident he was driving a white Tacoma truck that was owned by decedent Barrerra, and he was traveling westbound on Oklahoma Avenue and stopped his vehicle at a stop sign at the intersection of Stein Drive. He testified that Oklahoma Avenue has two lanes of travel and that one is for westbound traffic and one is for eastbound traffic. Lopez testified that he stopped his vehicle three feet behind the white line in front of the stop sign for approximately 20 seconds before proceeding, and that his truck struck the left rear of a vehicle driven by plaintiff which was approximately six to seven feet from the stop sign. He testified that after the impact, plaintiff’s vehicle stopped and then moved to the right and struck another vehicle that was approaching in the opposite direction on Stein Drive. Defendant Lopez testified that he did not observe plaintiff’s vehicle prior to the accident and that before he drove away from the stop sign, he was looking straight ahead which he testified to as being east.

Defendant Mayra Madrid Rodriguez testified that on the date of the accident she was driving a vehicle owned by her brother, Jose Madrid, a beige SUV, and she was traveling on Stein Drive at a rate of speed of 30 m.p.h., but she did not know which direction she was traveling in. She testified that she observed another vehicle coming from the opposite direction on Stein Drive and a white vehicle on Oklahoma Avenue before the accident happened, and that they were approximately four car lengths away. Rodriguez testified that she did not know the

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rate of speed that plaintiff's vehicle was traveling, and that she did not know if the vehicle on Oklahoma Avenue stopped at the stop sign. Rodriguez testified that her vehicle was struck by plaintiff's vehicle, and that the accident happened so fast that she could not describe anything more.

The testimony of the parties fails to eliminate triable issues of fact, as none of the parties can even testify to their direction of travel, and this is not a clear case of a rear end collision involving multiple vehicles stopped in front of each other. This Court is unable to determine how the accident happened so as to eliminate any culpability with respect to Rodriguez. Accordingly, the motion by Rodriguez for summary judgment dismissing the complaint as against her is denied.

Plaintiff cross-moves (seq. 005) for an order granting him summary judgment on the issue of liability as against defendant Juan Lopez and refers to all of the submissions utilized by Rodriguez in her motion for summary judgment. Plaintiff also seeks an order dismissing the affirmative defenses by a plaintiff in another action which is no longer consolidated with the instant action, as the order consolidating the two actions was vacated by decision of the undersigned, dated May 28, 2019. Accordingly, that branch of the motion is denied.

The Vehicle and Traffic Law establishes standards of care for motorists, and an unexcused violation of such standards of care constitutes negligence per se (*see Barbieri v Vokoun*, 72 AD3d 853, 900 NYS2d 315 [2d Dept 2010]; *Coogan v Torrisi*, 47 AD3d 669, 849 NYS2d 621 [2d Dept 2008]; *Dalal v City of New York*, 262 AD2d 596, 692 NYS2d 468 [2d Dept 1999]). Vehicle and Traffic Law §§ 1172 (a) and 1142 (a) require a driver of a motor vehicle approaching a stop sign to stop and “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.” 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 (*see Odumbo v Perera*, 27 AD3d 709, 813 NYS2d 462 [2d Dept 2006]). Generally, a driver who has the right of way is entitled to anticipate that other drivers will obey traffic laws which require him or her to yield (*Romero v Brathwaite*, 154 AD3d 894, 62 NYS3d 170 [2d Dept 2017]; *Yelder v Walters*, 64 AD3d 762, 883 NYS2d 290 [2d Dept 2009]).

Here, it is undisputed that Lopez' lane of travel was governed by a stop sign which required him to stop and yield, and that plaintiff's vehicle had the right of way when the accident happened. Furthermore, Lopez testified that he did not look to the right or look to the left before driving away from the stop sign.

Plaintiff's submissions are sufficient to establish, prima facie, his entitlement to judgment as a matter of law on the issue of negligence with respect to defendant Lopez (*see Motta v Gomez*, 161 AD3d 725, 72 NYS3d 840 [2d Dept 2018]; *Singh v Avis Rent A Car Sys., Inc.*, 119 AD3d 768, 989 NYS2d 363 [2d Dept 2014]; *Markesinis v Jaquez*, 106 AD3d 961, 965 NYS2d

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363 [2d Dept 2013]). Therefore, the burden shifts to the opposing parties to proffer evidence in admissible form sufficient to raise a triable issue of fact (CPLR 3212 [b]; *Zuckerman v City of New York*, 49 NY2d 557, 427 NYS2d 595).

In opposition, Lopez submits an affirmation by counsel. It is well settled that an affirmation of an attorney who lacks personal knowledge of the facts has no probative value (*see Cullin v Spiess*, 122 AD3d 792, 997 NYS2d 460 [2d Dept 2014]). To defeat a motion for summary judgment, a party opposing such motion must lay bare his proof, in evidentiary form. Rather than submitting an affidavit by defendant Lopez, defense counsel merely submits his own affirmation. The Court notes that the opposition submitted by defendants Rodriguez and Madrid contains an affirmation by their counsel wherein counsel states that she does not object to liability being imposed against Lopez. Accordingly, plaintiff's cross-motion for summary judgment on the issue of liability against defendant Juan Lopez is granted.

Anything not specifically granted herein is hereby denied.

The foregoing constitutes the decision and **Order** of the Court.



LINDA KEAVINS, JSC

Dated: 1/18/22

____ FINAL DISPOSITION X NON-FINAL DISPOSITION