

Mangasaryan v Palomino

2022 NY Slip Op 31392(U)

April 28, 2022

Supreme Court, New York County

Docket Number: Index No. 153314/2020

Judge: James G. Clynnes

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. JAMES G. CLYNES PART 22M

Justice

-----X INDEX NO. 153314/2020

ARTUR MANGASARYAN, Plaintiff, MOTION DATE 04/08/2021, 05/12/2021

- v -

MOTION SEQ. NO. 001 002

DONALD PALOMINO, NAVJOT SINGH, UPPER LEFT GLOBAL INC.

DECISION + ORDER ON MOTION

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 13, 14, 15, 16, 17, 18, 20, 22, 23, 25, 26, 27, 28, 39, 40

were read on this motion to/for JUDGMENT - SUMMARY

The following e-filed documents, listed by NYSCEF document number (Motion 002) 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 41, 42, 43

were read on this motion to/for JUDGMENT - SUMMARY

Upon the foregoing documents, plaintiff's motion for summary judgment on liability only (Motion Sequence #001) and the motion by defendant Donald Palomino ("Palomino") for summary judgment in his favor against defendants Navjot Singh ("Singh") and Upper Left Global Inc. ("Upper Left") and dismissal of the complaint and cross claims against him are consolidated for decision and decided as follows:

Plaintiff seeks recovery for injuries sustained as a result of a motor vehicle accident that occurred between a vehicle operated by Palomino, in which plaintiff was a passenger, and a vehicle operated by Singh and owned by Upper Left, at the intersection of Nassau and John Streets in New York, New York on June 12, 2017. By prior court order, this action shall share joint trial with the action Donald Palomino v Navjot Singh and Upper Left Global, Inc., Index 151505/019, which is also pending in this court.

Vehicle and Traffic Law ("VTL") 1140, which relates to vehicles approaching or entering an intersection, provides that the driver of a vehicle approaching an intersection shall yield the right of way to a vehicle which has entered the intersection from a different highway (VTL 1140).

VTL 1142 (a) provides, in pertinent part, "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" (VTL 1142 [a]).

VTL 1172 (a) provides, in pertinent part, "Except when directed to proceed by a police officer, every driver of a vehicle approaching a stop sign shall stop at a clearly marked stop line, but if none, then shall stop before entering the crosswalk on the near side of the intersection, or in the event there is no crosswalk, at the point nearest the intersecting roadway where the driver has a view of the approaching traffic on the intersecting roadway before entering the intersection and the right to proceed shall be subject to the provisions of section eleven hundred forty-two" (VTL 1172 [a]).

When a driver, who approaches an intersection with a stop sign, fails to yield the right of way to another vehicle who approaches the same intersection from another street without a traffic control device, he violates VTL 1140 and is thus guilty of negligence as a matter of law." (*Nevarez v S.R.M. Mgt Corp.*, 58 AD3d 295 [1st Dept 2008]). "A driver with the right of way who has only seconds to react to a vehicle which has failed to yield is not comparatively at fault for failing to avoid the collision" (*Yelder v Walters*, 64 AD3d 462 [2d Dept. 2009]; *Barbato v Maloney*, 94 AD3d 1028 [2d Dept. 2012]).

Plaintiff Passenger's Motion for Summary Judgment on Liability (Motion Sequence #001)

Plaintiff's submission which includes an affidavit in which he avers that he was a front seat passenger in a vehicle operated by defendant Palomino; that prior to the accident the vehicle was traveling on Nassau Street; that as the vehicle entered the intersection of Nassau Street and John Street it was struck by the vehicle operated by Singh and owned by Upper Left; that there was a stop sign on John Street at its intersection with Nassau Street; that the vehicle operated by Singh did not stop at the stop sign on John Street; and that as plaintiff as a passenger bears no culpability for the accident, established that plaintiff is free from liability in the subject accident.

Plaintiff's affidavit established that as an innocent passenger he is entitled to summary judgment on the issue of liability (*See Mello v. Narco Cab Corp.*, 105 AD3d 634, 635 [1st Dept 2013]). Plaintiff's affidavit also established that the vehicle operated and owned by defendants

Singh and Upper Left did not stop at the stop sign on John Street and proceeded into the intersection with Nassau Street.

Singh and Upper Left submitted an attorney affirmation in opposition in which they contend that plaintiff did not establish prima facie negligence against any of the defendants and that therefore plaintiff is only entitled to a finding that plaintiff is free from culpable conduct on the issue of liability.

Palomino submitted opposition which includes an affidavit from Palomino, in which he avers that he was operating a vehicle on Nassau Street with plaintiff as a passenger; that he was traveling at a speed of 5-10 miles per hour when he approached the intersection of Nassau Street and John Street; that both Nassau Street and John Street are one-way streets; that at the intersection of Nassau Street and John Street there are no traffic controls for vehicles traveling on Nassau Street and there are stop signs posted on both sides of the street for vehicles traveling on John Street; and that as Palomino entered the intersection of John Street he saw a vehicle approaching from John Street in his peripheral vision; that Palomino's vehicle was more than one quarter of the way through the intersection when he observed the codefendants' vehicle out of his peripheral vision; that he steered to the right to avoid impact but was unable to do so; and that the front of the vehicle operated by Singh and owned by Upper Left struck the driver's side front fender of Palomino's vehicle. Palomino contends that his affidavit establishes prima facie negligence against Singh and Upper Left and that plaintiff has not established prima facie negligence against him. Palomino contends that any order granting summary judgment on liability to plaintiff should be limited to summary judgment on liability in favor of plaintiff and Palomino and against defendants Singh and Upper Left, for failure of Singh's vehicle to stop at the stop sign and to yield to Palomino's vehicle who had the right of way or limited to a finding that plaintiff is free from culpable conduct on the issue of liability.

Plaintiff submitted an attorney affirmation in further support of his motion in reply to the opposition papers submitted by Singh and Upper Left. Plaintiff also submitted an attorney affirmation in further support of his motion in reply to the opposition by Palomino and in opposition to Palomino's motion for summary judgment on liability in his favor and against Singh and Upper Left.

**Palomino's motion for summary judgment
and dismissal of the complaint and cross claims (Motion Sequence #002)**

Palomino's motion includes, among other things, the affidavit he submitted in opposition to plaintiff's motion and a statement of material facts. Plaintiff and the other defendants submitted attorney affirmations in opposition to Palomino's motion.

Together, the affidavits of plaintiff and Palomino establish that plaintiff was a passenger in the vehicle operated by defendant Palomino and that the vehicle operated by defendant Palomino had the right of way as it traveled on Nassau Street into the intersection of John Street, that traffic on Nassau Street was not controlled by a stop sign and that traffic on John Street was controlled by a stop sign and that the vehicle operated and owned by Singh and Upper Left failed to stop at the stop sign and did not yield to Palomino's vehicle who had the right of way, when it entered the intersection and that Palomino observed the Singh and Upper Left vehicle and attempted to avoid the collision but was unable to do so. This establishes prima facie negligence on the part of Singh and Upper Left (see VTL 1140, 1142 [a], 1172 [a]; *Attl v Spetter*, 137 AD3d 1176 [2d Dept. 2016] [Violation of a state statute is negligence per se]; *Lebron v Mensah*, 161 AD3d 972 [2d Dept. 2018] [unexcused failure to observe the statutory standard of care is negligence]). Moreover, a driver with the right of way who has only seconds to react to a vehicle which has failed to yield is not comparatively at fault for failing to avoid the collision (*See Barbato v Maloney*, 94 AD3d 1028 [2d Dept 2012]).

Plaintiff's and defendants' oppositions which only consist of attorney affirmations failed to raise a triable issue of fact. (*See Zuckerman v City of New York*, 49 NY2d 557 [1980]). New York courts have consistently held an attorney's affirmation to be inadequate to oppose a summary judgment motion (*See GTF Marketing Inc. v Colonial Aluminum Sales, Inc.*, 66 NY2d 965, 968 [1985]). Defendants' opposition, which includes only an attorney affirmation, fails to provide a non-negligent excuse sufficient to raise a triable issue of fact. The defendant driver Singh has personal knowledge of the facts, yet defendants failed to meet their obligation of laying bare their proof and presenting evidence sufficient to raise a triable issue of fact (*Rosario v Vasquez*, 93 AD3d 509 [1st Dept 2012]).

The factual allegations set forth in plaintiff's affidavit in support of his motion do not raise an issue of fact sufficient to preclude granting summary judgment in favor of Palomino and against Singh and Upper Left and dismissal of the complaint and all cross claims against

Palomino. Plaintiff's averment that Singh stated Palomino was driving at a high rate of speed is insufficient to raise an issue of fact. There is no evidence of comparative negligence on the part of Palomino on the record before this court. Plaintiff's motion is granted to the extent that summary judgment on liability is awarded in favor of Plaintiff and Palomino and against Singh and Upper Left and Palomino's motion for summary judgment and dismissal of the complaint and cross claims against him are granted. Accordingly, it is

ORDERED that plaintiff's summary judgment motion (Motion Sequence #001) is granted to the extent that summary judgment on liability is awarded in favor of plaintiff and Palomino and against Singh and Upper Left; and it is further

ORDERED that Palomino's motion for summary judgment and dismissal of the complaint and cross claims against him (Motion Sequence #002) is granted and the complaint and cross claims against him are dismissed.

This constitutes the Decision and Order of the Court.

4/28/2022
DATE

James G. Clynes
JAMES G. CLYNES, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: