

Policart v Wheels LT
2022 NY Slip Op 31640(U)
May 11, 2022
Supreme Court, Kings County
Docket Number: Index No. 503500/2021
Judge: Richard Velasquez
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At an IAS Term, Part 66 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 11th day of MAY, 2022

P R E S E N T:
HON. RICHARD VELASQUEZ

Justice.

-----X
STEVE J. POLICART,

Plaintiff,

-against-

Index No.: 503500/2021
Decision and Order
Mot. Seq. No.'s 1

WHEELS LT et al.,

Defendants,
-----X

The following papers NYSCEF Doc #'s 10 to 23 read on this motion:

<u>Papers</u>	<u>NYSCEF DOC NO.'s</u>
Notice of Motion/Order to Show Cause	
Affidavits (Affirmations) Annexed _____	10-18
Opposing Affidavits (Affirmations) _____	20-22
Reply Affidavits _____	23

After having heard Oral Argument on MAY 11, 2022, and upon review of the foregoing submissions herein the court finds as follows:

Plaintiff moves pursuant to 3212 for summary judgment on the issue of liability. (MS#1). Defendant opposes the same.

ANALYSIS

It is well established that a moving party for summary judgment must make a prima facie showing of entitlement as a matter of law, offering sufficient evidence to demonstrate the absence of any material issue of fact. *Winegrad v. New York Univ. Med. Center*, 64 NY2d 851, 853 (1985). Once there is a prima facie showing, the burden shifts to the party

opposing the motion for summary judgment to produce evidentiary proof in admissible form to establish material issues of fact, which require a trial of the action. *Zuckerman v. City of New York*, 49 NY2d 557 (1980); *Alvarez v. Prospect Hosp.*, 68 NY2d 320 (1986). However, where the moving party fails to make a prima facie showing, the motion must be denied regardless of the sufficiency of the opposing party's papers. A motion for summary judgment will be granted "if, upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing the judgment in favor of any party". CPLR 3212 (b). The "motion shall be denied if any party shall show facts sufficient to require a trial of any issue of fact." *Id.*

It is well established that "where a driver enters an intersection with the right-of-way....and it is undisputed that the other vehicle entered the intersection from a perpendicular side street which was controlled by a stop sign and collided with the side of the other vehicle that had the right-of-way...under no view of these facts could the driver with the right of way be found to have acted negligently..." (see *Perez v Brux Cab Corp.*, 251 AD2d 157 [1998]; *Namisnak v Martin*, 244 AD2d 258, 260 [1997]); quoting *Rivera v. Water Boy, Inc.*, 144 AD3d 884, 884–85, 41 NYS3d 545 (NY App Div 2016).

In the present case, the plaintiff established their prima facie entitlement to judgment as a matter of law on the issue of liability by demonstrating that the defendant, who either failed to stop at a stop sign **or, upon stopping, failed to yield the right of way to the plaintiff's vehicle**, was the sole proximate cause of the accident (see Vehicle and Traffic Law § 1142[a]; *Bongiovi v. Hoffman*, 18 AD3d 686, 687, 795 NYS2d 354; *Willis v. Fink*, 7 AD3d 519, 520, 775 NYS2d 587; cf. *Rossani v. Rana*, 8 AD3d 548, 549, 779 NYS2d 211). In the present case, the plaintiff established prima facie entitlement to

judgment as a matter of law by establishing that the defendant's vehicle proceeded into the intersection controlled by a stop sign without yielding the right-of-way to the plaintiffs approaching vehicle in violation of Vehicle and Traffic Law § 1142(a). The evidence submitted by the plaintiffs in support of their motion established, prima facie, that the defendant failed to properly observe and yield to cross traffic before proceeding into the intersection (see *Mohammad v. Ning*, 72 AD3d 913, 914, 899 NYS2d 356; *Exime v. Williams*, 45 AD3d 633, 634, 845 NYS2d 450; *Hull v. Spagnoli*, 44 AD3d 1007, 1007, 844 NYS2d 416; *Gergis v. Miccio*, 39 AD3d 468, 468–469, 834 NYS2d 253; *Bongiovi v. Hoffman*, 18 AD3d 686, 687, 795 NYS2d 354), and that this was the sole proximate cause of the accident.

In opposition to the plaintiff's prima facie showing, the defendant failed to raise a triable issue of fact. "[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" (*Mohammad v. Ning*, 72 AD3d at 914–915, 899 NYS2d 356, quoting *Gergis v. Miccio*, 39 AD3d at 468, 834 NYS2d 253; see *Exime v. Williams*, 45 AD3d at 633, 845 NYS2d 450; *Marcel v. Chief Energy Corp.*, 38 AD3d 502, 503, 832 NYS2d 61); quoting, *Briggs v. Russo*, 98 AD3d 547, 547–48, 949 NYS2d 719, 721 (2d Dep't 2012). Therefore, the question of whether the defendant stopped the vehicle at the stop sign is not dispositive, since the evidence established that defendant failed to yield the right-of-way even if defendant did stop (see *Mohammad v. Ning*, 72 AD3d at 915, 899 NYS2d 356; *Exime v. Williams*, 45 AD3d at 634, 845 NYS2d 450; *McCain v. Larosa*, 41 AD3d 792, 793, 838 NYS2d 663; *Morgan v. Hachmann*, 9 AD3d 400, 400, 780 NYS2d 33); quoting *Briggs v. Russo*, 98 AD3d 547, 548, 949 NYS2d 719, 721 (2d Dep't 2012).

Additionally, the "driver who had the right of way was entitled to anticipate that the driver with the stop sign would obey the traffic law requiring them to yield" (*Hull v. Spagnoli*, 44 AD3d 1007, 1007, 844 NYS2d 416; see *Mohammad v. Ning*, 72 AD3d at 914, 899 NYS2d 356; *McCain v. Larosa*, 41 AD3d 792, 793, 838 NYS2d 663; *Gergis v. Miccio*, 39 AD3d at 468, 834 NYS2d 253); quoting, *Briggs v. Russo*, 98 AD3d 547, 548, 949 NYS2d 719, 722 (2d Dep't 2012). In opposition to the motion, the defendant failed to submit sufficient evidence in admissible form to raise a triable issue of fact as to whether the plaintiff was negligent (see *Rieman v. Smith*, 302 AD2d 510, 755 NYS2d 256; *Szczotka v. Adler*, 291 AD2d 444, 737 NYS2d 121). Defendants' contention that plaintiff was speeding, is speculative and, as such, was insufficient to defeat the plaintiff's motion for summary judgment (see *Rieman v. Smith*, supra; *Szczotka v. Adler*, supra); quoting, *Carabella v. Saad*, 29 AD3d 618, 619, 815 NYS2d 199, 200 (2006).

Accordingly, the plaintiff's motion for summary judgment as to liability is hereby granted, for the reasons stated above. (MS#1).

This constitutes the Decision/Order of the court.

Dated: Brooklyn, New York
MAY 11, 2022

ENTER FORTHWITH:

HON. RICHARD VELASQUEZ

Hon. Richard Velasquez, JSC

2022 MAY 18 AM 9:58

KINGS COUNTY CLERK
FILED