

Woodham v Morgan
2022 NY Slip Op 32447(U)
January 24, 2022
Supreme Court, Queens County
Docket Number: Index No. 710340/2019
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

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SHONDELL WOODHAM,

Index No.: 710340/2019

Plaintiff,

Motion

Date: January 5, 2022

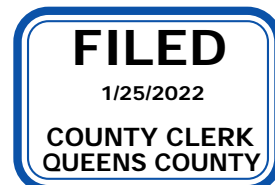
-against-

Motion Cal. No.: 18

KARIM MORGAN,

Motion Sequence No.: 2

Defendant.
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The following efile papers numbered 27-39, 41-51 submitted and considered on this motion by defendant Karim Morgan (hereinafter “Morgan”) seeking an Order pursuant to Civil Practice Law and Rules (“CPLR”) 3216, striking plaintiff Shondell Woodham’s (hereinafter “Woodham”) complaint; pursuant to CPLR 3212 granting summary judgment in his favor on the issue of liability; extending defendant’s time in which to move for summary judgment on the issue of threshold until one hundred twenty days (120) days after the completion of all discovery.

	<u>Papers Numbered</u>
Notice of Motion-Affidavits-Exhibits.....	EF 27-39
Affirmation in Opposition-Affidavits-Exhibits....	EF 41-50
Reply Affirmation-Affidavits-Exhibits.....	EF 51

The motion is granted in part and denied in part as moot, as set forth below:

Morgan makes this instant application for an Order pursuant to CPLR 3216, striking Woodham’s complaint; pursuant to CPLR 3212 granting summary judgment in his favor on the issue of liability; and, extending defendant’s time in which to move for summary judgment on the issue of threshold until one hundred twenty days (120) days after the completion of all discovery. By Order of the undersigned dated February 25, 2021 Morgan was granted an extension of time to move for summary judgment to July 23, 2021. This motion has been made timely. As an initial matter, the sur-reply submitted by Woodham will not be considered by the Court.

This personal injury litigation arises from a two-car accident which occurred on September 8, 2018 at the intersection of 133rd Avenue and 227th Street, Laurelton, New York. Woodham commenced the action with the filing of a summons and verified complaint on June 13, 2019. Morgan appeared in the action with the service of a verified answer with affirmative defenses and combined demands on November 15, 2019.

Outstanding Discovery

By correspondence dated June 11, 2020; July 30, 2020; March 22, 2021 and May 10, 2021, Morgan sought Woodham's response to his Demand for Authorizations dated April 15, 2020 which still had not been complied with prompting the partial relief sought in this motion under CPLR 3216. In Woodham's opposition she stated that she has complied with all outstanding discovery therefore this branch of the motion is now moot.

Statement of Material Facts-Morgan's Motion for Summary Judgment

Morgan's Statement of Material Facts pursuant to NYCRR 202.8[g] is the following:

1. On or about June 13, 2019, plaintiff commenced this personal injury action by filing a Summons and Verified Complaint. (Plaintiff's Complaint, Ex. A).
2. On November 15, 2019, defendant joined issue by filing and serving a Verified Answer to plaintiff's Complaint along with a Demand for a Bill of Particulars and Combined Discovery Demands to plaintiff's Complaint. (Defendant's Answer, Ex. B).
3. Plaintiff's examination before trial was conducted on April 17, 2020 (Woodham Depo., Ex. C.).
4. Defendant's examination before trial was conducted on June 15, 2020. (Morgan Dep., Ex. D).
5. Plaintiff filed a Note of Issue and Certificate of Readiness for Trial on December 3, 2020. (Note of Issue, Ex. E.). On or about December 22, 2020, defendant moved to vacate the Note of Issue due to substantial outstanding discovery. (Motion to vacate, Ex. F.). On or about February 25, 2021, the Court issued a Decision and Order denying, without prejudice, the branch of defendant's motion seeking to vacate the Note of Issue, directing plaintiff to provide outstanding discovery pertaining to plaintiff's prior motor vehicle accident and extending defendant's time to move for summary judgment to July 23, 2021. (Decision and Order, Ex. G.) As such, this Motion is timely made. (Decision and Order, Ex. G).
6. Notably, plaintiff has failed to provide additional discovery pursuant to the aforementioned Order. (Decision and Order, Ex. G.)

The Accident

7. This litigation arises out of a motor vehicle accident that occurred on September 8, 2018 in the intersection of 133rd Avenue and 227th Street in Queens, New York. (Plaintiff's Complaint, Ex. A.).

8. At the time of the accident, Ms. Woodham was driving a black 2017 Nissan Rogue on 227th Street towards its intersection with 133rd Avenue. (Woodham Depo. at 44-46, Ex. C). Prior to its intersection with 133rd Avenue, 227th Street is controlled by two (2) separate stop signs located on each side of the road, a solid white line representing a cross-walk, and the word "STOP" written in white paint on 227th Street. (Woodham Depo. at 53-55, Ex. C).

9. Defendant was driving a 2017 Lincoln on 133rd Avenue on the day of the accident. (Morgan Depo. at 7, Ex. D). At the subject intersection, 133rd Avenue is not subject to traffic control devices. (Morgan Depo. at 7, Ex. D).

10. Prior to entering the intersection on the day of the accident, plaintiff observed both stop signs, the solid white line representing a cross-walk, and the word "STOP" written in white paint (sic) on 227th Street. (Woodham Depo. at 54-55, Ex. C).

11. Plaintiff was familiar with the subject intersection and was aware that 133rd Avenue has two (2) travel lanes, one in each direction, and is a busy road. (Woodham Depo. at 56-57, Ex. C).

12. Plaintiff's vehicle was moving at the time of impact. (Woodham Depo. at 61, Ex. C). She did not see defendant's vehicle and was looking straight ahead prior to the accident. (Woodham Depo. at 61, Ex. C).

13. Included with the moving papers is the Affidavit of defendant, Karim Morgan. (Morgan Affidavit, Ex. I). On the day of the accident, Mr. Morgan operated his vehicle less than 25 miles per hour in the westbound direction on 133rd Avenue approaching its intersection with 227th Street. 133rd Avenue is a two-way street with one travel lane in each direction and parking on both sides of the roadway. There is no stop sign or traffic light controlling travel on 133rd Avenue at the intersection of 133rd Avenue and 227th Street. 227th Street is a one-way street with one travel lane in the northbound direction, has parking on both sides of the roadway, and is controlled by two (2) stop signs, as well as additional signage painted on 227th Street, stating "STOP", prior to the intersection with 133rd Avenue. (Morgan Affidavit, Ex. I).

14. As defendant entered the intersection traveling in the westbound direction on 133rd Avenue, plaintiff's vehicle suddenly and unexpectedly came out into the intersection against the two (2) stop signs and street signage painted on 227th Street. (Morgan Affidavit, Ex. I). Defendant saw plaintiff's vehicle only a "split second" before the collision.

15. The impact occurred between the front middle-to-right of defendant's vehicle and the back passenger side door of plaintiff's vehicle. (Morgan Dep. at 12-13, Ex. D) (Woodham Depo. at 70,

Ex. C).

16. The accident occurred as defendant entered the intersection of 133rd Avenue and 227th Street with the right of way, and plaintiff was negligent when she went through two (2) stop signs, as well as street signage painted on 227th Street, and/or failed to yield the right of way to defendant's vehicle, and came into contact with defendant's vehicle.

Morgan's Deposition Testimony

Morgan gave sworn testimony in this case on June 15, 2020. In relation to his version of how the accident occurred, Morgan testified that on the date of the accident, September 8, 2018, he was driving a 2017 Lincoln and that the accident occurred at the intersection of 133rd Avenue and 227th Street, located in Queens, New York at about 6 P.M. He stated that the intersection has a stop sign but not for the direction in which he was traveling, 133rd Avenue. He was traveling on the right side of 133rd Avenue. He stated that prior to the accident he was traveling about 20 miles per hour. The other vehicle involved in the accident was traveling from his left side. Morgan testified that the car came from his left side across his lane of travel. He saw the vehicle only a split second prior to the impact.

Woodham's Deposition Testimony

Woodham gave sworn testimony in this matter on April 17, 2020. Woodham testified in regards to the accident that on the date of the occurrence, September 8, 2018, she was operating her vehicle, a 2017 Nissan Rogue, and that she was traveling on 227th Street and the accident occurred at its intersection with 133rd Avenue. The accident occurred at about 6 P.M. Her 2 daughters were also with her in the vehicle, seated in the back of the car. She did not recall if there were any traffic control devices on 227th Street, and it is a one-way street. She gave testimony based upon a photograph which she stated depicted the location of the accident. At the aforementioned intersection, 227th Street had two stop signs and the word "stop" painted in white at the intersection for traffic traveling on 227th Street and the street also had a pedestrian crosswalk. She believed she saw both stop signs prior to entering the intersection and that she stopped her vehicle. Woodham said that stopped at both stop signs and she could hear the sound of other car coming but she "couldn't look because I was trying to get across, but I could hear the car." Woodham described 133 Avenue as a two lane road in each direction. She claimed she could hear the car speeding as it was coming towards her, like he was traveling 60 miles per hour, but that she did not see the car but her daughter did. At the time of impact with the other vehicle her car was moving. She described 133 Avenue as a busy street. She testified that she did not do anything to avoid the impact because she could not, she was trying to get across the street. She testified that she could hear the other vehicle coming but did not see it but she believed that her daughters saw it. Woodham stated that prior to proceeding after stopping the traffic was clear in both directions.

Discussion

Addressing the merits of the branch of Morgan's motion seeking summary judgment pursuant to CPLR 3212 on the issue of liability, 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 order for a defendant driver to establish entitlement to summary judgment on the issue of liability in a motor vehicle collision case, the driver must demonstrate, prima facie, *inter alia*, that he or she kept the proper lookout, or that his or her alleged negligence, if any, did not contribute to the accident.” (*See Elkholy v Dawkins*, 175 AD3d 1487 [2d Dept 2019]; *see also Hurst v Belome*, 142 AD3d 642 [2d Dept 2016].) “Since there can be more than one proximate cause of an accident, a defendant moving for summary judgment is required to make a prima facie showing that he or she is free from fault” (*Sage v Taylor*, 195 AD3d 971 [2d Dept 2021] citing *Carias v Grove*, 186 AD3d 1484 [2d Dept 2020]; *see also Boulos v Lerner-Harrington*, 124 AD3d 709 [2d Dept 2015]). “A driver who has the right-of-way is entitled to anticipate that other drivers will obey the traffic laws requiring them to yield to the driver with the right of way. A driver traveling with the right-of-way may nevertheless be found partially responsible for an accident if he or she did not use reasonable care to avoid the accident. Although a driver with the right-of-way...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.” (*See Jeong Sook Lee-Son v Doe*, 170 AD3d 973 [2d Dept 2019]; *see also Adobea v Junel*, 114 AD3d 818 [2d Dept 2014].) “A driver who fails to yield the right of way after stopping at a stop sign is in violation of Vehicle and Traffic Law §1142(a) and is negligent as a matter of law” (*see Williams v Hayes*, 103 AD3d 713 [2d Dept 2013]; *see also Belle-Fleur v Desriviere*, 178 AD3d 993 [2d Dept 2019]). A driver has a duty to see what there is to be seen and the failure to do so constitutes negligence (*see Abbas v Salavel*, 73 AD3d 1100 [2d Dept 2010]; *Laino v Lucchese*, 35 AD3d 672 [2d Dept 2006]; *Bemer v Koegel*, 51 AD3d 591, 592 [2d Dept 2006]).

The Court finds that Morgan established his entitlement to judgment as a matter of law. He demonstrated that on the date of the accident he was proceeding at the subject intersection with the right of way and either Woodham failed to stop at the stop sign and/or failed to yield the right of way to on coming traffic. Woodham testified that she heard the other vehicle coming in her direction but did not observe it because she was looking straight, and offered no testimony to indicate that Morgan was traveling above the speed limit prior to the accident (*See Hunt v New York City Tr. Auth.*, 166 AD3d 73 [2d Dept 2018]).

Woodham's Opposition

Woodham opposed the motion, arguing that she complied with Morgan's discovery demands, so that branch of the motion is now moot (*see Walsh v Hudson Tr. Lines*, 98 AD2d 745 [2d Dept 1983].) Further, the motion for summary judgment should be denied because Morgan failed to establish his entitlement to judgment as a matter of law. She claimed it was Morgan who failed to operate his vehicle in a reasonable manner. She claimed that she was already in the intersection and had almost completed crossing to the opposite end of 227th Street while she was traveling.

Woodham's Statement of Counterfacts

1. Plaintiff is not at odds with defendant regarding the procedural history of this case as stated in paragraphs 1 through 4 of the defendant's Statement of Facts.
2. However, regarding paragraphs 5 and 6, on August 3, 2021, plaintiff served duly signed authorizations releasing the non-privileged portions of the discovery as demanded by the defendant. Copies of the cover letter and the authorizations are annexed to the plaintiff's opposition briefs. See plaintiff's Exhibit 7.
3. Therefore, plaintiff is in compliance with the defendant's discovery demands as directed by the Court Orders.
4. The defendant's version of the accident description misleads the Court by omitting crucial facts of the accident.
5. The following excerpts of [Woodham's] Affidavit, annexed as Exhibit 6 to the plaintiff's opposition briefs, vividly describe how the accident occurred and how the plaintiff was injured and what is causing plaintiff to suffer serious injuries, pain, and suffering. Cross-references are added to Ms. Woodham's Affidavit, where appropriate:

3. I [Woodham] was injured by a car accident that happened in the intersection of 227th Street and 133rd Avenue, Queens, New York approximately on September 8, 2018, 6 P.M. (Ex 3- Police Accident Report and Ex. 4 at p. 43-plaintiff's deposition transcript)

4. I was driving a leased 2017 brand new Nissan Rogue north on 227th Street, which had a stop sign on each of the two corners of intersection and a white-painted stop sign on each of the two corners of intersection and a white-painted stop sign on the roadway. Also, there is a cross-walk connecting the two posted stop signs on 227th Street. (Ex 3 and Ex. 4 at pp. 46, 53-55)

5. My car was brand new and working in good condition. (Ex 4 at p. 48)

6. I had my two minor children in the rear seats of my car. We were coming from our

home and were on our way to donate clothes to a local supermarket called Farmbria on Linden Boulevard, Queens, which was only a few minutes away by driving from the intersection. I have driven in this area before and I was familiar with the intersection as well. (Ex. 4 at pp. 35, 45 and 55)

7. I was well aware of the stop signs on 227th Street and knew 133rd Avenue did not have traffic control devices. 227th Street is a one-way street going north and 133rd Avenue is a two way street with one lane on each side. (Ex 4 pp. 52, 56 and 57)

8. So, as always, before crossing into the intersection, I stopped on the white-painted stop sign before the posted red stop signs first. When the intersection was clear, I proceeded to the end of the crosswalk and stopped one more time before fully proceeding into the intersection. I checked the intersection and made sure it was clear. Then I proceeded into the intersection. (Ex 4 at pp. 55 and 102-103)

9. I had my two minor children in my car and had no reason to speed for. I was proceeding straight and slowly. (Ex 4, pp. 36 and 56-57 and 61)

10. However, by the time I reached the other end of the intersection on 227th Street, I heard noise from a car driving so fast. I did not see this car before the collision. Just a split second before the collision, one of my children screamed at car dashing towards my car. (Ex 4 at p. 56, 58, 59, 61 and Ex. 5 at pp. 13-14- defendant's deposition transcript)

11. The other car driven by the defendant struck the right rear passenger door of my car. (Ex 4 at p. 67)

12. As a result of the impact, all the airbags in my car deployed. My car skidded sideways, made a turn and flipped over. (Ex4 at p. 67)

13. I have a photograph depicting my car flipped and landed on the left side. This photograph is submitted as evidence in connection with my opposition to the defendant's motion. (Ex 1)

14. The impact of the collision was so hard that I lost consciousness until I was pulled out of my car by passers-by. My head was literally dangling on the airbag through the broken window. Both of my children were also rescued by them. (Ex 4 at pp. 69-72)

15. My car was damaged beyond repair. I could never drive it again after the accident. (Ex 4 at pp. 46-47)

16. I believe the front of the defendant's car came into contract with the right rear passenger door of my car. (Ex 5 at p. 12)

17. The photograph shows how heavily my car was struck by the defendant's car. (Ex 1)
18. We were taken to North Shore LIJ Hospital Emergency Department by ambulance. All of us were in so much shock. We were examined and released to home. I was released with a brace on my neck. (Ex 4 at p. 74)
19. Ever since then, I was prescribed to numerous physical therapy sessions and had to endure pain on my neck, arms, back and hip, more on the left hand side although I feel pain all over my body to date. As a result of the pain from this horrific car accident, I have received five (5) epidural injections to my neck and am undergoing continuous medical treatment in the future.
(Ex 4 at pp. 83-93)
20. My daily activities have been significantly impaired due to the car accident. (Ex 4 at pp. 99-102)
21. This car accident was caused by the defendant who sped across the intersection in which I was already lawfully. (Ex 1)

Morgan testified that the front passenger side of his vehicle came into contact with the back part of Woodham's vehicle. Woodham argued that the accident occurred due to Morgan's failure to drive reasonably at the intersection.

Discussion

A driver has a duty to see what there is to be seen and the failure to do so constitutes negligence (*see Abbas v Salavel*, 73 AD3d 1100 [2d Dept 2010]; *Laino v Lucchese*, 35 AD3d 672 [2d Dept 2006]; *Bemer v Koegel*, 51 AD3d 591, 592 [2d Dept 2006]).

Vehicle and Traffic Law ("VTL") §1142(a) titled "Vehicle entering stop or yield intersection" states the following:

"(a) 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 §1172 “Stop signs and yield signs” states the following in relevant part:

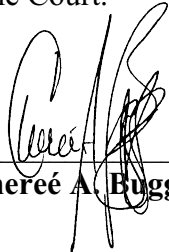
(a) Except when directed to proceed by a police officer, every driver of a vehicle approaching a stop sign shall stop at a clearly marked stop line, but if none, then shall stop before entering the crosswalk on the near side of the intersection, or in the event there is no crosswalk, at the point nearest 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.

“A driver who has the right-of-way is entitled to anticipate that other drivers will obey the traffic laws requiring them to yield to the driver with the right of way. A driver traveling with the right-of-way may nevertheless be found partially responsible for an accident if he or she did not use reasonable care to avoid the accident. Although a driver with the right-of-way...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.” (*See Jeong Sook Lee-Son v Doe*, 170 AD3d 973 [2d Dept 2019]; *see also Adobea v Junel*, 114 AD3d 818 [2d Dept 2014].) “A driver who fails to yield the right of way after stopping at a stop sign is in violation of Vehicle and Traffic Law §1142(a) and is negligent as a matter of law” (*see Williams v Hayes*, 103 AD3d 713 [2d Dept 2013]; *see also Belle-Fleur v Desriviere*, 178 AD3d 993 [2d Dept 2019]). The Court finds that Woodham is solely responsible for the accident by failing to yield the right of way to traffic traveling on 133rd Avenue which did not contain a traffic control signal for vehicles traveling on the Avenue at the aforementioned intersection. The claims related to Morgan possible speeding at the time of the accident are speculative since Woodham testified that she did not observe the vehicle at all prior to the accident, and it was her duty to yield the right of way for vehicle traveling on 133rd Avenue. Woodham described 133rd Avenue as a busy street with two lanes of travel in each direction, and Morgan testified Woodham’s vehicle was traveling from his left side and that he was traveling in the right lane. Woodham would have had to clear two lanes of traffic traveling in the opposite directions on 133rd Avenue at the aforementioned intersection, which she failed to do successfully (*see Shvydkaya v Park Ave. BMW Acura Motor Corp.*, 172 AD3d 1130 [2d Dept 2019]).

Therefore, the branch of defendant’s motion seeking summary judgment on the issue is granted and Plaintiff’s Verified Complaint is dismissed. The branches of the motion seeking relief under CPLR 3216 and additional time in which to move for summary judgment on the issue of threshold until one hundred twenty days (120) days after the completion of all discovery are denied as moot.

The foregoing constitutes the decision and Order of the Court.

Dated: January 24, 2022



Hon. Chereé A. Buggs, JSC