

Sajid v Doyle

2022 NY Slip Op 34883(U)

March 31, 2022

Supreme Court, Kings County

Docket Number: Index No. 507324/2019

Judge: Carl J. Landicino

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At an IAS Term, Part 81 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 31st day of March 2022.

PRESENT:

HON. CARL J. LANDICINO,
Justice.

-----X
MUHAMMAD SAJID,

Plaintiff,

-against-

PATRICIA A. DOYLE and JAMES F. DOYLE,

Defendants.

-----X
Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion:

Index No.: 507324/2019

DECISION AND ORDER

Motion Sequence #1

Papers Numbered

Notice of Motion/Cross Motion and	
Affidavits (Affirmations) Annexed	16-24,
Opposing Affidavits (Affirmations).....	25-26,
Reply Affidavits (Affirmations)	27

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After a review of the papers and oral argument, the Court finds as follows:

The instant action relates to a claim for personal injuries arising from a motor vehicle collision that allegedly occurred on October 05, 2018. Plaintiff Muhammad Sajid (hereinafter the "Plaintiff") alleges that he was injured when the vehicle he owned and operated was struck by a vehicle owned by Defendant Patricia A. Doyle and operated by Defendant James F. Doyle (hereinafter the "Defendants"). The incident allegedly occurred on Avenue R at or near its intersection with East 36th Street, Brooklyn, New York.

The Plaintiff now moves (motions sequence #1) for an order pursuant to CPLR 3212 granting him summary judgment on the issue of liability and proceeding to trial on the issue of damages. The Plaintiff contends that summary judgment should be granted because Defendant's vehicle was negligent and the

sole proximate cause of the collision. Specifically, the Plaintiff contends that summary judgment should be granted given that there is *prima facie* evidence that the Defendants' vehicle violated VTL § 1141 in as much as it failed to yield the right of way to the Plaintiff's vehicle, which was lawfully approaching from the opposite direction.

The Defendants oppose the motion and contend that there are issues of fact that should prevent this Court from granting the motion. Specifically, the Defendants argue that there is an issue of fact as to where plaintiff's vehicle was located at the time of the accident and whether plaintiff had unlawfully traveled through a red traffic light. In support of their position, the Defendants rely primarily on the deposition testimony of Defendant James F. Doyle and a Police Accident Report. The Defendant also argues that the deposition transcripts relied upon by the Plaintiff are inadmissible.¹

Summary judgment is a drastic remedy that deprives a litigant of his or her day in court, and it "should only be employed when there is no doubt as to the absence of triable issues of material fact." *Kolivas v. Kirchoff*, 14 AD3d 493 [2d Dept 2005], citing *Andre v. Pomeroy*, 35 NY2d 361, 364, 362 N.Y.S.2d 1341, 320 N.E.2d 853[1974]. The proponent for summary judgment must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact. See *Sheppard-Mobley v. King*, 10 AD3d 70, 74 [2d Dept 2004], citing *Alvarez v. Prospect Hospital*, 68 NY2d 320, 324, 508 N.Y.S.2d 923, 501 N.E.2d 572 [1986], *Winegrad v. New York Univ. Med. Ctr.*, 64 NY2d 851, 853, 487 N.Y.S.2d 316, 476 N.E.2d 642 [1985]. "In determining a motion for summary judgment, evidence must be viewed in the light most favorable to the nonmoving party, and all reasonable inference must be resolved in favor of the nonmoving party."

¹ As an initial matter, the Plaintiff's deposition transcript is admissible under CPLR 3116(a) since it is submitted by the party deponent. What is more, the Defendants rely on the unsigned deposition of Defendant James F. Doyle as part of their opposition. See *Pavane v. Marte*, 109 AD3d 970, 970, 971 N.Y.S.2d 562, 563 [2d Dept 2013].

Adams v. Bruno, 124 AD3d 566, 566, 1 N.Y.S.3d 280, 281 [2d Dept 2015] citing *Valentin v. Parisio*, 119 AD3d 854, 989 N.Y.S.2d 621 [2d Dept 2014]; *Escobar v. Velez*, 116 AD3d 735, 983 N.Y.S.2d 612 [2d Dept 2014].

Once a moving party has made a *prima facie* showing of its entitlement to summary judgment, “the burden shifts to the opposing party to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action” *Garnham & Han Real Estate Brokers v Oppenheimer*, 148 AD2d 493 [2d Dept 1989]. Failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers. *See Demshick v. Cmty. Hous. Mgmt. Corp.*, 34 AD3d 518, 520, 824 N.Y.S.2d 166, 168 [2d Dept 2006]; *see Menzel v. Plotnick*, 202 AD2d 558, 558–559, 610 N.Y.S.2d 50 [2d Dept 1994]. However, “[a] plaintiff is no longer required to show freedom from comparative fault in establishing his or her *prima facie* case...” if they can show “...that the defendant's negligence was a proximate cause of the alleged injuries.” *Tsyganash v. Auto Mall Fleet Mgmt., Inc.*, 163 AD3d 1033, 1034, 83 N.Y.S.3d 74, 75 [2d Dept 2018]; *Rodriguez v. City of New York*, 31 N.Y.3d 312, 320, 101 N.E.3d 366, 371 [2018].

Turning to the merits of the instant motion, the Court finds that sufficient evidence has been presented by the Plaintiff to establish, *prima facie*, that the Defendant’s vehicle violated VTL § 1141 in as much as it failed to yield the right of way to the Plaintiff’s vehicle approaching from the opposite direction. When asked when the collision occurred the Plaintiff stated that “I passed through the intersection half way, approximately.” When asked what color the traffic signal was as he passed through the intersection, the Plaintiff answered “[i]t was green.” When asked about the collision, the Plaintiff stated that “[w]hen I was halfway through the intersection then I got an indication all of a sudden from the left side and then something like this, you know, that happens like that (indicating). (See Plaintiff’s Motion, Exhibit D, Pages 15 through 19). This testimony is sufficient to show that the Defendant driver

James Doyle was negligent in violating the statute (VTL § 1141) and failing to see what there was to be seen and is the sole proximate cause of the accident. *See Agin v. Rehfeldt*, 284 A.D.2d 352, 352-353, 726 N.Y.S.2d 131 [2d Dept. 2001].

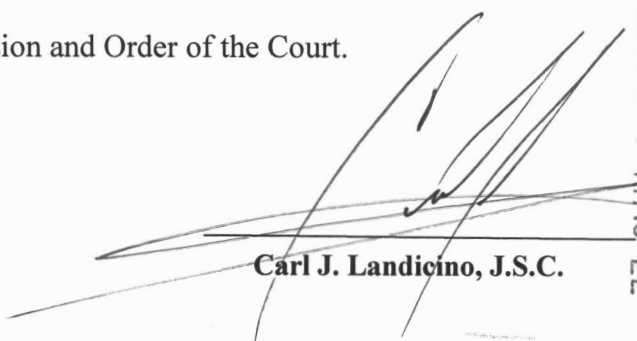
In opposition to the motion, the Defendants have failed to raise a material issue of fact that would prevent this Court from granting the motion. The Defendants rely primarily on the deposition of Defendant James F. Doyle and a Police Accident Report. As an initial matter, the Police Accident Report, while certified, does not contain any admissible statements. As a result, the information contained within it is inadmissible. *See Yassin v. Blackman*, 188 AD3d 62, 64, 131 N.Y.S.3d 53, 55 [2d Dept 2020]. Moreover, the deposition of Defendant James F. Doyle is insufficient to create an issue of fact. This is because the left turning driver is required to yield and the deposition of Defendant James F. Doyle testified that he never saw the Plaintiff's vehicle prior to the collision. "A driver is negligent if he or she has failed to see that which, through the proper use of senses, should have been seen." *Berner v. Koegel*, 31 A.D.3d 591, 592, 819 N.Y.S.2d 89, 90 [2d Dept 2006].

Based on the foregoing, it is hereby ORDERED as follows:

The Plaintiff's motion (motion sequence #1) for summary judgment on the issue of liability is granted. The matter shall proceed to trial on the issue of damages.

The foregoing constitutes the Decision and Order of the Court.

ENTER:


Carl J. Landicino, J.S.C.

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