

Trinidad v Verutes
2022 NY Slip Op 35066(U)
September 27, 2022
Supreme Court, Bronx County
Docket Number: Index No. 29165/2020e
Judge: Veronica G. Hummel
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX, IAS PART 31

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JANNIERY TRINIDAD, mother and natural guardian of infant M.O. and JANNIERY TRINIDAD, individually,

Index №. 29165/2020e

Plaintiffs,

-against-

Hon. VERONICA G. HUMMEL

Acting Justice Supreme Court

CONSTANCE VERUTES,

Defendant.

Motion Seq. 1

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In accordance with CPLR 2219 (a), the decision herein is made upon consideration of all papers filed by the parties in NYSCEF regarding the motion of plaintiff JANNIERY TRINIDAD, mother and natural guardian of infant M.O.¹ and JANNIERY TRINIDAD, individually [Mot. Seq. 1], made pursuant CPLR 3212, for an order granting plaintiffs partial summary judgment as to liability and dismissing the affirmative defense based on comparative negligence (the first affirmative defense) as against defendant CONSTANCE VERUTES.

This action is for personal injuries arising out of an alleged electric scooter knockdown accident which occurred on July 4, 2020, as the result of an impact between an electric scooter and defendant's vehicle at the intersection of Westchester Avenue and Mayflower Avenue. Defendant's vehicle, while making a left hand turn at the intersection, collided with plaintiff's scooter which was travelling straight.

A plaintiff in a negligence action moving for summary judgment on the issue of liability must establish, *prima facie*, that the defendant breached a duty owed to the plaintiff and that the defendant's negligence was a proximate cause of the alleged injuries. *Tsyganash v. Auto Mall Fleet Management, Inc.*, 163 A.D.3d 1033 (2d Dep't 2018); *see Rodriguez v. City of New York*, 31 N.Y.3d 312 (2018). A plaintiff is no longer required to show freedom from comparative fault in establishing his or her *prima facie* case. *see Rodriguez v City of New York, supra*. Importantly, once this 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 N.Y.2d 320 (1986);

¹ It appears from the record that plaintiff M.O is almost eighteen years of age. Plaintiffs are reminded that, upon the infant's reaching the age of majority, the attorneys for plaintiffs must amend the caption and upload a NYSCEF form EF22¹ to NYSCEF. NYSCEF Form EF22 can be found at: <https://iappscontent.courts.state.ny.us/NYSCEF/live/forms/notice.to.county.clerk.pdf>

Alvarex v. Madeline D'Anthony Enterprises, Inc. v. Sokolowsky, 101 A.D.3d 606 (1st Dep't 2012).

In support of the motion, plaintiffs submit an attorney affirmation, a statement of material facts, an affidavit by plaintiff, the pleadings, a certified copy of the police report, and a copy of deposition transcripts. Plaintiffs also submit a reply affirmation.

In opposition, defendants submit an attorney affirmation and a counterstatement of material facts.

It is well settled in New York that a violation of the Vehicle and Traffic Law constitutes negligence a matter of law. *Rodriguez v. Budget Rent A-Car Sys., Inc.*, 44 A.D.3d 216, 223-224 (1st Dep't 2007). VTL Section 1141 states that the driver of a vehicle intending to turn left within an intersection shall yield the right of way to any vehicle approaching from the opposite direction which is within the intersection or so close as to constitute an immediate hazard. Vehicle and Traffic Law 1128(a) is violated by failing to drive, to the degree practicable, within a single lane. *Shah v. MTA Bus Company*, 201 A.D.3d 833 (2d Dep't 2022). VTL 1163 (a) provides that no driver shall turn a vehicle at an intersection or to enter a private road or otherwise turn a vehicle from a direct course unless such movement can be made with reasonable safety. Hence, pursuant to Vehicle and Traffic Law 1141 and 1163, the operator of a vehicle intending to turn left within an intersection must yield the right-of-way to any oncoming vehicle that is within the intersection or so close to it as to constitute an immediate hazard. *Jackson v. Klein*, 203 A.D.3d 1147 (2d Dep't 2022). There is also a common-law duty to see what there is to be seen proper lookout to avoid a collision. *Shah v. MTA Bus Company, supra*; see *Canales v. Arichabala*, 123 A.D.3d 869 (2d Dep't 2014).

In the affidavit, plaintiff avers that he was operating an electric scooter at a speed of approximately 15 miles per hour, westbound on Westchester Avenue, a two-way, two-lane roadway, covered overhead by the elevated subway tracks with parking lanes on both sides of the road. He was intending to proceed straight through the intersection, without making any turn from Westchester Avenue onto Mayflower Avenue. There was still natural sunlight illuminating the roadway and the visibility was clear at the time of impact. Plaintiff saw defendant's eastbound vehicle, traveling on Westchester Avenue, in the opposite direction, when he was about to enter the intersection and saw no turn signal flashing on that vehicle at any time before impact. Upon entering the intersection and when plaintiff was about 10-15 feet from the defendant's vehicle, the defendant, suddenly and without any visual or audible warning, attempted to sharply turn her vehicle left, onto northbound Mayflower Avenue from eastbound Westchester Avenue. Plaintiff had no time to take any evasive action, as the defendant's vehicle was too close to the scooter, when it made its sudden turn movement and the turn was attempted in a split second before impact. As a result of the left-turn, the front of the scooter was caused to come into contact with

the front passenger's side of the defendant's vehicle. Plaintiff was in no way responsible for the happening of this collision. There was absolutely no time to react in order to take any evasive action as the defendant's vehicle was traveling too quickly and gave no warning, either by signal or horn that it was turning directly in front of plaintiff. Plaintiff had borrowed the scooter and was not sure how fast it was travelling prior to impact.

At deposition, defendant testified that she was turning left at the intersection and turned her left signal on. Defendant did not see the plaintiff's scooter prior to impact. The scooter hit the front passenger side of her vehicle.

Based on the submissions, plaintiffs establish *prima facie* entitlement to summary judgment on the issue of liability by submitting evidence showing that plaintiff was legally riding an electric scooter on the street, in accordance with traffic signals and travelling straight in or near the intersection, when the defendant's vehicle, in violation of the VTL, turned left in front of his scooter causing a collision. *see Bell v. Angah*, 146 A.D.3d 734 (1st Dep't 2017). Plaintiffs demonstrate that defendant violated provisions of the VTL, and said violations were *per se* negligence.

Defendant, in turn, fails to raise an issue of material fact as to any non-negligent explanation for the Accident. The attorney affirmation submitted in opposition to the motion has no evidentiary value. *see Conti v. City of Niagara Falls Water Bd.*, 82 A.D.3d 1633, 1634 (1st Dep't 2011) ("It is well established . . . that an affirmation submitted by an attorney who has no personal knowledge of the facts is without evidentiary value"), and is thus insufficient to defeat the motion. Any contention that plaintiffs' motion is premature also lacks merit as the mere hope that evidence sufficient to defeat a motion for summary judgment may be uncovered during the discovery process is insufficient to deny such a motion." *Downey v. Mazzioli*, 137 A.D.3d 498, 499 (1st Dep't 2016).

Furthermore, the speculation that plaintiff may have been speeding is insufficient to generate an issue of fact. Defendant averred in her affidavit that she did not see the plaintiff's scooter until she struck it and there is no evidence that plaintiff's speed contributed to the Accident. *see e.g. Ramroop v. Stein*, 204 A.D.3d 452 (1st Dep't 2022).

The Court further concludes that plaintiffs have sustained the burden to demonstrate, *prima facie*, that plaintiff's own negligence did not contribute to causing the Accident. Defendant, in turn, fails to raise a triable issue of fact. As such, the affirmative defense of comparative negligence is dismissed. *Ramroop v. Stein, supra*.

The court has considered the additional contentions of the parties not specifically addressed herein. To the extent that any relief requested by either party was not addressed by the court, it is hereby denied. Accordingly,

it is hereby

ORDERED that the motion of plaintiff JANNIERY TRINIDAD, mother and natural guardian of infant M.O. and JANNIERY TRINIDAD, individually [Mot. Seq. 1], made pursuant CPLR 3212, for an order granting plaintiffs partial summary judgment as to liability and dismissing the affirmative defense based on comparative negligence (the first affirmative defense) as against defendant CONSTANCE VERUTES is granted; and it is further

ORDERED that the Clerk shall mark the motion [Mot. Seq. 1] disposed in all court records.

This constitutes the decision and order of the Court.

Dated: September 27, 2022

Hon.s/Hon. Veronica G. Hummel/signed 09/27/2022

VERONICA G. HUMMEL, A.J.S.C.

1. CHECK ONE.....	☐ CASE DISPOSED IN ITS ENTIRETY	☒ CASE STILL ACTIVE
2. MOTION IS.....	☒ GRANTED	☐ DENIED ☐ GRANTED IN PART ☐ OTHER
3. CHECK IF APPROPRIATE.....	☐ SETTLE ORDER	☐ SUBMIT ORDER ☒ SCHEDULE APPEARANCE
	☐ FIDUCIARY APPOINTMENT	☐ REFEREE APPOINTMENT