

Wilson v Zatout
2022 NY Slip Op 35075(U)
September 27, 2022
Supreme Court, Bronx County
Docket Number: Index No. 20653/2020E
Judge: Veronica G. Hummel
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To commence the statutory time for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX IAS PART 31**

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JOHNNY WILSON,

Plaintiff,

-against -

**Index No.20653/2020E
DECISION/ORDER
Motion Seq. 1**

AHMED ZATOUT, CITY VIEW RENTAL, LLC and
MICHAEL LEE OLAN,

Defendants.

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

In accordance with CPLR 2219 (a), the decision herein is made upon consideration of all of the papers filed by the parties in NYSCEF in regard to the motion of defendants AHMED ZATOUT and CITY VIEW RENTAL, LLC. (the City View Defendants) [Mot. Seq. 1], made pursuant to CPLR 3212, seeking an order granting summary judgment dismissing the complaint and all cross-claims against them on the ground that the City View Defendants lack liability for the accident.

The uncontested facts based on the statements of material facts and submitted testimony of plaintiff and co-defendant are as follows: This is a negligence action to recover damages for personal injuries that plaintiff allegedly sustained as a result of a motor vehicle accident that occurred on November 18, 2018, on East 156th Street, a two-lane road, with traffic traveling in both directions (the Accident). Plaintiff was a passenger in the vehicle owned and operated by the City View Defendants. Defendant Olan's vehicle was travelling in the opposite direction on East 156th Street. The City View Defendants' vehicle was within its lane on the proper side of the street. Just past the intersection, defendant Olan swerved his vehicle to the left, allegedly to avoid hitting an animal, entered into the City View Defendants' lane, and hit the rear driver's side of the City View Defendants' vehicle.

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. *see Harrigan v. Sow*, 165 A.D.3d 463 (1st Dep't 2018); *Hilago v. Vasquez*, 187 A.D.3d 683 (1st Dep't 2020). In order for a defendant driver to establish entitlement to summary judgment on the issue of liability in a motor vehicle collision case, therefore, the driver must demonstrate, *prima facie*, that he or she kept the proper lookout, or that his or her alleged negligence, if any, did not contribute to the accident. *see Harrigan v. Sow, supra; Hilago v. Vasquez, supra*. A violation of a standard of care imposed by the Vehicle and Traffic Law (VTL) constitutes negligence *per se*. *Callahan v. Glennon*, 193 A.D.3d 1029, 1030 (2d Dep't 2021).

Of note, crossing a double yellow line into the opposing lane of traffic, in violation of Vehicle and Traffic Law § 1126(a), constitutes negligence as a matter of law, unless justified by an emergency situation not of the driver's own making. *see Hodnett v. Westchester County Department of Public Works and Transportation*, 181 A.D.3d 655 (2d Dep't 2020); *Mack v. Seabrook*, 161 A.D.3d 704 (1st Dep't 2018); *Foster v. Sanchez*, 17 A.D.3d 312 (2d Dep't 2005); *see VTL 1126[a]*.

Here, it is undisputed that the City View Defendants' vehicle was in its own lane, travelling in the correct direction. It is also conceded that defendant Olan crossed over the middle of the road, while travelling the opposite direction, causing the collision with the movants' vehicle. There is no allegation that the moving defendants acted negligently or that any negligence on the City View Defendants' part contributed to causing the Accident. As such, the City View Defendants establish *prima facie* entitlement to judgment by submitting the deposition testimony of plaintiff and defendant Olan showing that the City View Defendants acted without negligence and that any negligence on said defendants' part was not a proximate cause of the Accident. *Ruiz v. Reyes*, 148 A.D.3d 592 (1st Dep't 2017); *Bisogna v. Economos*, 42 A.D.3d 347 (1st Dep't 2007).

In opposition, neither plaintiff nor co-defendant raise an issue of fact warranting the denial of the motion. To the extent that there may be inconsistent testimony as to whether the

intersection light was green or red, the status of the light is irrelevant under the circumstances as co-defendant crossed over the lanes and impacted movants' vehicle.

Furthermore, the attorney affirmations submitted in opposition to the motion have 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 are thus insufficient to defeat the motion. In addition, any argument that the motion for summary judgment on liability is premature also lacks merit. 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).

The court has considered the additional contentions of the parties not specifically addressed herein. To the extent 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 defendants AHMED ZATOUT and CITY VIEW RENTAL, LLC. (the City View Defendants) [Mot. Seq. 1], made pursuant to CPLR 3212, seeking an order granting summary judgment dismissing the complaint and all cross-claims against them on the ground that the City View Defendants lack liability for the Accident is granted; and it is further

ORDERED that the Clerk shall enter judgment dismissing the complaint and all cross-claims against the City View Defendants and severing the remaining action; and it is further

ORDERED that the caption shall be amended as follows:

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JOHNNY WILSON,

Index No.20653/2020E

Plaintiff ,

-against -

MICHAEL LEE OLAN,

Defendant.

-----X

;and it is further

ORDERED that the Clerk shall mark motion sequence 1 decided in all court records;
and it is further

ORDERED that the City View Defendants shall upload NYSCEF form EF22¹ to NYSCEF to amend the caption as set forth herein within twenty (20) days from upload of this Order.

The foregoing constitutes the decision and order of the court.

Dated: September 27, 2022

E N T E R,

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

Hon. Veronica G. Hummel, A.J.S.C.

¹ NYSCEF Form EF22 can be found at:

<https://iappscontent.courts.state.ny.us/NYSCEF/live/forms/notice.to.county.clerk.pdf>

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1. CHECK ONE.....
 2. MOTION IS.2 is granted
 3. CHECK IF APPROPRIATE.....

CASE DISPOSED IN ITS ENTIRETY☒ CASE STILL ACTIVE☒ GRANTED DENIED GRANTED IN PART ☐ OTHER☐ SETTLE ORDER ☐ SUBMIT ORDER SCHEDULE APPEARANCE☐ FIDUCIARY APPOINTMENT ☐ REFEREE APPOINTMENT