

Carson v Stell

2023 NY Slip Op 33486(U)

October 5, 2023

Supreme Court, New York County

Docket Number: Index No. 161636/2018

Judge: James G. Clynes

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. JAMES G. CLYNES PART 22M

Justice

PRISCILLA CARSON, Plaintiff, - v - JAMES STELL, MATTHEW BOOKER, CARERIDE PARATRANSIT, LLC Defendants. INDEX NO. 161636/2018 MOTION DATE 05/27/2021 MOTION SEQ. NO. 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89

were read on this motion to/for SUMMARY JUDGMENT (AFTER JOINDER)

Upon the foregoing documents, the motion by Defendant James Stell for summary judgment pursuant to CPLR 3212 dismissing all claims alleged against him is decided as follows:

Plaintiff seeks recovery for injuries allegedly sustained as a result of a December 5, 2017 motor vehicle accident between Plaintiff, a passenger in a vehicle owned by Defendant Careride Paratransit, LLC and operated by Defendant Booker and a vehicle operated by Defendant Stell. In support of his motion, Defendant Stell relies on the examination before trial (EBT) testimony of Plaintiff, Defendant Booker, as well as his own EBT testimony.

Plaintiff testified that she was a back-seat passenger in an Access-a-Ride vehicle which was a four-door sedan, she was not wearing her seatbelt, she arrived in front of her apartment building, the Access-A-Ride vehicle was closest to the curb, the vehicle parked, traffic was light, she asked the driver if it was okay to get out, the driver looked in the rear mirror, said yes, about two seconds later Plaintiff opened her door, put her foot out, placed it on the street, put her right hand on the car door handle, and was struck by a vehicle coming from behind. She further testified that she was looking toward her right at the time of impact but did not look behind her at all before opening the door because she was not able to due to a spine surgery that she underwent one month before the accident.

Defendant Booker testified that on the date of the accident, he was working for Careride, an Access-A-Ride contractor as a vehicle operator, he was taking his passenger to her destination, his passenger was sitting in the rear passenger seat, he pulled over to his left, into a parking spot, put the vehicle in park, went to unbuckle his seatbelt and may or may not have put the hazard lights on, when he heard the impact between the other vehicle and the door of his vehicle, he looked back and saw the passenger sitting in her seat with no portion of her body outside the vehicle. Defendant Booker testified that from the time he parked until the accident happened, there were no discussions between him and the passenger.

Defendant Stell testified that he was driving on West 129th Street going about 15 mph, the first car driving up that block, he noticed a white vehicle parked on the left side of the street that was parked and protruded out of the curb a bit, as he was proceeding up the block towards the white vehicle, the back passenger door on the right-hand side opened simultaneously as he drove next to the vehicle, and they collided. Defendant Stell testified that he could not recollect whether any part of the passenger's body was outside of the car when this happened.

In opposition, Plaintiff contends that there was no moving traffic prior to Plaintiff opening the rear passenger door, and therefore issues of fact exist as to whether Plaintiff violated VTL 1214. Defendant Booker also opposes the motion, contending that issues of fact exist as to whether Defendant Stell's vehicle was traveling too close to the left side of the roadway, and whether he could have avoided the impact.

Pursuant to VTL 1214, "[n]o person shall open the door of a motor vehicle on the side available to moving traffic unless and until it is reasonably safe to do so, and can be done without interfering with the movement of other traffic, nor shall any person leave a door open on the side of a vehicle available to moving traffic for a period of time longer than necessary to load or unload passengers."

Generally, a person in a vehicle who opens the vehicle's door into the path of oncoming traffic violates VTL 1214 and is therefore negligent (*see Smith v City of NY*, 179 AD3d 500 [1st Dept 2020] [where the plaintiff failed to raise an issue of fact as to whether the defendant, a bus driver, was negligent in failing to see what was there to be seen, when the passenger in the plaintiff's parked car opened the door into oncoming traffic when it was not safe to do so]; *Perez v Steckler*, 157 AD3d 445 [1st Dept 2018] [Plaintiff failed to raise an issue of fact as to whether he violated VTL 1214 when the defendant testified that he was driving next to plaintiff's parked

vehicle, plaintiff suddenly opened his driver's side door, causing defendant to strike the door]; *Tavarez v Herrasme*, 140 AD3d 453 [1st Dept 2016] [where the defendants failed to raise an issue of fact where the plaintiff's affidavit stated that the rear door of the defendants' vehicle "opened without warning" and struck the left side of his vehicle established that the defendant driver violated VTL 1214]; *see also Abbas v Salavel*, 73 AD3d 1100 [2d Dept 2010] ["The evidence established that the plaintiff violated Vehicle and Traffic Law § 1214 by opening the door on the side of his car adjacent to moving traffic when it was not reasonably safe to do so, and was negligent in failing to see what, by the reasonable use of his senses, he should have seen."]; *Williams v Persaud*, 19 AD3d 686, 686 [2d Dept 2005] [where the Court found that there was no evidence that the defendant breached any duty owed to the plaintiff or, assuming such a breach, that any conduct on the part of the defendant was a proximate cause of the accident when the plaintiff violated VTL 1214 by opening her door on the side adjacent to moving traffic when it was not reasonably safe to do so, and was negligent in failing to see what, by the reasonable use of her senses, she should have seen]).

Defendant Stell has established his prima facie entitlement to judgment as a matter of law by his testimony that he was driving next to the parked vehicle in which Plaintiff was a passenger, Plaintiff suddenly opened her door, in violation of VTL 1214, causing Defendant Stell to strike her door, and Defendant Stell was unable to avoid the accident. Plaintiff's opposition failed to raise an issue of fact as to whether she violated VTL 1214, or whether Defendant Stell could have avoided the accident. The motion is granted. Accordingly, it is

ORDERED that the motion of Defendant Stell for summary judgment and to dismiss the complaint herein is granted and the complaint is dismissed in its entirety as against said Defendant and the Clerk is directed to enter judgment accordingly in favor of said Defendant; and it is further

ORDERED that the action is severed and continued against the remaining Defendants; and it is further

ORDERED that the caption be amended to reflect the dismissal and that all future papers filed with the court bear the amended caption; and it is further

ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the Clerk of the Court and the Clerk of the General Clerk's Office, who are directed to mark the court's records to reflect the change in the caption herein; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website).

This constitutes the Decision and Order of the Court.

10/5/2023

DATE

James G. Clynes

JAMES G. CLYNES, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE