

Morrison v Schwarcz

2023 NY Slip Op 33702(U)

October 16, 2023

Supreme Court, Kings County

Docket Number: Index No. 534189/2022

Judge: Francois A. Rivera

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 52 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 16th day of October 2023

HONORABLE FRANCOIS A. RIVERA
-----X
JANELLE S. MORRISON,

Plaintiff,

-against-

NOSSON SCHWARCZ,
Defendant.
-----X

DECISION & ORDER

Index No. 534189/2022

Oral Argument: 9/28/2023

Cal. No.: 41, 42, Ms. No.: 1,2

By notice of motion, filed on June 14, 2023, under motion sequence number one, defendant Nosson Schwarz sought an order pursuant to CPLR 3212 granting the defendant summary judgment in his favor on the issue of liability and dismissing the complaint of plaintiff Janelle S. Morrison.

By notice of cross motion, filed August 9th, 2023, under motion sequence two, plaintiff sought an order pursuant to CPLR 3212 granting summary judgment in her favor on the issue of liability and an order pursuant to CPLR 3211 (b) striking the defendant's Third (contributory negligence/culpable conduct) Second (failure to use seat belt) and Sixth (Emergency doctrine) affirmative defenses.

The following NYSCEF numbers 9-38 were considered.

LAW AND APPLICATION

After reviewing the motion papers and hearing oral argument, the order of the Court is as follows for the reasons set forth herein.

A defendant moving for summary judgment dismissing the complaint has the burden of establishing its freedom from comparative fault as a matter of law (*Caldwell v. Town of Huntington*, 206 A.D.3d 875, 876, [2nd Dept 2022] citing *Parker v. Johns*, 203 A.D.3d 1059, 1060 [2nd Dept 2022]). The defendant submitted his own and the plaintiff's deposition transcript.

The evidentiary submission demonstrated the following facts. The subject accident occurred on October 31, 2022, at approximately 4.04 p.m., on Utica Avenue at its intersection with Remsen Avenue, in Brooklyn, Kings County, New York. On the date and time of the collision, plaintiff was a seat belted operator of a 2014 Honda sedan and the defendant was the operator of a 2018 Hyundai, which was registered to him. The defendant was traveling on Utica Avenue south bound and plaintiff was traveling the opposite side north bound. At the aforesaid intersection, defendant made a left turn from Utica Avenue onto Remsen Avenue, in Brooklyn, New York and collided with the plaintiff's vehicle.

New York State Vehicle and Traffic Law 1141 provides as follows. The driver of a vehicle intending to turn to the left within an intersection or into an alley, private road, or driveway 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 (VTL 1141).

Considering the evidentiary submission of the plaintiff and the defendant, the defendant's motion for summary judgment motion is denied and the plaintiff's cross motion for summary judgment on liability is granted. The plaintiff made a prima facie showing that the defendant violated VTL 1141. The defendant neither established his freedom of comparative fault nor raised a triable issue of fact in opposition to the plaintiff's cross motion. Defendant's second affirmative defense, failure to wear seat belt, is struck and sixth affirmative defense asserting the emergency doctrine are hereby struck.

CONCLUSION

The motion by defendant Nosson Schwarz for an order pursuant to CPLR 3212 granting the defendant summary judgment in his favor on the issue of liability and dismissing the complaint of plaintiff Janelle S. Morrison is denied.

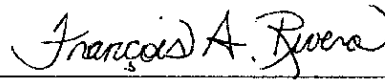
The cross motion by plaintiff s Janelle S. Morrison for an order pursuant to CPLR 3212 granting summary judgment in her favor on the issue of liability is granted.

The cross motion by plaintiff s Janelle S. Morrison for an order pursuant to CPLR 3211 (b) striking the defendant's second affirmative defense for failure to properly use a seat belt and the sixth affirmative defense asserting the emergency doctrine is granted.

The cross motion to strike the third affirmative defense of culpable conduct is denied.

The foregoing constitutes the decision and order of this Court.

ENTER:



J.S.C.

HON. FRANCOIS A. RIVERA
J.S.C.