

Anastasis v Oyenola

2023 NY Slip Op 35069(U)

December 8, 2023

Supreme Court, Queens County

Docket Number: Index No. 716844/2022

Judge: Mojgan C. Lancman

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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

PRESENT: HON. MOJGAN C. LANCMAN

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NIKOLAOS ANASTASIS,

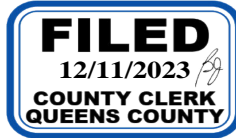
IAS Part 20

Index No.: 716844/2022

Plaintiff,

Motion Seq. No.: 1

-against-



Motion Date: 9.13.2023

SUNDAY OYENOLA,

Defendant.

Motion Cal. No.: 2

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The e-filed papers bearing NYSCEF Doc. Nos. 7-19 were read on this motion made by the plaintiff, Nikolaos Anastasis (the “Plaintiff”), for an Order, *inter alia*, granting partial summary judgment.

The Plaintiff commenced this cause seeking to recover damages for personal injuries allegedly sustained in a motor vehicle accident (the “Accident”). Presently before the Court is the Plaintiff’s motion for an Order: (1) granting summary judgment against the defendant, Sunday Oyenola (the “Defendant”), on the issue of liability; and (2) striking the Defendant’s affirmative defense of culpable conduct. For the following reasons, the motion is granted.

I. Factual Background

The Accident took place on July 16, 2020 at the intersection of 22nd Street and 39th Avenue in Queens, New York. Two vehicles were involved in the Accident. The Plaintiff was the operator and owner of one of the vehicles, a Nissan. The other vehicle, a Toyota, was operated and owned by the Defendant.

As noted, the Accident took place at an intersection. There was no stop sign or other traffic control device at the intersection in the Plaintiff’s direction of travel. On the other hand, there was a stop sign at the intersection with respect to the Defendant’s direction of travel. According to the Plaintiff’s affidavit in support, the Defendant “failed to stop at the stop sign that controlled his road of travel.”

The Defendant does not submit an affidavit in opposition. Instead, his counsel has filed an affirmation in opposition.

II. Discussion

To establish entitlement to summary judgment on the issue of legal liability, the Plaintiff: “... 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. To be entitled to partial summary judgment a plaintiff does not bear the . . . burden of establishing . . . the absence of . . . her own comparative fault; instead, [a] violation of the Vehicle and Traffic Law constitutes negligence as a matter of law . . .” (*Shah v MTA Bus Co.*, 201 AD3d 833, 834 [2d Dept 2022] [internal quotation marks and citations omitted]).

The Plaintiff establishes *prima facie* entitlement to summary judgment on the issue of liability because the Defendant's failure to yield the right-of-way was a proximate cause of the Accident. Here, the record establishes that: (1) that the Plaintiff had the right of way; (2) that the Defendant failed to stop at the stop sign he had at the intersection; (3) that the Defendant did not yield the right of way to the Plaintiff; and (4) that the contact between the Plaintiff's vehicle and the Defendant's vehicle was the result of the latter's failure to yield the right of way to the Plaintiff (*see* Vehicle and Traffic Law § 1172 [a]; *Ashby v Estate of Encarnacion*, 178 AD3d 763 [2d Dept 2019]; *Kerolle v Nicholson*, 172 AD3d 1187 [2d Dept 2019]; *Kaziu v Human Care Servs. for Families & Children, Inc.*, 167 AD3d 588 [2d Dept 2018]; *Kraynova v Lowy*, 166 AD3d 600 [2d Dept 2018]; *Mastricova v Ruderman*, 164 AD3d 1435 [2d Dept 2018]).

In opposition, the Defendant fails to raise any triable issues of fact because he does not submit an affidavit in opposition. The attorney affirmation submitted in opposition does not raise any triable issues of fact because it has “no probative value in opposition to a summary judgment motion” (*Commissioners of the State Ins. Fund v Sanitation Salvage Corp.*, 187 AD3d 537, 537 [1st Dept 2020]).

The Defendant's legal argument that the motion should be denied as premature because of outstanding discovery is without merit. In *Quintanilla v Mark*, 210 AD3d 714-715, the Second Department held as follows with respect to the interplay between a summary judgment motion and open discovery:

While a party is entitled to a reasonable opportunity to conduct discovery in advance of a summary judgment determination, a party contending that a summary judgment motion is premature must demonstrate that discovery might lead to relevant evidence or that the facts essential to justify opposition to the motion were exclusively within the knowledge and control of the movant. The mere hope or speculation that evidence sufficient to defeat a motion for summary judgment may be uncovered during the discovery process is insufficient to deny the motion. Here, the defendant's proffered need to conduct depositions did not warrant denial of the motion, since the defendant already had personal knowledge of the relevant facts, and his mere hope or speculation that evidence might be uncovered was insufficient to deny the motion [internal quotation marks, brackets and citations omitted]).

Here, the Defendant has personal knowledge of the relevant facts because he was the owner and operator of one of the vehicles involved in the Accident. Thus, the argument that outstanding discovery warrants denial of this motion is baseless (*see id.*; *Elfe v Roman*, 219 AD3d 1304 [2d Dept 2023]). The Defendant's remaining opposition arguments with respect to liability are also baseless. The Plaintiff is therefore granted summary judgment on the issue of liability against the Defendant.

B. Culpable Conduct

The next issue presented for consideration is whether the Defendant's affirmative defense of culpable conduct, including contributory negligence and assumption of risk, should be dismissed. This issue is properly before the Court because: "[e]ven though a plaintiff is no longer required to establish his or her freedom from comparative negligence to be entitled to summary judgment on the issue of liability, the issue of a plaintiff's comparative negligence may be decided in the context of a summary judgment motion where, as here, the plaintiff moved for summary judgment dismissing a defendant's affirmative defense of comparative negligence" (*Hai Ying Xiao v Martinez*, 185 AD3d 1014, 1014 [2d Dept 2020]; *see also Ng v West*, 195 AD3d 1006 [2d Dept 2021]) [citations omitted].

Furthermore, CPLR § 3212 [g] "... permits a motion court to limit issues of fact for trial, by specifying which facts are not in dispute or are incontrovertible, and such facts shall be deemed established for all purposes in the action. The provision recognizes that, notwithstanding the denial or partial grant, one of several facts may nonetheless appear to be conceded or otherwise definitively resolved by the moving and opposing papers" (*see Oluwatayo v Dulinayan*, 142 AD3d 113, 118 [1st Dept 2016]).

The record demonstrates that the Plaintiff is an innocent driver (*see id.*). The evidence in admissible form, his affidavit, reveals that the Accident was caused as the result of the Defendant's failure to stop at a stop sign. There is no evidence that the Plaintiff contributed in any manner to the Accident. Consequently, the "Plaintiff has established his lack of culpable conduct as an undisputed innocent driver, which entitles him to summary judgment on lack of fault pursuant to CPLR 3212 [g]" (*Oluwatayo v Dulinayan*, 142 AD3d 113, 120; *see Ramirez v Elias-Tejada*, 168 AD3d 401 [1st Dept 2019]). In light of said determination, the Defendant's affirmative defense of culpable conduct, including contributory negligence and culpable conduct, on the Plaintiff's part is dismissed (*see Oluwatayo v Dulinayan*, 142 AD3d 113).

In light of the foregoing determinations, it is unnecessary to consider the parties' remaining arguments.

Lastly, the Court notes that although the Plaintiff is granted summary judgment on the issue of liability, the Defendant is entitled to discovery on the issue of damages (*see Barr v Raffae*, 96 AD2d 800 [1st Dept 1983]), and that the Plaintiff is not relieved of the burden of establishing that he suffered a serious injury within the meaning of Insurance Law § 5102 [d] (*see Zecca v Riccardelli*, 293 AD2d 31 [2d Dept 2002]).

III. Conclusion

For the reasons stated above, it is hereby:

ORDERED, the Plaintiff's motion is granted; and it is further,

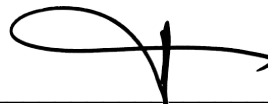
ORDERED, that the Plaintiff is granted summary judgment on the issue of liability against the Defendant; and it is further,

ORDERED, that Defendant's affirmative defense of culpable conduct, including contributory negligence and assumption of risk, on the Plaintiff's part is dismissed; and it is further,

ORDERED, that the Plaintiff shall serve a copy of this Order with Notice of Entry upon the Defendant via NYSCEF by January 31, 2024.

This constitutes the Decision and Order of the Court.

Dated: Jamaica, New York
December 8, 2023



MOJGAN C. LANCMAN, J.S.C.

