

LaFranca v Grunert
2023 NY Slip Op 35156(U)
January 18, 2023
Supreme Court, Queens County
Docket Number: Index No. 708032/2017
Judge: Timothy J. Dufficy
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SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS, PART 35

PRESENT: **Hon. Timothy J. Dufficy**

Justice

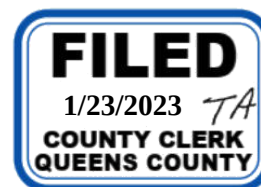
-----X
MELISSA LAFRANCA,

Plaintiff,

—against—

PATRICIA GRUNERT, THOMAS GRUNERT and
MICHAEL GRUNERT,

Defendants,
-----X



Index No. 708032/2017

Motion Seq. No. 3

Motion Date October 5, 2022.

The following papers were read on this motion by plaintiff for an Order, granting her summary judgment on the issue of liability pursuant to CPLR § 3212; dismissing the affirmative defense of comparative negligence pursuant to CPLR § 3211; and granting plaintiff a special trial preference pursuant to CPLR § 3043(a).

	PAPERS NUMBERED
Notice of Motion-Affidavits-Exhibits	NYSCEF Doc. No(s). 42-66
Answering Affidavits-Exhibits	NYSCEF Doc. No(s). 67-68
Replying Affidavit	NYSCEF Doc. No(s). 69

Upon the foregoing papers, the requested reliefs of summary judgment and to strike the affirmative defense of comparative negligence are granted. The special trial preference is denied.

This lawsuit arises from a motor vehicle accident that occurred on March 27, 2017, at the intersection of 58th Road and Main Street in Queens, New York.

The record reflects that plaintiff Melissa LaFranca was traveling northbound on Main Street and the vehicle operated by defendant MICHAEL GRUNERT (GRUNERT) and owned by defendants THOMAS GRUNERT and PATRICIA GRUNERT was traveling eastbound on 58th Road. It is undisputed that there is a stop sign for vehicles traveling on 58th Road and there is no

Stop sign for vehicles traveling on Main Street, a two-way street. Additionally, there is a parking lane, a bus lane, and travel lane in each direction of Main Street.

Plaintiff testified at her examination before trial (EBT) that she had been traveling eastbound on Main Street at approximately 15-20 miles per hour. She saw the GRUNERT vehicle coming from her left, a split second before the accident when the GRUNERT vehicle was entering the intersection. She slammed on her brakes but the front and right-front corner of the GRUNERT vehicle came into contact with Plaintiff's left front fender.

Plaintiff also submits a certified police accident report containing GRUNERT's party admission statement that before the accident he was stopped at the Stop sign on eastbound 58th Road at the intersection with Main Street. According to the report, GRUNERT stated that after waiting 5 to 10 seconds, he made a left turn onto northbound Main Street where the front of his vehicle collided with the plaintiff's vehicle.

GRUNERT testified at his EBT that before the accident, he was traveling eastbound on 58th Street towards Main Street. He testified that he stopped at the sign and began "inching forward" because his view of northbound traffic on Main Street was blocked by a large truck, that was stopped in traffic on southbound Main Street. As he was inching out, "in order to have a line of sight," GRUNERT saw the plaintiff's vehicle traveling northbound on Main Street, approaching the intersection. Plaintiff's vehicle was about 10 to 15 feet away from his vehicle and traveling at 40 miles per hour. At this point, the front of GRUNERT's vehicle had crossed into the northbound lane. GRUNERT testified that a "few seconds" passed from the time he saw the plaintiff's vehicle until the accident. He could not see traffic on northbound Main Street before he entered the intersection because his view was obstructed by the truck.

Plaintiff has established a *prima facie* entitlement to summary judgment. The record reflects that plaintiff had the right of way when GRUNERT failed to yield, in violation of Vehicle and Traffic Law § 1142(a), and that this negligence was the sole proximate cause of the accident. (See *Belle-Fleur v Desriviere*, 178 AD3d 993 [2d Dept 2019]; *Smith v Omanes*, 123 AD3d 691 [2d Dept 2014]; *Williams v Hayes*, 103 AD3d 713 [2d Dept 2013]; *Thompson v Schmitt*, 74 AD3d 789 [2d Dept 2010]).

In opposition, GRUNERT fails to raise a triable issue of fact. "The driver with the right of way is entitled to anticipate that the other motorist will obey traffic laws which require him or her to yield" (See *Williams v Hayes*, *supra*, 103 AD3d at 714). "Although a driver with a right of way

also has a duty to use reasonable care to avoid a collision, . . . a driver with the right of way who has only seconds to react to a vehicle which has failed to yield is not comparatively negligent for failing to avoid the collision” (See *Yelder v Walters*, 64 AD3d 762, 764 [2d Dept 2009]).

Speculative contentions as to how a driver with the right of way could have avoided the accident are insufficient to raise an issue of fact (See *Breen v Seibert*, 123 AD3d 963 [2d Dept 2014]). Regardless of which vehicle first entered the intersection, plaintiff as the driver with the right of way was entitled to anticipate that defendant would obey traffic laws requiring him to yield (See *Yelder, supra*, 64 AD3d at 764).

Viewing the evidence in the light most favorable to GRUNNERT, the evidence establishes that plaintiff had only “a few seconds” to react to the GRUNNERT vehicle, who admitted proceeding into the intersection although his view of traffic on Main Street was obstructed.

Finally, GRUNNERT’s testimony regarding the speed of plaintiff’s vehicle is speculative and fails to raise an issue of fact as he only saw it for “a few seconds” before the accident, when it was 10 to 15 feet away (See *Yelder, supra*, 64 AD3d at 765; *Galvis v Ravilla*, 111 AD3d 600 [2d Dept. 2013]; *Batts v Page*, 51 AD3d 833 [2d Dept. 2008]).

Accordingly, plaintiff’s motion for summary judgment on the issue of liability is granted and since there is no credible evidence of comparative fault by the plaintiff, affirmative defense of comparative negligence is dismissed.

However, the trial preference is denied. The purpose of CPLR § 3403 is to single out cases which for some pressing reason deserve to be tried earlier than calendar position would ordinarily allow (*Green v Vogel*, 144 AD2d 66 [2d Dept 1989]). “[A] trial preference should be granted sparingly and only when extraordinary circumstances command such a result since ‘the granting of a preference represents a favoring of one case over many other cases awaiting trial’” (*Smith v Schnabel*, 34 AD2d 603 [3d Dept 1970]). A trial judge has “broad latitude...[to] exercise sound judicial discretion...[to] facilitate the prompt trial of those actions which present **extraordinary or exceptional circumstances** in order to further the ends of justice” [emphasis added] (*Green v Vogel*, 144 AD3d at 70). In exercising sound discretion, the trial judge is to consider the facts of each individual case (*Id.*).

While this court is not unsympathetic to plaintiff’s situation, unfortunately it is similar to that faced by many litigants in Queens County. Plaintiff has not made a sufficient showing of extraordinary or exceptional circumstances or extraordinary hardship to warrant the granting of a

trial preference (*Bernard v Hyman*, 155 AD2d 403 [2d Dept 1989]; *Rago v Nationwide Ins. Co.*, 120 AD2d 579 [2d Dept 1986]).

Accordingly, it is

ORDERED, that plaintiff's motion for summary judgment on the issue of liability is granted; and it is further

ORDERED, that defendants' affirmative defense of comparative negligence is dismissed, and it is further

ORDERED that plaintiff's motion for a special trial preference is denied.

The foregoing constitutes the decision and order of the Court.

Dated: January, 18, 2023

A handwritten signature in black ink, appearing to read 'T. Dufficy', is written over a horizontal line.

HON. TIMOTHY J. DUFFICY, J.S.C.

