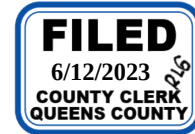


Gray v Smith
2023 NY Slip Op 35173(U)
June 9, 2023
Supreme Court, Queens County
Docket Number: Index No. 715789/2019
Judge: Denis J. Butler
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This opinion is uncorrected and not selected for official publication.

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE DENIS J. BUTLER
JusticeIAS Part 12-----x
ESTELLE L. GRAY,

Plaintiff,

-against-

SYLVIA G. SMITH, CARERIDE PARATRANSIT
LLC, and CARLOS E. FRANCIS,Defendants.
-----x

Index

Number: 715789/2019

Motion Date:

May 23, 2023Motion Seq. No.: 001

The following papers were read on this motion by defendants Careride Paratransit LLC and Carlos E. Francis for an order pursuant to CPLR § 3212 granting summary judgment on the issue of liability and dismissing all claims and cross claims insofar as asserted against moving defendants; and cross-motion by plaintiff for an order granting summary judgment pursuant to CPLR § 3212 as against defendants Sylvia G. Smith, Careride Paratransit LLC, and Carlos E. Francis, on the issue of plaintiff's liability on the ground plaintiff is free from fault in the happening of the accident, and dismissing all affirmative defenses against plaintiff alleging comparative negligence.

Papers
Numbered

Notice of Motion, Affirmation,

Memorandum of Law and Exhibits.....E33-47

Notice of Cross-Motion, Affirmation, Exhibits.....E48-54

Affirmation In Opposition to Cross-Motion, Exhibits.....E56-57

Reply Affirmation.....E59

Upon the foregoing papers, it is ordered that this motion and cross-motion are determined as follows:

Plaintiff sues for injuries sustained on August 6, 2018, when the vehicle owed by defendant Careride Paratransit LLC, and

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operated by defendant Carlos E. Francis, wherein plaintiff was a passenger, made contact with the vehicle owned and operated by defendant Sylvia G. Smith as the two vehicle's approached each another from opposite directions.

The motion by defendants Careride Paratransit LLC and Carlos E. Francis (hereinafter moving defendants) seeks summary judgment and dismissal of the complaint insofar as asserted against moving defendants on the ground moving defendants were not responsible for the happening of the accident.

A proponent for summary judgment must make a prima facie showing of entitlement to judgment, as a matter of law, through the submission of sufficient evidence to demonstrate the absence of any material issues of fact (see Alvarez v Prospect Hosp., 68 NY2d 320, 24 [1986]). Once the movant establishes prima facie entitlement to judgment, it is incumbent upon the opposing party to produce evidentiary proof in admissible form sufficient to establish the existence of triable issues of fact (see Zuckerman v City of New York, 49 NY2d 557, 63 [1980]). "Issue finding, rather than issue determination is the court's function," and "[i]f there is any doubt about the existence of a triable issue of fact, or a material issue of fact is arguable, summary judgment should be denied" (Celardo v Bell, 222 AD2d 547, 547 [2d Dept 1995]).

"A defendant moving for summary judgment in a negligence action has the burden of establishing, prima facie, that he or she was not at fault in the happening of the subject accident" (McPhaul-Guerrier v Leppla, 201 AD3d 920, 921 [2d Dept 2022] [internal quotation marks omitted]). "In determining a motion for summary judgment, the court must view the evidence in the light most favorable to the nonmoving party" (Open Door Foods, LLC v Pasta Machines, Inc., 136 AD3d 1002, 1004-05 [2d Dept 2016]). "Thus, where conflicting inferences may be drawn, [the Court] must draw those [inferences] most favorable to the nonmoving party" (Id.).

"A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety" (Vehicle and Traffic Law § 1128[a]; see Pipinias v Ferreira, 155 AD3d 1073, 1074 [2d Dept 2017]). "A violation of the Vehicle and Traffic Law constitutes negligence as a matter of law" (Ricciardi v Nelson, 142 AD3d 492, 493 [2d Dept 2016]).

The court finds conflicting deposition testimony considered on this motion demonstrates the existence of a triable issue of fact whether defendant Smith swerved into defendant Francis' lane of

travel causing the accident. At defendant Francis's deposition, defendant Francis testified defendant Smith caused the accident when defendant Smith swerved out of defendant Smith's lane of travel and crashed into defendant Francis' vehicle. At defendant Smith's deposition, however, defendant Smith testified that although defendant Smith could not recall how the accident occurred defendant Smith remained in her lane of travel at the time of the accident.

Moving defendants also annexed the affidavit of non-party witness Arshad Choudhary who testified defendant Smith's vehicle had blown-out the front driver's side tire and then swerved into defendant Francis' vehicle. Defendant Smith testified, however, that her vehicle experienced no mechanical failure prior to the accident.

As such, the motion by defendants Careride Paratransit LLC and Carlos E. Francis seeking summary judgment and dismissal of the complaint, and any cross claims, insofar as asserted against defendants Careride Paratransit LLC and Carlos E. Francis, is denied.

The cross motion by plaintiff seeks summary judgment in favor of plaintiff on the issue of liability on the ground plaintiff is an innocent passenger who was not responsible for the happening of the accident.

It is uncontroverted that plaintiff was an innocent passenger who did not engage in any culpable conduct that contributed to the happening of the accident (see Morris v Dorota, 187 AD3d 1174 [2d Dept 2020]). While moving defendants opposed the cross motion on the ground there has been no finding of liability as to moving defendants, "[t]he right of an innocent passenger to summary judgment on the issue of whether he or she was at fault in the happening of an accident is not restricted by potential issues of comparative negligence as between two defendant drivers" (Morris v Dorota, 187 AD3d 1174 [2d Dept 2020] [internal quotation marks omitted]).

As such, the cross motion by plaintiff seeking summary judgment on the issue of plaintiff's liability and comparative fault in the happening of the accident, is granted.

Accordingly, it is

ORDERED that the motion by defendants Careride Paratransit LLC and Carlos E. Francis seeking summary judgment and dismissal of the complaint, and any cross claims, insofar as asserted against those

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defendants, is DENIED; and it is further

ORDERED that the cross motion by plaintiff seeking summary judgment on the issue of plaintiff's liability and comparative fault in the happening of the accident is GRANTED, and all affirmative defenses asserted against plaintiff alleging comparative negligence are hereby DISMISSED.

This constitutes the decision and order of the court.

Dated: June 9, 2023



Denis J. Butler, J.S.C.

