

Gianutsos v Vaezi

2024 NY Slip Op 32821(U)

July 15, 2024

Supreme Court, New York County

Docket Number: Index No. 159502/2019

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

-----X

KRISTI GIANUTSOS,

Plaintiff,

- v -

ALIREZA VAEZI, EDWARD OSTAD

Defendant.

-----X

INDEX NO. 159502/2019
MOTION DATE 06/03/2024
MOTION SEQ. NO. 001

AMENDED DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44

were read on this motion to/for

JUDGMENT - SUMMARY

Upon the foregoing documents, the motion by Plaintiff pursuant to CPLR 3212 for summary judgment on the issue of liability, finding that Defendants violated VTL 1160 (c) and VTL 1163 (b) is decided as follows:

Plaintiff seeks to recover for injuries allegedly sustained as a result of an August 26, 2019 motor vehicle accident between a vehicle operated by Plaintiff and a vehicle owned by Defendant Edward Ostad and operated by Defendant Alireza Vaezi ("Defendant Driver") on Old Westbury Road at its intersection with Locust Lane.

The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case (Winegrad v NY Univ. Med. Ctr., 64 NY2d 851 [1985]). Once such entitlement has been demonstrated by the moving party, the burden shifts to the party opposing the motion to "demonstrate by admissible evidence the existence of a factual issue requiring a trial of the action or tender an acceptable excuse for his failure...to do [so]" (Zuckerman v New York, 49 NY2d 557, 560 [1980]).

New York Consolidated Laws Service 1160 (c) states in relevant part:

Left turns on other than two-way roadways. At any intersection where traffic is restricted to one direction on one or more of the roadways, the driver of a vehicle intending to turn left at any such intersection shall approach the intersection in the extreme left-hand lane of the roadway lawfully available to traffic moving in the direction of travel of such vehicle or, where travel on the shoulder or slope has been authorized, from the shoulder or slope, and after entering the intersection the left turn shall be made so as to leave the intersection, as nearly as practicable, in the left-hand lane lawfully available to traffic moving in such direction upon the roadway being entered.

(Vehicle and Traffic Law 1160 (c) [Consol., Lexis Advance through 2024 released

Chapters 1-194])

New York Consolidated Laws Service 1163 (b) states in relevant part: “A signal of intention to turn right or left when required shall be given continuously during not less than the last one hundred feet traveled by the vehicle before turning” (Vehicle and Traffic Law 1163 (b) [Consol., Lexis Advance through 2024 released Chapters 1-194]).

In support of the motion, Plaintiffs rely, in pertinent part, on Plaintiff’s Examination Before Trial (“EBT”), Defendant Driver’s EBT, and a certified copy of a police accident report. Plaintiff testified that she was involved in another motor vehicle accident in 2014 or 2015 where she was rear ended. Plaintiff testified that on the date of the subject accident she was traveling approximately twenty-five to thirty miles per hour on the service road of the LIE in the left lane. Plaintiff testified that her son (who she believes was five years old at the time) was a passenger in the vehicle that she was operating at the time of the subject accident, and that both she and her son were wearing their seatbelts. Plaintiff testified that a vehicle from the center lane tried to make a “quick left” in front of her vehicle, she “jammed” on her brake, but the front right side of Plaintiff’s vehicle came into contact with the rear of the other vehicle which was half in Plaintiff’s lane and

half in the other vehicle's lane. Plaintiff testified that she first noticed the other vehicle when it came in front of her vehicle.

Defendant Driver testified that he was employed as a personal driver and aide and was driving a vehicle owned by Defendant Edward Ostad with his permission. Defendant Driver testified that he was driving his employer with Abraham Ostad as a passenger in the front passenger seat from Manhattan to Long Island. Defendant Driver testified that he was driving in the middle lane and was first in the lane at a red light. Defendant Driver further testified that he first saw Plaintiff's vehicle behind him three to four minutes before the accident. Defendant Driver testified that his passenger told him to make a left, he turned on his turn signal, but there was no room to go into the left lane due to traffic, so Defendant Driver continued going straight. Defendant Driver testified that he was driving about twenty miles per hour when he was struck in the rear by Plaintiff's vehicle. Defendant Driver further testified that no portion of his vehicle was in the left lane at the time of impact and that his vehicle remained in the middle lane.

In opposition, Defendants contend that Defendant Driver's intention to make a left turn is irrelevant since he testified that the accident happened in the center lane.

In reply, Plaintiff relies on the certified copy of the police accident report. Plaintiff contends that the police accident report states that Defendant Driver stated that "he was changing lanes" and that Defendant Driver was cited with unsafe lane change. Plaintiff further contends that the accident was caused by Defendants' negligence.

The question of whether the accident occurred as Plaintiff described it and as supported by the police accident report and whether it occurred as Defendant Driver described it, is a classic dispute of fact (*Ramos v Rojas*, 37 AD3d 291, 292 [1st Dept 2007]). Accordingly, the motion is

denied, the conflicting accounts of the accident set forth by the parties raise issues of fact, sufficient to preclude summary judgment of liability. Accordingly, it is

ORDERED that the motion by Plaintiff for summary judgment on the issue of liability is DENIED; and it is further

ORDERED that any requested relief not specifically addressed herein has nonetheless been considered; and it is further

ORDERED that within 30 days of entry, Plaintiff shall serve a copy of this Decision and Order with Notice of Entry upon Defendants.

This constitutes the Decision and Order of the Court.

7/15/2024

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