

Young-Smith v Gigante

2024 NY Slip Op 34841(U)

July 17, 2024

Supreme Court, Suffolk County

Docket Number: Index No. 604439/2022

Judge: Linda Kevins

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SHORT FORM ORDER

INDEX No. 604439/2022
CAL. No. 202301797MV

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 29 - SUFFOLK COUNTY

P R E S E N T :

Hon. LINDA J. KEVINS
Justice of the Supreme Court

MOTION DATE 4/23/24
ADJ. DATE 4/30/24
Mot. Seq. # 002 MG
Mot. Seq. # 003 MD

-----X

ARIEL T. YOUNG-SMITH,

Plaintiff,

- against -

NICHOLAS J. GIGANTE and LISA ZEPPELELLI,

Defendants,

-----X

NICHOLAS J. GIGANTE and LISA ZEPPELELLI,

Third-Party Plaintiffs,

- against -

JOSEPH R. SANCHEZ,

Third-Party Defendant.

-----X

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Upon the following papers read on this e-filed motion for summary judgment: Notice of Motion and supporting papers by plaintiff Ariel T. Young-Smith, filed March 19, 2024; Notice of Cross-Motion and supporting papers by third-party defendant Joseph R. Sanchez, filed March 30, 2024; Answering Affidavits and supporting papers by defendants/third-party plaintiffs Nicholas J. Gigante and Lisa Zeppetelli, filed April 26, 2024; Replying Affidavits and supporting papers by plaintiff Ariel T. Young-Smith, filed April 29, 2024; Replying Affidavits and supporting papers by third-party defendant Joseph R. Sanchez, filed May 3, 2024; Other ___; it is

Young-Smith v Gigante
Index No. 604439/2022
Page 2

ORDERED that the motion by plaintiff Ariel T. Young-Smith and the motion by third-party defendant Joseph R. Sanchez are consolidated for purposes of this determination; and it is further

ORDERED that the motion by plaintiff Ariel T. Young-Smith is granted; and it is further

ORDERED that the motion by third-party defendant Joseph R. Sanchez, improperly denominated as a cross motion, is denied; and it is further

ORDERED that upon Entry of this Order, the movant is directed to promptly serve a copy of this Order with Notice of Entry upon all parties and to promptly file the affidavits of service with the Clerk of the Court.

Plaintiff Ariel T. Young-Smith commenced this action to recover damages for personal injuries she allegedly sustained as a result of a motor vehicle accident, which occurred on July 8, 2021, at the intersection of Great East Neck Road and South Railroad Avenue, in West Babylon, New York. The accident allegedly occurred when the vehicle operated by third-party defendant Joseph R. Sanchez (Sanchez), in which plaintiff was a passenger, was struck by a vehicle operated by defendant/third-party plaintiff Nicholas J. Gigante (Gigante) and owned by defendant/third-party plaintiff Lisa Zeppetelli (Zeppetelli).

Plaintiff now moves for summary judgment on the issue of her own negligence. Plaintiff argues, among other things, that the vehicle in which she was traveling had the right of way as it was proceeding through the intersection when it was struck by the vehicle driven by Gigante, and that plaintiff, as an “innocent passenger,” was free from comparative negligence. In support of the motion, plaintiff submits, among other things, the pleadings, a certified copy of the police accident report, the parties’ deposition transcripts, and what is purported to be a letter from the Suffolk County Traffic and Parking Violations Agency. Sanchez submits a partial opposition to plaintiff’s motion and moves for summary judgment on the issue of Gigante’s negligence. Sanchez argues, among other things, that Gigante ran a red traffic light and was the proximate cause of the alleged accident. Gigante and Zeppetelli oppose both motions, arguing, among other things, that there is a question of fact regarding which vehicle had a green traffic light. The court notes the purported letter from the Suffolk County Traffic and Parking Violations Agency was not properly certified or authenticated, and, thus, was not considered in its determination (*see* CPLR 4518; *Muslar v Hall*, 214 AD3d 77, 185 NYS3d 45 [1st Dept 2023]).

To establish prima facie entitlement to judgment as a matter of law, a movant must come forward with evidentiary proof, in admissible form, demonstrating the absence of any material issues of fact (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 508 NYS2d 923 [1986]; *Sillman v Twentieth Century Fox Film Corp.*, 3 NY2d 395, 165 NYS2d 498 [1957]). The failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 48 NYS2d 316 [1985]). If such a showing is made, the burden shifts to the

Young-Smith v Gigante
Index No. 604439/2022
Page 3

party opposing the motion for summary judgment, who must proffer evidence in admissible form sufficient to establish the existence of any material issue of fact which requires a trial (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 508 NYS2d 923; *Zuckerman v City of New York*, 49 NY2d 557, 427 NYS2d 595 [1980]).

Vehicle and Traffic Law § 388 (1) provides that the owner of a motor vehicle is liable for damages resulting from the negligence of one who uses or operates that vehicle with the permission, express or implied, of such owner (*see Rodriguez v Morales*, 217 AD3d 695, 190 NYS3d 452 [2d Dept 2023]; *Kelly v Starr*, 181 AD3d 799, 120 NYS3d 373 [2d Dept 2020]). By their answer and deposition testimony, defendants/third-party plaintiffs admit that Zeppetelli is the owner of the subject vehicle and that Gigante was operating the vehicle with her permission and consent at the time of the alleged accident.

Plaintiff established a prima facie case that she was not at fault in the happening of the accident (*see CPLR 3213 [g]; Romain v City of New York*, 177 AD3d 590, 112 NYS3d 162 [2d Dept 2019]). The right of an innocent passenger to summary judgment is not restricted by potential issues of comparative negligence as between the drivers of the two vehicles (*see Ochoa v Townsend*, 209 AD3d 867, 177 NYS3d 81 [2d Dept 2022]; *Morris v Dorota*, 187 AD3d 1174, 131 NYS3d 577 [2d Dept 2020]). While Gigante and Sanchez give conflicting testimony as to who had the right of way when entering the intersection, neither driver suggested that plaintiff bore any fault in the happening of the accident, and, thus, neither raised an issue of fact in opposition (*see Romain v City of New York*, 177 AD3d 590, 112 NYS3d 162; *see generally Alvarez v Prospect Hosp.*, 68 NY2d 320, 508 NYS2d 923). Accordingly, plaintiff's motion is granted.

As there can be more than one proximate cause of an accident, a defendant driver who is seeking summary judgment must make a prima facie showing that he or she is free from comparative fault (*Laureano v EAN Holdings, LLC*, 225 AD3d 754, 207 NYS3d 153 [2d Dept 2024]; *Ballentine v Perrone*, 179 AD3d 993, 114 NYS3d 696 [2d Dept 2020]; *Inesta v Florio*, 159 AD3d 682, 71 NYS3d 161 [2d Dept 2018]). A defendant driver seeking summary judgment on the issue of liability must establish that he or she kept the proper lookout, or that his or her alleged negligence did not contribute to the accident (*Ballentine v Perrone*, 179 AD3d 993, 994, 114 NYS3d 696, 697-698). It is generally for the fact-finder to determine the issue of proximate cause (*see Hain v Jamison*, 28 NY3d 524, 46 NYS3d 502 [2016]; *Floritic v City of New York*, 212 AD3d 434, 183 NYS3d 7 [1st Dept 2023]). Additionally, summary judgment is not warranted where the parties submit conflicting deposition testimony that fails to eliminate triable issues of fact as to how the accident occurred (*see Schmitz v Pinto*, 220 AD3d 681, 197 NYS3d 326 [2d Dept 2023]; *Golovnya v Artemchenko*, 210 AD3d 1058, 180 NYS3d 177 [2d Dept 2022]; *Baab v HP, Inc.*, 211 AD3d 783, 181 NYS3d 124 [2d Dept 2022]).

As to Sanchez's motion, he failed to establish his prima facie entitlement to summary judgment (*see Schmitz v Pinto*, 220 AD3d 681, 197 NYS3d 326). Joseph Sanchez testified that he was traveling within the speed limit on Great East Neck Road, and that he had a "steady green light" as he approached

Young-Smith v Gigante
Index No. 604439/2022
Page 4

the intersection with South Railroad Avenue. He could not estimate for how long the traffic light at the intersection was green. In contrast, Gigante testified that he was traveling on South Railroad Avenue and approaching the intersection with Great East Neck Road, that he first observed the traffic light controlling the intersection when he was at a distance of at least “15 to 20 car lengths” from the intersection, and that the traffic light was green for his lane of travel. He testified that when he was approximately two to three car lengths from the intersection, the light changed to yellow, that he “had plenty of time to clear the intersection” and so “proceeded to go through the intersection because the light wasn’t red,” and that the light was still yellow as he traveled through the intersection. Given the conflicting testimony by the drivers of the vehicles, Sanchez failed to establish his freedom from comparative fault (*see Ballentine v Perrone*, 179 AD3d 993, 114 NYS3d 696). Thus, there are triable issues of fact as to the happening of the accident and who was at fault (*see Schmitz v Pinto*, 220 AD3d 681, 197 NYS3d 326; *Baab v HP, Inc.*, 211 AD3d 783, 181 NYS3d 124). Accordingly, Sanchez’s motion is denied.

Anything not specifically granted herein is hereby denied.

The foregoing constitutes the Decision and **Order** of the Court.

Dated: 7.17.24



LINDA KEAVINS, JSC

FINAL DISPOSITION X NON-FINAL DISPOSITION