

Chuvik v Palmer

2024 NY Slip Op 34886(U)

July 11, 2024

Supreme Court, Suffolk County

Docket Number: Index No. 601298/2021

Judge: Joseph Farneti

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SHORT FORM ORDER

INDEX No. 601298/2021

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 37 - SUFFOLK COUNTY

PRESENT:

Hon. JOSEPH FARNETI
Acting Justice of the Supreme Court

MOTION DATE 12/7/23 (001)
MOTION DATE 2/21/24 (002)
ADJ. DATE 2/22/24 (001)
ADJ. DATE 6/20/24 (002)
Mot. Seq. # 001 MG
Mot. Seq. # 002 MG

-----X
MYKOLA CHUVIK,

Plaintiff,

- against -

JEREMY PALMER and OXANA
SOBKOVICH,

Defendants.
-----X

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Upon the following papers read on these e-filed motions for summary judgment: Notice of Motion/Order to Show Cause and supporting papers by defendant Sobkovich, filed October 24, 2023; by plaintiff, filed January 23, 2024; Notice of Cross-Motion and supporting papers ; Answering Affidavits and supporting papers by defendant Palmer, filed January 11, 2024 and May 15, 2024; by plaintiff, filed January 19, 2024; by defendant Sobkovich filed February 9, 2024; Replying Affidavits and supporting papers by defendant Sobkovich, filed January 12, 2024 and January 23, 2024; by plaintiff, filed June 18, 2024; Other ; it is

ORDERED that the motion by defendant Oxana Sobkovich (seq. 001) and the motion by plaintiff Mykola Chuvik (seq. 002) are consolidated for purposes of this determination; and it is

ORDERED that the motion by defendant Oxana Sobkovich for summary judgment dismissing the complaint and cross claims against her is granted; and it is

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ORDERED that the motion by plaintiff for summary judgment on the issue of defendant Jeremy Palmer's negligence and dismissing defendants' affirmative defenses of comparative negligence is granted.

This is an action to recover damages for injuries allegedly sustained by plaintiff as a result of a multi-vehicle accident, which occurred on October 10, 2020, on Main Street (Route 27), near its intersection with Dayton Lane, in the Village of East Hampton. The accident allegedly occurred when a vehicle operated by defendant Jeremy Palmer traveled from the left-turn lane into defendant Oxana Sobkovich's lane of travel, colliding with the passenger side of her vehicle. The force of the impact propelled the Sobkovich vehicle forward over the divider and into a vehicle operated by plaintiff, which was heading in the opposite direction of travel from the defendants.

Defendant Sobkovich now moves for summary judgment dismissing the complaint and cross claims against her, arguing, among other things, that defendant Palmer's negligence in violating Vehicle and Traffic Law § 1128 was the sole proximate cause of the accident. In support of her motion, defendant Sobkovich submits, among other things, copies of the pleadings and the deposition transcripts of the parties. Defendant Sobkovich states that she was traveling straight within her lane of travel when, suddenly and without warning, defendant Palmer's vehicle struck the driver side of her vehicle, propelling it into the vehicle operated by the plaintiff. In opposition, defendant Palmer contends he was changing lanes from the turning lane to the northbound lane, which was immediately to the right of his lane of travel, and that he did not see defendant Sobkovich's vehicle until he felt and heard the impact with his vehicle. Defendant Palmer submits, among other things, a certified copy of the police accident report and photographs. Plaintiff also opposes the motion, arguing, among other things, that defendant Sobkovich failed to demonstrate, prima facie, that she was free from fault in the happening of the accident. Plaintiff contends that he was traveling in the opposite direction of the defendants when the vehicle of defendant Sobkovich crossed over the divider and struck his vehicle.

Plaintiff moves for summary judgment on the issue of liability against defendant Palmer and for dismissal of defendants' affirmative defenses of comparative negligence, arguing, among other things, that defendant Palmer's negligence in violating Vehicle and Traffic Law § 1128 was a proximate cause of the accident. In support of his motion, plaintiff submits, among other things, copies of the pleadings and the deposition transcripts of the parties. Defendant Sobkovich does not oppose that part of plaintiff's motion that seeks summary judgment against defendant Palmer, but opposes that part of plaintiff's motion which seeks dismissal of her affirmative defense of comparative negligence. In opposition, defendant Palmer contends there are questions of fact as to defendant Sobkovich's contributory negligence.

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 in admissible form to eliminate any material issues of fact from the case (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 508 NYS2d 923 [1986]; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 87 NYS2d 316 [1985]). Once the movant demonstrates a prima facie entitlement to judgment as a matter of law, the burden shifts to the party opposing the motion to produce evidentiary proof in admissible form sufficient to establish the

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existence of material issues of fact which require a trial of the action (*see Vega v Restani Constr. Corp.*, 18 NY3d 499, 942 NYS2d 13 [2012]; *Alvarez v Prospect Hosp.*, 68 NY2d 320, 508 NYS2d 923; *Zuckerman v City of New York*, 49 NY2d 557, 427 NYS2d 595 [1980]; *see also* CPLR 3212 [b]). In deciding the motion, the court must view all evidence in the light most favorable to the nonmoving party (*see New York City Asbestos Litig. v Chevron Corp.*, 33 NY3d 20, 99 NYS3d 734 [2019]; *Stonehill Capital Mgt., LLC v Bank of the West*, 28 NY3d 439, 45 NYS3d 864 [2016]). To establish prima facie entitlement to judgment as a matter of law on the issue of liability, a plaintiff is no longer required to show freedom from comparative fault (*Rodriguez v City of New York*, 31 NY3d 312, 76 NYS3d 898 [2018]; *see Liu v Lowe*, 173 AD3d 946, 102 NYS3d 713 [2d Dept 2019]; *Bloechle v Heritage Catering, Ltd.*, 172 AD3d 1294, 101 NYS3d 424 [2d Dept 2019]; *Catanzaro v Edery*, 172 AD3d 995, 101 NYS3d 170 [2d Dept 2019]).

A defendant moving for summary judgment in a negligence action has the burden of demonstrating, prima facie, that he or she was not at fault in the happening of the subject collision (*see Salama v Piccirillo*, 223 AD3d 692, 203 NYS3d 169 [2d Dept 2024]; *Daniel v Ian-Michael*, 188 AD3d 1155, 132 NYS3d 841 [2d Dept 2020]). “A plaintiff in a negligence action moving for summary judgment on the issue of liability must establish, prima facie, that the defendant breached a duty owed to the plaintiff and that defendant’s negligence was a proximate cause of the alleged injuries” (*Singh v Jervis*, 222 AD3d 900, 900, 202 NYS3d 260 [2d Dept 2023], quoting *Tsyganash v Auto Mall Fleet Mgt., Inc.*, 163 AD3d 1033, 1033-1034, 83 NYS3d 74 [2d Dept 2018]).

“A violation of the Vehicle and Traffic Law constitutes negligence as a matter of law” (*Salama v Piccirillo*, 223 AD3d 692, 693, 203 NYS3d 169; *Rogers v Consolidated Edison Co. of N.Y., Inc.*, 223 AD3d 689, 690-691, 203 NYS3d 360 [2d Dept 2024]). Vehicle and Traffic Law § 1128 (a) requires that “[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” (*Singh v Jervis*, 222 AD3d 900, 900, 202 NYS3d 260, quoting *Higashi v M&R Scarsdale Rest., LLC*, 176 AD3d 788, 790, 111 NYS3d 92 [2d Dept 2019]; Vehicle and Traffic Law § 1128 (a)). Furthermore, a driver is bound to see what there is to be seen with the proper use of his or her senses (*Singh v Jervis*, 222 AD3d 900, 202 NYS3d 260). “While the driver with the right-of-way is entitled to assume that other drivers will obey the traffic laws requiring them to yield, the driver with the right-of-way also has an obligation to keep a proper lookout and see what can be seen through the reasonable use of his or her senses to avoid colliding with other vehicles” (*Woods v Burgos*, 220 AD3d 688, 689, 197 NYS3d 324 [2d Dept 2023], quoting *Miron v Pappas*, 161 AD3d 1063, 1064, 77 NYS3d 163 [2d Dept 2018] [internal citations omitted]; *Blake v Francis*, 205 AD3d 671, 673, 165 NYS3d 754 [2d Dept 2022]). Nevertheless, “[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” (*Salama v Piccirillo*, 223 AD3d 692, 693, 203 NYS3d 169 [internal quotation marks omitted], quoting *Choo v Virginia Transp. Corp.*, 204 AD3d 743, 744, 164 NYS3d 473 [2d Dept 2022] [internal quotation marks omitted]; *see Hernandez-Martinez v Wang*, 221 AD3d 977, 978, 200 NYS3d 435 [2d Dept 2023]).

Defendant Sobkovich demonstrated her prima facie entitlement to summary judgment by submitting evidence that defendant Palmer’s unsafe lane change in violation of Vehicle and Traffic Law § 1128 (a), was the proximate cause of the accident (*Singh v Jervis*, 222 AD3d 900, 202 NYS3d 260).

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By her deposition testimony, defendant Sobkovich attests that her vehicle was traveling straight within in her lane of travel on Main Street when, suddenly and without warning, defendant Palmer's vehicle struck the driver side of her vehicle, propelling her into the vehicle operated by the plaintiff, which was traveling in the opposite direction of travel. Defendant Sobkovich claims that she had no opportunity to avoid the collision and that she only had seconds to react before colliding with plaintiff's vehicle. Defendant Sobkovich avers that her actions taken after being struck by defendant Palmer's vehicle, and before striking plaintiff's vehicle, were reasonable under the circumstances. Thus, the burden shifted to defendant Palmer and plaintiff to provide a non-negligent explanation for the collision (*see Zuckerman v City of New York*, 49 NY2d 557, 427 NYS2d 595).

Both plaintiff and defendant Palmer failed to submit any evidence in opposition either denying defendant Sobkovich's allegations or offering a non-negligent explanation for the collision. Defendant Palmer contends he was traveling in the left-turn lane, intending to make a left turn into a restaurant, when his wife informed him that he "was going to the wrong restaurant and needed to go over there and she pointed." Defendant Palmer then proceeded to change lanes from the turning lane to the northbound lane. He testified that he looked in his rearview and passenger mirrors, looked over his shoulder multiple times, changed his directional signal from left to right, and then proceeded to change into the northbound lane. He contends that he did not see defendant Sobkovich's vehicle until he felt and heard an impact involving his vehicle. Plaintiff contends that he was traveling in the opposite direction of the defendants when the vehicle of defendant Sobkovich crossed over the divider and struck his vehicle. He testified that he could not avoid the collision with defendant Sobkovich. The testimony of defendant Palmer and plaintiff were insufficient to rebut the inference of defendant Palmer's negligence or to raise a triable issue of fact (*see Singh v Jervis*, 222 AD3d 900, 202 NYS3d 260; *Jaipaulsingh v Umana*, 208 AD3d 765, 174 NYS3d 413 [2d Dept 2022]).

Plaintiff demonstrated his prima facie entitlement to judgment as a matter of law on the issue of defendant Palmer's liability (*see Singh v Jervis*, 222 AD3d 900, 202 NYS3d 260; *Jaipaulsingh v Umana*, 208 AD3d 765, 174 NYS3d 413). Plaintiff states that his vehicle was traveling within his lane of travel, in the opposite direction of the defendants, when it was struck in the side by defendant Sobkovich's vehicle who had crossed over the divider between the lanes of travel. Both defendants testified that defendant Palmer's vehicle left the left-turn lane and collided with the vehicle operated by defendant Sobkovich, which was then propelled into the vehicle operated by plaintiff. The burden now shifts to defendants to raise a triable issue of fact as to whether there was a non-negligent explanation for the collision (*see Bloechle v Heritage Catering, Ltd.*, 172 AD3d 1294, 101 NYS3d 424; *Catanzaro v Edery*, 172 AD3d 995, 101 NYS3d 170; *Auguste v Jeter*, 167 AD3d 560, 88 NYS3d 509). In opposition, defendants failed to submit evidence offering a non-negligent explanation for the collision (*see Salama v Piccirillo*, 223 AD3d 692, 203 NYS3d 169; *Singh v Jervis*, 222 AD3d 900, 202 NYS3d 260).

The court now turns to the remaining portion of plaintiff's motion. When moving to dismiss an affirmative defense, "the plaintiff bears the burden of demonstrating that the affirmative defenses 'are without merit as a matter of law because they either do not apply under the factual circumstances of [the] case, or fail to state a defense'" (*Lewis v US Bank N.A.*, 186 AD3d 694, 697, 130 NYS3d 22 [2d Dept 2020]), quoting *Shah v Mitra*, 171 AD3d 971, 974, 98 NYS3d 197 [2d Dept 2019]; *see Wells Fargo*

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Bank, N.A. v Rios, 160 AD3d 912, 74 NYS3d 321 [2d Dept 2018]). In the context of a motion to dismiss an affirmative defense, “the court must liberally construe the pleadings in favor of the party asserting the defense and give that party the benefit of every reasonable inference” (*LG Funding, LLC v United Senior Props. of Olathe, LLC*, 181 AD3d 664, 665, 122 NYS3d 309 [2d Dept 2020], quoting *Bank of N.Y. v Penalver*, 125 AD3d 796, 797, 1 NYS3d 82 [2d Dept 2015]; see *Gonzalez v Wingate at Beacon*, 137 AD3d 747, 26 NYS3d 562 [2d Dept 2016]). Where there is any doubt regarding the availability of a defense, it should not be dismissed (see *Lewis v US Bank N.A.*, 186 AD3d 694, 130 NYS3d 22; *LG Funding, LLC v United Senior Props. of Olathe, LLC*, 181 AD3d 664, 122 NYS3d 309; *Shah v Mitra*, 171 AD3d 971, 98 NYS3d 197).

Although 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 determined in the context of a summary judgment motion where the plaintiff moves for summary judgment dismissing a defendant’s affirmative defense alleging comparative negligence and culpable conduct on the part of the plaintiff (see *Tenezaca v State of New York*, 220 AD3d 959, 198 NYS3d 745 [2d Dept 2023]; *Jones v Zuo*, 220 AD3d 933, 198 NYS3d 734 [2d Dept 2023]). While the issue of proximate cause generally is a question for the fact finder to resolve, it may be determined as a matter of law where only one conclusion may be drawn from the established facts (see *Singleton v Summus*, 219 AD3d 1366, 196 NYS3d 484 [2d Dept 2023]; *Angelillo v Guerin*, 219 AD3d 556, 194 NYS3d 272 [2d Dept 2023]).

Plaintiff demonstrated his prima facie entitlement to judgment as a matter of law dismissing the defendants’ affirmative defenses of comparative negligence. Plaintiff’s submissions established that he was not at fault in the happening of the accident (see *Salama v Piccirillo*, 223 AD3d 692, 203 NYS3d 169; *Singh v Jervis*, 222 AD3d 900, 202 NYS3d 260). Plaintiff testified that he operated his vehicle within his lane of travel, when defendant Sobkovich’s vehicle suddenly crossed over the lines divider and struck his vehicle. He further testified that he took all steps possible to avoid the collision. In opposition, defendants failed to raise a triable issue of fact as to plaintiff’s comparative fault (see *Salama v Piccirillo*, 223 AD3d 692, 203 NYS3d 169; *Singh v Jervis*, 222 AD3d 900, 202 NYS3d 260).

Accordingly, the motions are granted.

Dated: 7/11/2024

A.J.S.C.

FINAL DISPOSITION NON-FINAL DISPOSITION