Albro v Wigger
2024 NY Slip Op 35152(U)
October 31, 2024
Supreme Court, Suffolk County
Docket Number: Index No. 610936/2019
Judge: David T. Reilly
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SHORT FORM ORDER

INDEX No. 610936/2019
CAL. No. 202400297MV

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 30 - SUFFOLK COUNTY

P R E S E N T :

Hon. DAVID T. REILLY
Justice of the Supreme Court

MOTION DATE 5/15/24
ADJ. DATE
Mot. Seq. # 002 MG

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WILLIAM M. ALBRO,

Plaintiff,

- against -

CAMERON T. WIGGER and PETER A. WIGGER,

Defendants.

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Upon the following e-filed papers read on this motion to reargue: Notice of Motion and supporting papers by plaintiff, dated April 17, 2024; Answering Affidavits and supporting papers by defendants, dated April 30, 2024; Replying Affidavits and supporting papers by plaintiff, dated May 1, 2024; it is

ORDERED that the motion by plaintiff for leave to reargue his prior motion pursuant to CPLR 2221(d)(3) is granted; and it is further

ORDERED that, upon reargument, the motion by plaintiff for partial summary judgment on the issue of defendants' negligence is granted.

This action was commenced by plaintiff William M. Albro to recover damages for injuries he allegedly sustained on May 7, 2018, when his motor vehicle collided with a vehicle owned by defendant Peter A. Wigger and operated by defendant Cameron T. Wigger.

Plaintiff now moves to reargue his prior motion for partial summary judgment in his favor, asserting that the Court misapprehended the facts or law by "overlook[ing] key deficiencies in Defendants' opposition papers and oral argument," and by "failing to acknowledge and address the presumption of Defendants' negligence under Vehicle and Traffic Law §§ 1141, 1163, case law, and common-law." The Court notes that said motion was denied on the record after oral arguments held

thereupon on March 5, 2024, and the transcript of such proceedings was so-ordered on April 3, 2024.

At his deposition, plaintiff testified that at approximately 8:00 p.m. on the date in question, he was operating his motor vehicle westbound on Middle Country Road, near its intersection with Panamoka Trail, at no more than 50 miles per hour. He indicated that it was dusk, but could not recall if his vehicle's headlights were illuminated. Plaintiff stated that he first observed defendants' vehicle when it was approximately an eighth of a mile away, traveling eastbound toward him on Middle Country Road. He explained that defendants' vehicle was "swerving a little bit in and out like swerving side to -- yellow line to white line . . . [a]nd there was a blue glow on his face," making its driver appear to be on his cellular telephone at the time. He averred that "[f]ive to 10" seconds after he first observed it, defendants' vehicle, traveling at "[l]ess than 50" miles per hour, attempted to make a left turn into the Millennium Gas Station. Plaintiff testified that he had kept defendants' vehicle in his field of vision, but did not see such vehicle's left turn signal activated, and that he cannot recall if its headlights were illuminated. Rather, he indicated that he had no "indication or warning" that defendants' vehicle was about to initiate a left turn. Plaintiff testified that, instead, defendants' vehicle entered his lane of travel, completing only "around a quarter" of its left turn before plaintiff's vehicle collided with its passenger side. Plaintiff stated that when he observed defendants' vehicle begin to enter his lane of travel, he "[h]it [his] brakes and swerved right," but such effort was inadequate to avoid a collision. He explained that if he had "swerved any more right, [he] would've hit the metal gas station sign, a fence, and a statuary[,] [s]o [he] had to take the impact."

A party moving for summary judgment "must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact" (***Alvarez v Prospect Hosp.***, 68 NY2d 320, 324, 508 NYS2d 923 [1986]). Failure to make such showing requires denial of the motion, regardless of the sufficiency of the opposing papers (***Winegrad v New York Univ. Med. Ctr.***, 64 NY2d 851, 853, 487 NYS2d 316 [1985]). If the moving party produces the requisite evidence, the burden then shifts to the nonmoving party to establish the 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]). Mere conclusions, expressions of hope, or unsubstantiated allegations are insufficient to raise a triable issue (*see* ***Zuckerman v City of New York***, 49 NY2d 557, 427 NYS2d 595 [1980]). In deciding the motion, the Court must view all evidence in the light most favorable to the nonmoving party (*see* ***Ortiz v Varsity Holdings, LLC***, 18 NY3d 335, 339, 937 NYS2d 157 [2011]).

The Vehicle and Traffic Law establishes standards of care for motorists, and an unexcused violation of such standards of care constitutes negligence per se (*see* ***Brodney v Picinic***, 172 AD3d 673, 99 NYS3d 399 [2d Dept 2019]). Vehicle and Traffic Law § 1141 states that "[t]he driver of a vehicle intending to turn to the left within an intersection or into an alley, private road, or driveway shall yield the right of way to any vehicle approaching from the opposite direction which is within the intersection or so close as to constitute an immediate hazard." "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" (***Giwa v Bloom***, 154 AD3d 921, 921-922, 62 NYS3d 527 [2d Dept 2017], quoting ***Yelder v***

Walters, 64 AD3d 762, 764, 883 NYS2d 290 [2d Dept 2009]). "The operator of a vehicle with the right-of-way is entitled to assume that the opposing driver will obey the traffic laws requiring him or her to yield" (***Gause v Martinez***, 91 AD3d 595, 596, 936 NYS2d 272 [2d Dept 2012]). Further, an operator of a motor vehicle has a "common-law duty to see that which [he or she] should have seen through the proper use of [his or her] senses" (***Botero v Erraez***, 289 AD2d 274, 275, 734 NYS2d 565 [2d Dept 2001]; *see also* ***Ferrara v Castro***, 283 AD2d 392, 724 NYS2d 81 [2d Dept 2001]).

Upon reconsideration of his arguments and the evidence adduced, the Court finds plaintiff has established a prima facie case of entitlement to partial summary judgment in his favor on the issue of defendants' negligence (*see* ***Marangoudakis v Suniar***, 208 AD3d 1233, 175 NYS3d 263 [2d Dept 2022]; *see generally* ***Alvarez v Prospect Hosp.***, 68 NY2d 320, 508 NYS2d 923). Specifically, plaintiff demonstrated that defendant driver, Cameron Wigger, made a left turn in front of plaintiff's vehicle, which had the right of way, leaving plaintiff mere seconds to avoid the subject collision (*see* ***Giwa v Bloom***, 154 AD3d 921, 62 NYS3d 527). While the comparative negligence of each party will be addressed at the damages phase of any trial (*see* ***Rodriguez v City of New York***, 31 NY3d 312, 76 NYS3d 898 [2018]), the Court finds plaintiff has proffered evidence sufficient to support a finding of negligence against defendant driver. As to defendant vehicle owner Peter Wigger, Vehicle and Traffic Law § 388 (1) provides that "[e]very owner of a vehicle used or operated in this state shall be liable and responsible for. . . injuries to person or property resulting from negligence in the use or operation of such vehicle. . . by any person using or operating the same with the permission, express or implied, of such owner." The burden then shifts to defendants to raise a triable issue (*see generally* ***Vega v Restani Constr. Corp.***, 18 NY3d 499, 942 NYS2d 13).

In opposition, submitting, among other things, a transcript of plaintiff's deposition testimony and an affidavit of Cameron Wigger, defendants argue that triable issues remain. In his affidavit, Cameron Wigger states, in relevant part, that at the subject time and location, he was operating a motor vehicle eastbound on Middle Country Road with its headlights illuminated. He indicates that after traveling on Middle Country Road for "several minutes," he intended to make a left turn onto Panamoka Trail– not into the gas station driveway, which he contends "is 50 feet west of the intersection." Nevertheless, Mr. Wigger avers that he "stopped a few seconds to look for oncoming vehicles in the westbound lane of Middle Country Road[,] saw no vehicles[,] and began to make the left turn." He indicates that when his vehicle "was 1/4 to 1/2 way through the left turn, it was struck in the front by a Jeep, which came out of nowhere."

Defendants' submissions are insufficient to raise a triable issue (*see* ***Marangoudakis v Suniar***, 208 AD3d 1233, 175 NYS3d 263). While the finder of fact could ultimately determine that defendants' negligence here was slight, total, or something in between, upon the evidence before the Court, there is no scenario in which defendants are entirely free from negligence. Absent some non-speculative proof that plaintiff was speeding, or that plaintiff was operating his vehicle without headlights in nighttime conditions, there is no dispute that defendant driver initiated a left turn into plaintiff's lane of travel while plaintiff was so close as to constitute an immediate hazard (*see* Vehicle and Traffic Law § 1141). Namely, there is no proof that plaintiff's vehicle came from any direction or location other than the subject roadway; no proof that the environment was so dark as to require headlights and, if it was, no

proof that plaintiff's vehicle did not have its headlights activated; and no proof, even circumstantially, that plaintiff was speeding (*cf.* ***Binyaminov v Satterlee***, ___AD3d___, 2024 NY Slip Op 04946 [2d Dept 2024]). Absent some other factor, which defendants do not offer, the only conclusion that can be reached upon the evidence presented here is that defendant made a left turn while negligently failing to observe plaintiff's approaching vehicle. Accordingly, upon reargument, the Court's prior order is vacated and plaintiff's motion for partial summary judgment in his favor as to defendants' negligence is granted.

Date: October 31, 2024

David T. Reilly, J.S.C.

_____ **FINAL DISPOSITION** ___X__ **NON-FINAL DISPOSITION**