

Ramirez v Yusim
2024 NY Slip Op 35307(U)
January 9, 2024
Supreme Court, Richmond County
Docket Number: Index No. 151129/2023
Judge: Ralph J. Porzio
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

RUTH C. RAMIREZ

Plaintiff

Index #: 151129/2023

-against-

DECISION & ORDER

YULIANA YUSIM

Defendant

Upon the papers filed in support of the application and the papers filed in opposition thereto, it is hereby:

ORDERED that Plaintiff's motion for partial summary judgment on the issue of liability is hereby granted; and it is hereby

ORDERED that Plaintiff's motion to dismiss Defendant's affirmative defense of comparative negligence is hereby denied.

BACKGROUND

This case arises out of a motor vehicle collision between the Plaintiff and Defendant on December 22, 2022, at the intersection of Great Kills Road and Ocean Road in Staten Island. Summon and Complaint were filed on June 16, 2023. The Defendant filed an Answer on June 30, 2023. Plaintiff filed the instant motion on October 6, 2023. The Defendant filed opposition on November 22, 2023.

The Plaintiff alleges that on December 22, 2022, they were traveling on Great Kills Road in the direction of Ocean Road. At that intersection, Great Kills Road is not governed by any traffic control device, while Ocean Road is governed by a stop sign. The Plaintiff alleges that while they were traveling within the intersection, the Defendant's vehicle failed to stop at the stop sign on Ocean Road and struck the rear driver's side of the Plaintiff's vehicle.

In support of their Motion, the Plaintiff argues that because the Defendant faced a stop sign on Ocean Road, the Defendant violated the Vehicle and Traffic Law (hereinafter "VTL"), and the Plaintiff is entitled to partial summary judgment on the issue of liability. In opposition, the Defendant submitted an affidavit alleging that they intended to make a left turn through the above-mentioned intersection, they made a complete stop at the stop sign, and they observed the

Plaintiff's vehicle enter the intersection before beginning to make their turn. Notably, the Defendant alleges that the Plaintiff stopped short while moving through the intersection, that the Defendant did not observe any reason as to why the Plaintiff would stop short, and that the Defendant as unable to bring their vehicle to a stop before making contact with the rear passenger side of the Plaintiff's vehicle. The Defendant argues that because of this, the Plaintiff was the proximate cause of the accident, and the Plaintiff is not entitled to summary judgment on liability.

LEGAL STANDARD

It is well settled that a motion for summary judgment should be granted if "upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party." CPLR 3212(b). The proponent of a motion for summary judgment must make a prima facie showing by offering sufficient evidence to eliminate any material issues of fact from the case that as a matter of law the movant is entitled to summary judgment (*see Winegrad v. NYU Medical Center*, 64 N.Y.2d 851, 853 [1985]). A Plaintiff moving for summary judgment does not have the burden of establishing that they were not comparatively negligent, in order to prevail on a motion for summary judgment (*see Rodriguez v. City of New York*, 31 N.Y.3d 312 [2018]). Furthermore, a "Plaintiff is not 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 decided in the context of a summary judgment motion where, as here, the Plaintiff seeks summary judgment dismissing an affirmative defense alleging comparative negligence" (*Maliakel v. Morio*, 185 A.D.3d 1018 [2d Dept. 2020]). "[A] violation of the Vehicle and Traffic Law constitutes negligence as a matter of law" (*Vainer v. DiSalvo*, 79 A.D.3d 1023, 1024 [2d Dept 2010]). If one party has established that the other party has committed negligence per se, the burden then falls to the opposing party to submit a non-negligent explanation for the action (*see Arbizu v REM Transp., Inc.*, 20 A.D.3d 375, 376 [2005]). VTL § 1142(a) provides in pertinent part:

Except when directed to proceed by a police officer, every driver of a vehicle approaching a stop sign shall stop...and after having stopped shall yield the right of way to any vehicle which has entered the intersection from another highway or which is approaching so closely on said highway as to constitute an immediate hazard during the time when such driver is moving across or within the intersection.

A driver who has the right-of-way is entitled to anticipate that other drivers will obey traffic laws that require them to yield (*see Wolf v Cruickshank*, 144 A.D.3d 1144, 1145 [2nd Dept 2016]). Notwithstanding this however, “[a] vehicle approaching an intersection must yield the right-of-way to a vehicle already in the intersection” (*Schiskie v Fernan*, 277 A.D.2d 441, 411 [2nd Dept 2000]). “[A] driver who has the right-of-way has a duty to exercise reasonable care to avoid a collision [and] to see what there is to be seen through the proper use of his or her senses” (*Ballentine v Perrone*, 179 A.D.3d 993 [2nd Dept 2020]; *see also De Castillo v Sormeley*, 140 A.D.3d 918, 919 [2nd Dept 2016]).

DISCUSSION

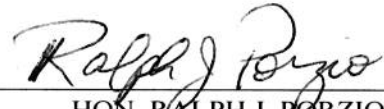
The Court finds that, based on the submissions of both parties, the Plaintiff has established that the Defendant was negligent as a matter of law. It is undisputed that the Defendant’s vehicle faced a stop sign at the intersection of Ocean Road and Great Kills Road while the Plaintiff’s vehicle did not. Solely based on this, the Plaintiff established *prima facie* that the Defendant violated VTL § 1142(a) by entering the intersection and making contact with Plaintiff’s vehicle (*see Orellana v Mendez*, 208 A.D.3d 888 [2d Dept 2022]; *Yelder v. Walters*, 64 A.D.3d 762; 764 [2d Dept 2009]). In opposition, the Defendant’s own affidavit admits that they observed the Plaintiff’s vehicle traveling within the intersection prior to the Defendant entering the intersection and beginning their left turn. The allegation that the Plaintiff stopped short speaks to the Plaintiff’s comparative fault, which the Plaintiff does not need to establish their freedom from on a motion of partial summary judgment (*see Maliakel v. Morio*, 185 A.D.3d 1018 [2d Dept. 2020]). The issue of any comparative fault of the Plaintiff will be left to the trier of fact. The cases cited by the Defendant in opposition are distinguishable in that they deal with differing accounts of accidents, and instances where a Plaintiff’s vehicle abruptly changed lanes attempting to pass a Defendant’s vehicle traveling in the same direction (*see MD Sumsurzaha v. Corso*, 175 A.D.3d 1583 [2nd Dept 2019]; *Gray v. Air Excel Serv. Corp.*, 171 A.D.3d 1026 [2d Dept 2019]; *Poon v. Nisanov*, 162 A.D.3d 804 [2nd Dept 2018]). In the instant matter, it is undisputed that the Defendant’s vehicle was stopped at a stop sign, and that the Defendant observed the Plaintiff’s vehicle enter the intersection before the Defendant did. As such, the Defendant was required to yield the right of way to the Plaintiff pursuant to VYL 11412(a). The Defendant has failed to provide a non-negligent explanation for their violation of the VTL.

For these reasons, Plaintiff's motion for partial summary judgment on the issue of liability is hereby granted. Any determination of liability regarding the Plaintiff will be left to the trier of fact.

This constitutes the decision and order of the Court.

Date: January 9, 2024

ENTER



HON. RALPH J. PORZIO
J.S.C.