

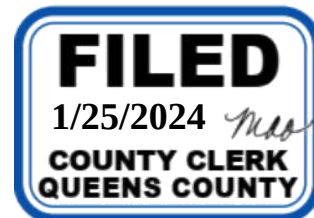
Bohana v Goller
2024 NY Slip Op 35313(U)
January 19, 2024
Supreme Court, Queens County
Docket Number: Index No. 715980/2023
Judge: Karina E. Alomar
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Short form Order

NEW YORK SUPREME COURT-QUEENS COUNTY

Present: HONORABLE KARINA E. ALOMAR
JUSTICE

IAS PART 23

-----X
BRITTANY BOHANA,

Plaintiff,

Index No.: 715980/2023
Motion Date: 01/18/2024
Motion Seq. No.: 1, 2

-against-

MELISSA GOLLER, IRA GOLLER, and ANNA
BRADSHAW,Defendants.
-----X

The following numbered papers 20 to 59 read on these motions by: (1) defendants Melissa Goller and Ira Goller for an order pursuant to CPLR §3212 dismissing plaintiff's complaint; and (2) plaintiff's motion for an order pursuant to CPLR §3212 granting partial summary judgment on the issue of plaintiff's liability and striking defendants' affirmative defenses of culpable conduct.

PAPERS	NUMBERED
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Upon the foregoing cited papers, it is ordered that these motions by (1) defendants Melissa Goller and Ira Goller for an order pursuant to CPLR §3212 dismissing on the issue of liability, and (2) plaintiff's motion for an order pursuant to CPLR §3212 granting partial summary judgment on the issue of liability and striking defendants' affirmative defenses of culpable conduct, are decided as follows:

Plaintiff commenced the instant action on August 3, 2023, to recover for personal injuries allegedly sustained as the result of a motor vehicle accident which occurred on July 20, 2023, at or near the intersection of Little Neck Parkway and 254th Street, Little Neck, Queens, New York. Defendant Ira Goller was the owner of a certain 2011 Jeep motor vehicle bearing New York State registration number FHL9789, which was operated by defendant Melissa Goller. Whereas defendant Anna Bradshaw was the owner and operator of a certain 2021 Toyota motor vehicle bearing New York State registration number KNS4289, in which plaintiff was a passenger.

The proponent of a summary judgment motion has the burden of submitting evidence in admissible form demonstrating the absence of any triable issues of fact and establishing entitlement to judgment as a matter of law (*see, Giuffrida v Citibank Corp.*, 100 NY2d 72 [2003]; *see also Alvarez v. Prospect Hosp.*, 68 NY2d 320 [1986]). Only when the movant satisfies its prima

facie burden will the burden shift to the opponent “to lay bare his or her proof and demonstrate the existence of triable issues of fact” (see, *Alvarez*, 68 NY2d at 324; see also, *Zuckerman v City of New York*, 49 NY2d 557 [1980]; *Chance v Felder*, 33 AD3d 645, 645-646 [2d Dept 2006]). However, failure to make prima facie showing of entitlement to judgment requires denial of the motion, regardless of the sufficiency of the opposing papers. When the existence of an issue of fact is even arguable or debatable, summary judgment should be denied. (*Stone v. Goodson*, 8 NY2d 8, 167 NE2d 328 [1960]; *Rebecchi v Whitmore*, 172 AD2d 600, 568 NYS2d 423 [1991]).

A violation of the Vehicle and Traffic Law constitutes negligence as a matter of law. (*Vainer v DiSalvo*, 79 AD3d 1023, 914 NYS2d 236 [2d Dept 2010]; *Fratello v Cnty. of Suffolk*, 96 AD3d 798, 947 NYS2d 530 [2d Dept 2012]). The unexcused failure to observe the statutory standard of care is negligence. (See *Martin v Herzog*, 228 NY 164 [1920]; *Dalal v City of New York*, 262 AD2d 596 [2d Dept 1999]).

Pursuant to VTL §1141, the driver of a vehicle intending to turn 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. “The operator of an oncoming vehicle with the right-of-way is entitled to assume that the opposing operator will yield in compliance with the Vehicle and Traffic Law” (*Lebron v Mensah*, 161 AD3d 972, 76 NYS3d 219 [2d Dept 2018]; *Ahern v Lanaia*, 85 AD3d 696, 924 NYS2d 802 [2d Dept 2011]).

Moreover, it is the duty of each motorist to operate his vehicle with reasonable care, having regard for the actual and potential hazards existing from weather, road, traffic, and other conditions, to maintain a reasonably safe rate of speed, to have his automobile under reasonable control, and to keep a proper lookout, under the circumstances then existing, and to see and be aware of what is in his view. (*Guzzardi v Grotas*, 98 AD2d 761, 469 NYS2d 475 [2d Dept 1983]).

With respect to plaintiff’s motion for summary judgment on the issue of plaintiff’s own liability. Plaintiff submits, inter alia, plaintiff’s affidavit dated November 28, 2023, in which plaintiff averred that she was a passenger in defendant Anna Bradshaw’s vehicle. Plaintiff further averred that she was asleep in the vehicle at the time of the accident.

It is well established that the right of an innocent passenger to summary judgment on the issue of whether she was at fault in the happening of an accident is not restricted by potential issues of comparative negligence as between two defendant drivers. (*Romain v City of New York*, 177 AD3d 590, 112 NYS3d 162 [2d Dept 2019]; *Phillip v D & D Carting Co.*, 136 AD3d 18, 22 NYS3d 75 [2d Dept 2015]). Here, it is uncontested that plaintiff was a sleeping passenger in defendant Anna Bradshaw’s vehicle and neither driver suggested that the plaintiff bore any fault in the happening of the accident. As such, plaintiff’s motion seeking summary judgment on the issue of plaintiff’s own liability and striking defendants’ affirmative defenses of culpable conduct on the part of plaintiff is granted.

With respect to defendant Melissa Goller and Ira Goller’s motion. In support of defendant’s motion defendants submit, inter alia, defendant Melissa Goller’s affidavit dated October 24, 2023.

Ms. Goller deposed that at the time of the accident she had been driving northbound on Little Neck Parkway, which is a two-way street with two lanes of traffic in each direction. A standard three-phased traffic light control the intersection of Little Neck Parkway and 252nd Street. Ms. Goller averred that she saw the traffic light at the intersection of Little Neck Parkway and 252nd street about 20 seconds before the accident happened. The traffic light at the intersection of Little Neck Parkway and 252nd street was green for the entire time she first noticed it until the accident happened. Ms. Goller also averred that she first saw co-defendant's vehicle 2 seconds before the accident while it was proceeding towards the intersection. Ms Goller further averred that, a second before the accident happened, co-defendant made a sudden left hand turn in front of her vehicle to travel onto 252nd St. Upon seeing the Toyota make the left turn, Ms.Goller applied heavy pressure to the brakes of the Jeep but could not stop in time. Accordingly, defendants Melissa Goller and Ira Goller have demonstrated their prima facie entitlement to judgment as a matter of law on the issue of liability inasmuch as they have established that co-defendant Bradshaw operated her vehicle in violation of VTL §1141 in making a left turn when it was not reasonably safe to do so. It is now imperative for the opposing parties to raise a triable issue of fact.

In opposition defendant Bradshaw submits their attorney's affirmation. However, defendant's attorney possesses no personal knowledge of the facts. "Such an affirmation has no probative value and is insufficient to defeat a motion for summary judgment," and should be disregarded. (*Gomes v Revere Sugar Corp.*, 140 AD2d 582, 528 NYS2d 646 [2d Dept 1988]; *Chickering v Colonial Life Ins. Co. of Am.*, 51 AD2d 566, 378 NYS2d 475 [2d Dept 1976]). As such defendant Bradshaw fails to raise any triable issues of fact.

However, it is well-settled that a party should be allowed a reasonable opportunity for discovery prior to the determination of a motion for summary judgment. (*See, Diller v Mirto*, 211 AD3d 912, 913 [2nd Dept 2022]; *Village of Dobbs Ferry v Landing on the Water at Dobbs Ferry Homeowners Assn., Inc.*, 198 AD3d 838, 839 [2nd Dept 2021]). Pursuant to CPLR § 3212(f), should it appear from affidavits submitted in opposition to the motion that facts essential to justify opposition may exist but cannot then be stated, the court may deny the motion or may order a continuance to permit affidavits to be obtained or disclosure to be had and may make such other order as may be just. "A party contending that a motion for summary judgment is premature is required to demonstrate that additional discovery might lead to relevant evidence or that the facts essential to oppose the motion are exclusively within the knowledge and control of the movant[s]." (*see, Jannetti v Whelan*, 131 AD3d 1209, 17 NYS3d 455 [2015]; *Wells Fargo Bank, N.A. v Gonzalez*, 174 AD3d 555, 104 NYS3d 167 [2nd Dept' 2019]). Here it is uncontested that plaintiff was a sleeping passenger in Ms. Bradshaw's vehicle at the time of the accident and no depositions of any of the parties have been conducted. As such, the facts essential to oppose the motion are exclusively within the knowledge and control of the defendants. As such, defendants Melissa Goller and Ira Goller's motion is premature.

Accordingly, it is hereby

ORDERED, that the branch of plaintiff's motion for summary judgment on the issue of plaintiff's own liability is granted, it is further

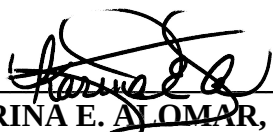
ORDERED, that the branch of plaintiff's motion for an order striking defendants' affirmative defense of culpable conduct on the part of plaintiff is granted, it is further

ORDERED, that defendants Melissa Goller and Ira Goller's motion for an order pursuant to CPLR §3212 dismissing plaintiff's complaint as against Melissa Goller and Ira Goller is denied without prejudice.

This constitutes the decision and order of the Court.

Dated: January 19, 2024




KARINA E. ALOMAR, J.S.C.