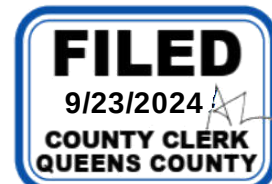


Canchari v Goberdhan
2024 NY Slip Op 35359(U)
September 23, 2024
Supreme Court, Queens County
Docket Number: Index No. 706976/2020
Judge: Marguerite A. Grays
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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: **HONORABLE MARGUERITE A. GRAYS**
Justice

IAS PART 4

-----X
 MARIA ELENA CANCHARI,

Index
 No.: 706976/2020

Plaintiff(s),

Motion
 Date: April 30, 2024

-against-

Motion
 Cal. No.:

RAMDAT GOBERDHAN,

Motion
 Seq. No.: 1

Defendant(s).

-----X
 The following papers numbered EF 15-24 read on this motion by defendant Ramdat Goberdhan for an Order, pursuant to CPLR § 3212, granting defendant summary judgment on the issue of liability, dismissing the Complaint.

PAPERS
 NUMBERED

Notice of Motion Affid.-Exhibits.....	EF 15-21
Answering Affid.-Exhibits.....	EF 22-23
Reply Affid.-Exhibits.....	EF 24

Upon the foregoing papers it is ordered that the motion by defendant Ramdat Goberdhan for an Order, pursuant to CPLR §3212, granting defendant summary judgment on the issue of liability, is determined as follows:

On June 8, 2020, plaintiff Maria Elena Canchari commenced this action to recover damages for personal injuries allegedly sustained as a result of a motor vehicle accident that occurred on January 16, 2019, that she claims was caused by defendant's negligence. According to plaintiff's deposition testimony, on January 16, 2019, plaintiff was proceeding in her motor vehicle northbound on the 132nd Street when she stopped twice at a stop sign at the intersection with 116th Avenue, in South Ozone Park, Queens, New York. Plaintiff

attested that defendant's motor vehicle was traveling westbound on 132nd Street. After stopping a second time for six seconds and looking in each direction for other cars but seeing none coming from either direction of 116th Avenue, she proceeded further into the intersection when her vehicle and defendant's vehicle collided. She testified that she had an unobstructed view.

It is undisputed that both of the roads the parties were traveling on were two-way, with one lane of traffic in each direction, that there is a stop sign and cross walk on each end of 132nd Street where it intersects with 116th Avenue and that there is no traffic control device on 116th Avenue.

Defendant testified at his examination before trial that on January 16, 2019, when he was traveling at the rate of speed of ten (10) to fifteen (15) miles per hour on 116th Avenue heading in a westbound direction, plaintiff's vehicle, which was traveling northbound on 132nd Street, failed to stop at the stop sign at the intersection with 116th Avenue. Defendant testified that he saw plaintiff's vehicle in the middle of the intersection when he was approximately two to three SUV car lengths away and that he braked to avoid the collision but the cars collided. Defendant averred that it did not appear that plaintiff stopped at the stop sign.

Defendant Ramdat Goberdhan now moves for summary judgment on the issue of liability arguing that the motor vehicle accident occurred because he had the right of way and plaintiff failed to yield the right of way to him in violation of the Vehicle and Traffic Law § 1142(a), and that her failure constitutes negligence as a matter of law. Defendant argues that he is entitled to summary judgment on the grounds that plaintiff's alleged negligence was the sole and proximate cause of the accident where (1) plaintiff's access to the intersection was controlled by a stop sign and that she was required to yield to it, (2) plaintiff failed to see that which she should have seen with the proper use of her senses, (3) there is no credible evidence that the defendant did anything wrong with regard to the operation of his vehicle or in any way contributed to the happening of the accident, (4) defendant had the right of way, and (5) defendant was entitled to anticipate that the plaintiff would comply with her obligation to yield at a stop sign. Defendant contends that he has demonstrated that there are no triable issues of fact.

Plaintiff opposes the motion, arguing that there are issues of fact as to defendant's contributory negligence. Since plaintiff testified that she stopped twice at the stop sign and defendant testified she might not have stopped at all, it is her contention that she has raised an issue of fact regarding whether she stopped. She argues that there is a triable issue of fact whether defendant used reasonable care to take evasive action to avoid the collision. Plaintiff submits an affidavit in which she states her belief that defendant is at least partially at fault

for the injuries she sustained as a result of the motor vehicle accident.

In a negligence action, when a defendant moves for summary judgment, defendant has the burden of establishing, *prima facie*, that he or she was not at fault in the happening of the subject accident (*Israel v Nichols*, 226 AD3d 756 [2024]). "Pursuant to Vehicle and Traffic Law §1142(a), a driver entering an intersection controlled by a stop sign must yield the right of way to any other vehicle that is already in the intersection or that is approaching so closely as to constitute an immediate hazard" (*Cruz v DiSalvo*, 188 AD3d 986, 987 [2020]). A driver who fails to yield the right of way after stopping at a stop sign, is in violation of Vehicle and Traffic Law §1142(a) and is negligent as a matter of law (*Park v Giunta*, 217 AD3d 661, 662 [2023]). Whether a driver stopped at the stop sign is not dispositive where the evidence establishes that the driver failed to yield after initially stopping (*Yasso v Town of Brookhaven*, 219 AD3d 784, 786 [2023]).

The driver with the right of way is entitled to anticipate that the other motorist will obey traffic laws that require him or her to yield (*id.*; *Yu Mei Liu v Weihong Liu*, 163 AD3d 611 [2018]) and a driver with the right of way who has only seconds to react "is not comparatively at fault for failing to avoid the collision" (*Notaroberta v Golub*, 226 AD3d 1039, 1040 [2024] quoting *Breen v Seibert*, 123 AD3d 963, 964 [2014]). "Even though the driver with the right of way is entitled to assume that other drivers will obey the traffic laws requiring them to yield, he or she still has a duty to exercise reasonable care to avoid a collision with another vehicle already in the intersection" (*Park v Giunta*, 217 AD3d at 661).

Here, defendant established his entitlement to judgment as a matter of law by submitting evidence, to wit, deposition testimony, demonstrating that plaintiff had a stop sign at the subject intersection and failed to yield to defendant driver, constituting negligence as a matter of law (*Park v Giunta*, 217 AD3d at 662; *see* Vehicle and Traffic Law § 1142[a]). The parties' deposition transcripts demonstrate that defendant had the right of way, that plaintiff failed to yield the right of way, plaintiff entered the intersection in violation of Vehicle and Traffic Law § 1142(a), and that plaintiff's negligence was the sole proximate cause of the accident. Under these circumstances, defendant was entitled to assume that plaintiff would yield to him as required by Vehicle and Traffic Law § 1142(a). Defendant further demonstrated that he was not comparatively negligent, as he had only seconds to react to apply the brakes when plaintiff failed to yield and thus exercised due care to avoid the collision (*see, Notaroberta v Golub*, 226 AD3d at 1040).

In opposition, plaintiff failed to raise a triable issue of fact as to any alleged comparative negligence on the part of defendant. Plaintiff's claim that she stopped twice at the stop sign is not dispositive as the evidence establishes that she failed to yield after initially stopping, or failed to yield even after stopping two times (*see, Yasso v Town of Brookhaven*, 219 AD3d at 786).

Accordingly, defendant's motion for summary judgment on the issue of liability,

dismissing the Complaint, is granted.

Dated: *September 23, 2024*



MARGUERITE A. GRAYS
J.S.C.

