

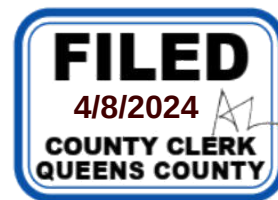
Irizarry v Vinci
2024 NY Slip Op 35432(U)
April 2, 2024
Supreme Court, Queens County
Docket Number: Index No. 700322/2022
Judge: Karina E. Alomar
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Short form Order

NEW YORK SUPREME COURT-QUEENS COUNTY

Present: HONORABLE KARINA E. ALOMAR
JUSTICE

IAS PART 23

-----X
ALICIA IRIZARRY,

Plaintiff,

Index No.: 700322/2022

Motion Date: 03/28/24

Motion Sequence No.: 1

-Against-

JOHN J. VINCI, INDEPENDENT COACH
CORP.,Defendants,
-----X

The following numbered papers 16 to 34 read on this motion by plaintiff for an order: (1) pursuant to CPLR §3212 granting partial summary judgment on the issue of liability as against defendants; and (2) pursuant to CPLR §3211 dismissing defendants Fourth Affirmative defense alleging failure to wear a seatbelt, Fifth Affirmative defense alleging contributory negligence, Sixth Affirmative defense alleging culpable conduct, and Eight Affirmative defense grounded upon the Emergency Doctrine

PAPERS	NUMBERED
Notice of Motion, Affidavit, Exhibit.....	EF No: 16 – 23
Affirmation in Opposition, Affidavit.....	EF No: 25 – 26
Affirmations in Reply.....	EF No: 34

Upon the foregoing cited papers, it is ordered that plaintiff motion for an order granting summary judgment on the issue of liability as against defendants and dismissing defendants Fourth, Fifth, Sixth, and Eighth Affirmative defenses are decided as follows:

Plaintiff commenced the instant action on January 6, 2022, to recover for personal injuries allegedly sustained as the result of a motor vehicle accident which occurred on November 12, 2019, at New York State Route 878 (“Nassau Expressway”), Queens, New York. Defendant John J. Vinci was the operator of a certain 2016 Bus vehicle bearing registration number HF525310, which was owned by defendant Independent Coach Corp. Whereas plaintiff was the operator of a certain 2007 Toyota Yaris bearing registration number DYM5465.

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 [2d Dept 2010]; *Fratello v Cnty. of Suffolk*, 96 AD3d 798 [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]).

It is well settled law that the driver of an approaching vehicle must maintain a reasonably safe rate of speed and control over their vehicle and use reasonable care to avoid colliding with a lead vehicle (see *Denezzo v Joseph*, 95 AD3d 1060, 1060 [2d Dept 2012] [internal quotation marks omitted]). The Vehicle and Traffic Law §1129(a) imposes a duty upon drivers to maintain safe distances between their cars and cars in front of them as well as a duty to be aware of traffic conditions, including vehicle stoppages. 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 [2d Dept 1983]).

Pursuant to VTL §1128, 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.

Moreover, a rear-end collision with a stopped or stopping vehicle creates a prima facie case of liability as to the rearmost vehicle, requiring that driver to rebut this inference of negligence by providing a non-negligent explanation for the collision (*Harris v Ryder*, 292 AD2d 499, 499 [2d Dept 2002]; Vehicle and Traffic Law § 1129[a]).

In support of her motion plaintiff submits, inter alia, her affidavit dated January 6, 2024. Plaintiff deposed that the Nassau Expressway is a two-way roadway with two lanes for moving traffic in each direction. On November 12, 2019, there was no visual obstructions on the roadway or any construction. Plaintiff had been traveling on the same lane through the Nassau Expressway when defendants' vehicle struck the rear of her vehicle.

Plaintiff and defendants also submit, inter alia, the deposition transcript of defendant John J. Vinci ("Vinci"). Defendant Vinci deposed that prior to the accident he had been driving on the Nassau Expressway for four to five miles, and that the Nassua Expressway has three lanes of traffic on either direction.

Defendant Vinci also averred that plaintiff had been on the center lane. Defendant Vinci further averred that he intended to change lanes from the left most lane to the right most lane because his right-side mirror had become loose at some unknown point, and he wanted to "see what happened to the mirror." The right-side mirror had not come completely off but was hanging, banging against the fender. Vinci had noticed the banging for a minute or two prior to the accident. Vinci could not see out of the right-side mirror and so he had attempted to look out through the windows to look for any oncoming traffic in the center lane. However, while attempting to change

lanes, the right-side middle of the bus struck plaintiff's side rear wheel area. Vinci had not seen plaintiff's vehicle prior to the impact. After the impact both vehicles pulled over to the left shoulder of the expressway.

Herein, defendant has demonstrated a prima facie entitlement to summary judgment as a matter of law in as much as defendant does not contend that their vehicle struck the rear end of plaintiff's vehicle while attempting to change lanes without being able to properly observe oncoming traffic on the center lane.

In opposition defendants contend that the Emergency Doctrine is applicable to the instant matter. When an actor is faced with a sudden and unexpected circumstance which leaves little or no time for thought, deliberation or consideration, the actor may not be negligent if the actions taken are reasonable and prudent in an emergency context. (*Vitale v Levine*, 44 AD3d 935 [2d Dept 2007]). The existence of an emergency and the reasonableness of an actor's response to it will ordinarily present questions of fact. (*Crawford-Dunk v MV Transp., Inc.*, 83 AD3d 764 [2d Dept 2011]).

Here, the side-mirror issue does not rise to the level of an emergency, nor can defendant's actions be found to have been reasonable. Defendant Vinci had been aware of the side-mirror issue for at least one minute prior to the accident and was on the left most lane. Nevertheless, defendant deposed that he intended to change lanes from the left most lane to the right most lane while being unable to observe any oncoming traffic through the right-side mirror. Defendants also failed to provide why defendant, while on the left most lane, could not pull over on the left shoulder to inspect the right-side mirror prior to the accident as it ultimately did after the accident. Defendants' contention that Vinci had little or no time for thought, deliberation or consideration is also undermined by Vinci's own testimony that he had planned on changing lanes from the left most lane to the right most lane to inspect the mirror.

With respect to plaintiff's branch of motion pursuant to CPLR §3211 dismissing defendants Fourth Affirmative defense alleging failure to wear a seatbelt, Fifth Affirmative defense alleging contributory negligence, Sixth Affirmative defense alleging culpable conduct. Defendants fail to oppose this branch of plaintiff's motion.

Accordingly, it is hereby

ORDERED, that plaintiff's branch of motion pursuant to CPRL §3212 granting summary judgment on the issue of liability as against defendants is granted, it is further

ORDERED, that plaintiff's branch of motion pursuant to CPLR §3211 dismissing defendants Fourth Affirmative defense alleging failure to wear a seatbelt, Fifth Affirmative defense alleging contributory negligence, Sixth Affirmative defense alleging culpable conduct, and Eight Affirmative defense grounded upon the Emergency Doctrine is granted, it is further

ORDERED, that plaintiff shall serve a copy of this order, with notice of entry, upon defendants within thirty (30) days of the date of entry.

This constitutes the decision and order of the Court.

Dated: April 2, 2024



KARINA E. ALOMAR, J.S.C.

