

Guardado v Cenname
2024 NY Slip Op 35629(U)
April 5, 2024
Supreme Court, Nassau County
Docket Number: Index No. 613361/21
Judge: Francis Ricigliano
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SUPREME COURT - STATE OF NEW YORK
COUNTY OF NASSAU

Present: HON. FRANCIS RICIGLIANO
Supreme Court Justice

X

RINA GUARDADO,

Plaintiff,

-against-

BROOKE CENNAME and Ralph CENNAME,

Defendants.

X

DECISION and ORDER

PART 26

INDEX NO.: 613361/21

Motion Seq. 1

The following papers were read on this motion.	NYSCEF DOCS
Notice of Motion, Affirmations, Exhibits, etc	24-28,30-33;
Opposition to Motion	34;
Reply	35.

By Notice of Motion, Motion Sequence #1, plaintiff RINA GUARDADO moves for (a) summary judgment on the issue of liability pursuant to CPLR 3212; and (b) dismissal of the defendants' affirmative defense of comparative negligence.

This action arises out of a motor vehicle accident that occurred on October 21, 2018, when the plaintiff's vehicle was struck by a motor vehicle, operated by defendant BROOKE CENNAME and owned by defendant RALPH CENNAME, that allegedly bypassed a stop sign, without stopping.

In support of Motion Sequence #1, plaintiff submits her own deposition testimony wherein she testified that her vehicle was struck by a motor vehicle that was operated by defendant BROOKE CENNAME when defendant passed a stop sign without stopping. Plaintiff also testified that her direction of travel had no traffic control device, signal, light or sign and that she had the right of way. Based upon the same, plaintiff argues that she has demonstrated prima facie entitlement to summary judgment on liability as the defendant operator passed a stop sign and failed to yield the right of way in violation of Vehicle and Traffic Law §1142 (a), and that the burden shifts to defendants to demonstrate a non-negligent explanation for the accident. Plaintiff also points to defendant BROOKE CENNAME'S deposition testimony, wherein she testified that she had a stop sign controlling the movement of her vehicle and plaintiff did not have a traffic device controlling the plaintiff's movement.

In opposition to plaintiff's motion, defendants BROOKE CENNAME and RALPH CENNAME submit an Affirmation in Opposition arguing that plaintiff's motion for summary judgment should be denied because there is a question of fact as to whether the accident occurred as plaintiff asserts it did. Defendants acknowledge that plaintiff had the right of way, point to defendant BROOKE CENNAME'S deposition testimony that she did not see the plaintiff's vehicle prior to the impact because of sun glare, and argue plaintiff still had a duty to use reasonable care when entering the intersection to avoid an accident.

In reply on the motion, plaintiff points out defendants have failed to submit a sworn affidavit by the defendant operator BROOKE CENNAME or anyone else with knowledge of the collision. Additionally, plaintiff contends that she was not comparatively negligent because she has the right of way when she was struck by defendants' vehicle who had a stop sign, rendering any conduct of the plaintiff irrelevant and immaterial.

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The motion is decided as follows:

For a summary judgment motion to be granted, the movant must demonstrate a prima facie entitlement to judgment as a matter of law. *Zuckerman v. New York*, 49 NY2d 557 (1980). Once a movant has shown a prima facie right to summary judgment, the burden shifts to the opposing party to show that a factual dispute exists requiring a trial, and such facts presented by the opposing party must be presented by evidentiary proof in admissible form. *Id.*

VTL 1142 (a) provides “[E]xcept when directed to proceed by a police officer, every sign shall stop sign shall...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.” Thus, it has been held that “the question of whether the driver stopped at the stop sign is not dispositive where the evidence established that the driver failed to yield after initially stopping.” *Jones v. Zuo*, 220 AD3d 933 (2d Dept 2023), quoting *Fuertes v. City of New York*, 146 AD3d 936 (2d Dept 2017). Additionally, “as a general matter, a driver who fails to yield to 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. *Policart v. Wheels LT*, 221 AD3d 920, (2d Dept 2023) quoting *Shvydkaya v. Park Ave. BMW Acura Motor Corp.*, 172 AD3d 1131 (2d Dept 2019). “A driver who has the right-of-way is entitled to anticipate that other drivers will obey traffic laws that require them yield.” *Policart*, 221 AD3d at 920 quoting *Laurent v. Bass*, 177 AD3d 724 (2d Dept 2019); see also *BelleFleur v. Desriviere*, 178 AD3d 993 (2d Dept 2019).

Here, plaintiff established her prima facie entitlement to judgment as a matter of law on the issue of liability by submitting, inter alia, her own Affidavit and deposition testimony, which

demonstrated that defendant BROOKE CENNAME was negligent in entering the intersection without yielding the right-of-way to the plaintiff. In opposition to that prima facie showing, the defendants have failed to raise a triable issue of fact with respect to liability and their affirmative defense based on comparative negligence.

Accordingly, it is hereby

ORDERED, that plaintiff's motion for an Order granting summary judgment on the issue of liability against defendants pursuant to CPLR 3212 is GRANTED; and it is further

ORDERD, that plaintiff's motion for an ORDER dismissing the defendants' affirmative defense alleging comparative negligence is GRANTED; and it is further

ORDERED, that all other issues are reserved for trial.

This constitutes the Decision and Order of this Court. Any and all applications not specifically addressed herein are denied.

Dated: April 5, 2024

ENTER:



Hon. Francis Ricigliano
Supreme Court Justice

ENTERED

Apr 11 2024

NASSAU COUNTY
COUNTY CLERK'S OFFICE