Labella v Sanchez
2025 NY Slip Op 35245(U)
January 14, 2025
Supreme Court, Westchester County
Docket Number: Index No. 52347/2021
Judge: Christie L. D'Alessio
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

PATRICIA LABELLA,

Plaintiff,

-against-

JOSE L. GONZALEZ SANCHEZ, PEREIRA PLUMBING, HEATING and THE VILLAGE OF BRONXVILLE,

Defendants.

DECISION & ORDER

No. 52347/2021

Mot. Seq. Nos. 001, 002

D'ALESSIO, J.S.C.

Patricia Labella ("Plaintiff") proceeds, in this motor vehicle accident ("MVA") case, against: **(1)** Jose L. Gonzalez Sanchez ("Sanchez"); **(2)** Sanchez's employer, Pereira Plumbing, Heating ("Pereira"); and **(3)** the Village of Bronxville ("Bronxville," and collectively, "Defendants"). (*See* Doc. 1). Presently before the Court are: **(1)** Bronxville's motion for summary judgment dismissing all causes of action maintained against it under CPLR 3212; and **(2)** Plaintiff's cross-motion for partial summary judgment against Defendants on the issue of liability, also under CPLR 3212. (*See* Docs. 87-103, 108-10, 112-15, 118-23, 126).

For the reasons set forth below, both motions are DENIED.

BACKGROUND

The four-way intersection of Midland Avenue and Pondfield Road ("Intersection") in Bronxville, New York, was designed to be regulated by four traffic lights on poles. (Doc. 89 ¶ 2; *see also* Doc. 108 ¶ 4; Doc. 114 ¶ 4). On December 29, 2020, however, two vehicles collided at the Intersection and knocked over one of the traffic light poles. (Doc. 89 ¶ 4; *see also* Doc. 108 ¶ 4; Doc. 114 ¶ 4). Bronxville, the next day, contacted its contractor to replace the damaged pole. (Doc. 89 ¶ 5; *see also* Doc. 108 ¶ 5; Doc. 114 ¶ 5). The missing pole was replaced on or before January 5, 2021. (Doc. 89 ¶ 6; *see also* Doc. 108 ¶ 6; Doc. 114 ¶ 6).

The subject MVA occurred between December 29, 2020 and January 5, 2021.

As Plaintiff approached the Intersection at approximately 9:16 a.m. on December 31, 2020, she had a green light. (Doc. 96 at 09:16:27-33). As Sanchez approached the Intersection—an area he passed through daily—he noticed that the traffic light he usually saw was missing. (Doc. 98 at 36:7-8). Notwithstanding that observation, Sanchez proceeded through the Intersection at a speed between twenty and twenty-five miles per hour. (Doc. 89 ¶ 11; *see also* Doc. 108 ¶ 11; Doc. 114 ¶ 11). Sanchez testified that he did not see Plaintiff's vehicle until it was "very close." (Doc. 89 ¶ 12; *see also* Doc. 96 at 27:12-14; Doc. 108 ¶ 12; Doc. 114 ¶ 12). Sanchez's vehicle struck the front driver's side of Plaintiff's vehicle in the Intersection. (*See* Doc. 89 at 09:16:30-32). Plaintiff claimed damages include herniated cervical discs and had surgery therefor. (*See* Doc. 125).

This litigation follows.

STANDARD OF REVIEW

CPLR 3212(b) instructs, *inter alia*, that a motion for summary judgment "shall 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." This standard requires that a movant "make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact." *Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324 (1986). Failure to carry this burden "requires a denial of the motion, regardless of the sufficiency of the opposing papers." *Ayotte v. Gervasio*, 81 N.Y.2d 1062, 1063 (1993) (internal quotation marks omitted). Should the movant make this initial showing, "the burden shifts to the party opposing the motion to demonstrate the existence of a triable issue of fact." *Metz v. Peconic Bay Med. Ctr.*, 203 A.D.3d 1040, 1041 (2d Dep't 2022). Both the movant and opponent must, to meet their respective burdens, submit evidence in

admissible form. *Moscatiello v. Wyde True Value Lumber & Supply Corp.*, 168 A.D.3d 833, 834 (2d Dep't 2019); *Midfirst Bank v. Agho*, 121 A.D.3d 343, 347 (2d Dep't 2014).

"In determining a motion for summary judgment, evidence must be viewed in the light most favorable to the nonmoving party, and all reasonable inferences must be resolved in favor of the nonmoving party." *Derise v. Jaak 773, Inc.*, 127 A.D.3d 1011, 1011 (2d Dep't 2015). This perspective does not, however, relieve the motion's opponent from their burden. "Material proffered in opposition to summary judgment is insufficient if it constitutes mere surmise, suspicion, speculation, or conjecture." *Agulnick v. Agulnick*, 191 A.D.3d 12, 16 (2d Dep't 2020). Indeed, simply raising the specter of metaphysical doubt will not refute a *prima facie* showing. The Court's role on summary judgment is one of issue-spotting, not issue-determining. *See Suffolk Cty. Dep't of Soc. Servs. v. James M.*, 83 N.Y.2d 178, 182 (1994); *Sillman v. Twentieth Century-Fox Film Corp.*, 3 N.Y.2d 395, 404 (1957).

ANALYSIS

The Court considers the pending motions *seriatim*.

I. Bronxville's Motion for Summary Judgment

Bronxville advances two arguments in support of its motion. *First*, it argues that Sanchez's negligence—not the missing traffic light—was the sole proximate cause of the accident. (*See* Doc. 88 at 3-5). *Second*, it argues that, in any event, it cannot be held liable because it replaced the traffic light within a reasonable amount of time. (*Id.* at 5-7).

A. Proximate Cause

"[E]very operator of a motor vehicle approaching an intersection governed by a traffic-control signal which is out of service or otherwise malfunctioning shall stop in the manner required for stop signs . . .and proceed according to the rules of right of way for vehicles . . . ." N.Y. Veh. & Traff. Law § 1117. A driver's violation of this standard of care constitutes negligence per se.

Barbieri v. Vokoun, 72 A.D.3d 853, 856 (2d Dep't 2010). Where a driver "confronting an intersection with a malfunctioning traffic signal is fully aware of the malfunctioning signal (and the need to exercise due caution) and was not confused by the malfunctioning signal, the malfunctioning signal is not a proximate cause of an accident occurring in the intersection." *Alcantara-Pena v. Shanahan*, 62 Misc.3d 1203(A) (Sup. Ct. 2018) (emphasis added); *see also Gomez v. Santiago*, 135 A.D.3d 666, 667 (1st Dep't 2016); *Minemar v. Khramova*, 29 A.D.3d 750, 751 (2d Dep't 2006); *Bisceglia v. Int'l Bus. Machs.*, 287 A.D.2d 674, 676 (2001); *Gonzalez v. City of Yonkers*, 277 A.D.2d 421, 421 (2d Dep't 2000).

In accordance with the foregoing, for Bronxville to prevail under this argument, it must establish that Sanchez was "fully aware of the malfunctioning signal" and "not confused" thereby. *See Alcantara-Pena*, 62 Misc.3d 1203(A). Bronxville did not carry this burden. Indeed, Sanchez testified that he "[l]ook[ed] for the traffic light that wasn't there." (Doc. 98 at 36:7-8). As the evidence does not establish, as a matter of law, that Sanchez knew that the traffic light was "malfunctioning" (i.e., should not have been missing/should have been present) and that he was not confused thereby, this argument is rejected. *See Achaibar v. City of New York*, 45 Misc.3d 1036, 1039 (Sup. Ct. 2014); *Kohn v. City of New York*, 19 Misc.3d 1140(A) (Sup. Ct. 2008).

Bronxville's motion for summary judgment on this theory is, accordingly, denied.

B. Repair Efforts

"A municipality has a duty to maintain its streets in a reasonably safe condition. In order to prevail, plaintiff must show that the City permitted a dangerous or potentially hazardous condition to exist and cause injury." *Kohn v. City of New York*, 69 A.D.3d 463, 463 (1st Dep't 2010) (citing *Thompson v. City of New York*, 78 N.Y.2d 682 (1991)). As such, for liability to attach to Bronxville, "there must be evidence that the dangerous condition existed and that the defendant

either created the condition[] or had actual or constructive notice of it and failed to remedy it within a reasonable time." *Melo v. LaGuardia Fitness Ctr. Corp.*, 72 A.D.3d 761, 762 (2d Dep't 2010) (emphasis added). Bronxville's argument on this point is that it: **(1)** did not create the dangerous condition; **(2)** obtained an estimate to replace the light the day after it was knocked down (i.e., within twenty-four hours thereof); **(3)** replaced the traffic light within a week; and **(4)** Plaintiff has no evidence or precedent establishing that Bronxville acted unreasonably. (*See* Doc. 88 at 5-6).

Reasonableness is a fact-specific inquiry—municipality's actions, while reasonable in one scenario, might fall very well short of the mark with a different fact pattern. *See, e.g. Urbistondo v. City of New York*, 89 A.D.3d 598, 598-99 (1st Dep't 2011); *Prager v. Motor Vehicle Acc. Indem. Corp.*, 74 A.D.2d 844, 845 (2d Dep't 1980), *aff'd*, 53 N.Y.2d 854 (1981). The Court cannot, and will not, accept Bronxville's position—advanced in conclusory fashion, without citation to specific precedent—and usurp the jury's role and declare that its efforts were reasonable.[1]

Bronxville's motion for summary judgment on this theory is, likewise, denied.

II. Plaintiff's Motion for Summary Judgment

Plaintiff seeks summary judgment against Defendants as to liability. (*See, e.g.*, Doc. 112).

"A plaintiff in a negligence action moving for summary judgment on the issue of liability must establish, *prima facie*, that the defendant breached a duty owed . . . and that the defendant's negligence was a proximate cause of the alleged injuries." *Li v. Zhen*, 232 A.D.3d 872, 873 (2d Dep't 2024) (internal quotation marks omitted). "There can be more than one proximate cause . . . ." *Waters v. Saha*, 228 A.D.3d 703, 704 (2d Dep't 2024) (internal quotation marks omitted).

[1] The Court notes that its conclusion on this issue is reached without reference to Plaintiff's expert submissions. Indeed, the Court declines to consider the Plaintiff's expert submission because it fails to identify the specific provisions—or version—of the Manual on Uniform Traffic Control Devices upon which it relies for its conclusions. (*See* Doc. 110); *see also Abraido v. 2001 Marcus Ave., LLC*, 126 A.D.3d 571, 572 (1st Dep't 2015); *Igbodudu-Edwards v. Bd. of Managers of Parkchester N. Condo., Inc.*, 105 A.D.3d 448, 449 (1st Dep't 2013).

With respect to Bronxville, the Court found a question of fact as to whether the missing traffic signal was a proximate cause of the accident.[2] In so finding, the Court likewise found a question of fact as to Sanchez's awareness thereof—which, in turn, presents a question of fact regarding the breach of his duty. (*See* discussion *supra*). Given these conclusions, Plaintiff's cross-motion must be denied.[3]

CONCLUSION

In accordance with the foregoing, both Bronxville's motion and Plaintiff's cross-motion for summary judgment under CPLR 3212 are DENIED. Counsel shall appear with their clients—and, if different from clients, those with settlement authority—for an in-person Settlement Conference at 10:45 a.m. on January 29, 2025. The parties shall meet and confer regarding settlement prior to the next appearance. The parties shall file the Note of Issue and Trial Readiness Order on or before January 17, 2025.

The Clerk of the Court is respectfully directed to terminate Motion Sequence No. 001 (DENIED) and Motion Sequence No. 002 (DENIED).

Dated: January 14, 2025
New City, New York

SO ORDERED.

HON. CHRISTIE L. D'ALESSIO, J.S.C.

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[2] The Court notes that Bronxville argued that Plaintiff's motion was untimely. This matter, before being transferred to the undersigned, proceeded before the Honorable William Giacomo, J.S.C. Justice Giacomo's Individual Part Rules instruct, *inter alia*, that "any motion for summary judgment by any party must be made within sixty (60) days following the filing of the Note of Issue." To this end, those rules "caution[] that untimely motions cannot be made timely by denominating such as cross-motions. The failure of a party to serve and file a motion or cross-motion within the 60-day time period . . . shall result in the denial of the untimely motion or cross-motion." Although Plaintiff's cross-motion was filed well after the timeline laid out by Justice Giacomo's Individual Part Rules, the Note of Issue was vacated. (*See* Doc. 106). Bronxville does not explain how Plaintiff's cross-motion is untimely in this context.

[3] Sanchez received a ticket for violating N.Y. Vehicle & Traffic Law § 1111(d)(1). (Doc. 100). Sanchez pled guilty to a violation, but his testimony was unclear as to the violation to which he pled guilty. (*See* Doc. 98 at 48:19-49:19). Without a certificate of conviction or some other evidence regarding the plea, the Court declines to speculate as to the charge and its impact on the facts before it.