

Peralta v Feingold-Neiditch
2025 NY Slip Op 35486(U)
February 26, 2025
Supreme Court, Westchester County
Docket Number: Index No. 56663/2023
Judge: David S. Zuckerman
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Dispo Motion Seq. # 1
 To commence the 30 day statutory time
 period for appeals as of right
 (CPLR 5513[a]), you are advised to
 serve a copy of this order, with notice
 of entry, upon all parties

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF WESTCHESTER

-----X
 ADRIAN PERALTA,

Plaintiff,

-against -

DECISION/ORDER

Index No:
 56663/2023

CAROL FEINGOLD-NEIDITCH,

Defendant.

-----X
 ZUCKERMAN, J.

In this personal injury action, the papers denominated Documents 1 through 42 in NYSCEF were considered in connection with this motion by Plaintiff for an Order, pursuant to CPLR §3212, granting summary judgment on liability and, pursuant to CPLR §3211(b), striking Defendant's Fourth, Fifth, and Sixth Affirmative Defenses. Defendant opposes the motion.

FACTS

This action arises out of a motor vehicle accident. Plaintiff alleges that Defendant caused the accident by making an improper

left turn, in violation of VTL §§1141 and 1163. The Complaint contains a single cause of action for negligence.

The Answer contains numerous affirmative defenses, including, as relevant here,

“AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

Any damages sustained by the Plaintiff was caused by the culpable conduct of the Plaintiff, including contributory negligence or assumption of risk, and not by the culpable conduct or negligence of this answering Defendant

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

Upon information and belief, plaintiff failed to use or misused available seat belts, and thereby contributed to the alleged injuries.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

The plaintiff failed to mitigate his damages”
(Answer, p. 3).

CONTENTIONS OF THE PARTIES

Plaintiff argues that there is no triable issue of fact that Defendant negligently caused the accident by making an improper left turn. In support, counsel submits, *inter alia*, an affidavit from Plaintiff, transcripts from the parties’ depositions, a

police accident report, and the pleadings. Plaintiff adds that, for the same reason, the above-listed affirmative defenses must be stricken.

Defendant first responds that, since the intersection is controlled by a traffic light, Plaintiff erroneously relies on VTL §§1141 and 1163. Rather, VTL §1111 "governs" (Affirmation in Opposition, p. 2). More importantly, Defendant asserts that there is an issue of fact as both parties accuse the other of disregarding the red light at the accident location. In support, Defendant cites deposition testimony demonstrating that "[a]s Ms. Feingold approached the intersection, the left turn arrow was yellow" (Affirmation in Opposition, p. 3). Defendant adds that the certified police accident report should not be considered as it contains hearsay statements. Likewise, Defendant argues that Plaintiff's affidavit in support must be disregarded because it "contradicts his prior deposition testimony" and is "self-serving" (*id.* at 9). Finally, Defendant argues that the defense alleging Plaintiff's culpable conduct should not be dismissed because there is deposition testimony that, at the time of the accident, Plaintiff disregarded a red light and was speeding.

DISCUSSION

1. Summary Judgment on Liability

Pursuant to CPLR §3212(b), a motion for summary judgment "shall be granted if, upon all of 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." The Court of Appeals has explained that "[s]ummary judgment is designed to expedite all civil cases by eliminating from the Trial Calendar claims which can properly be resolved as a matter of law ... when there is no genuine issue to be resolved at trial, the case should be summarily decided, and any unfounded reluctance to employ the remedy will only serve to swell the Trial Calendar and thus deny to other litigants the right to have their claims promptly adjudicated" (*Andre v Pomeroy*, 35 NY2d 361, 364 [1974]).

In a summary judgment motion, the movant bears the initial burden of presenting evidence, in competent and admissible form, establishing the absence of any material issues of fact (*Viviane Etienne Medical Care v Country-Wide Insurance Company*, 25 NY3d 498 [2015]; *Bank of New York Mellon v Gordon*, 171 AD3d 197 [2d Dept 2017]; *Winegrad v New York University Medical Center*, 64 NY2d 851 [1985]). In the event that initial burden is met, the non-moving party must come forward with proof, also in admissible form, that

there are material issues of fact which require a trial of the action (*Alvarez v Prospect Hospital*, 68 NY2d 320 [1986]; *Owens v City of New York*, 183 Ad3d 903 [2d Dept 2020]).

In *Celardo v. Bell*, 222 AD2d 547 (2d Dept 1995), the court stated:

It is axiomatic that summary judgment is a drastic remedy which should only be granted if it is clear that no material issues of fact have been presented. Issue finding, rather than issue determination, is the court's function (*Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395 (1957.)) If there is any doubt about the existence of a triable issue of fact or if a material issue of fact is arguable, summary judgment should be denied (*Museums at Stony Brook v Village of Pachogue Fire Dept.*, 146 AD2d 572 (1989) ...

In analyzing the contrasting factual allegations, the court may not engage in weighing the evidence. Rather, the court must draw all reasonable inferences in favor of the non-moving party (*Rizzo v Lincoln Diner Corp.* 215 AD2d 546 [2d Dept 2000]). Then, the court must determine whether "by no rational process could the trier of facts find for the non-moving party" (*Jastrzebski v N Shore Sch Dist*, 232 AD2d 677 678 [2d Dept 1996]). Where facts are in dispute, there are issues of credibility, or conflicting inferences may be drawn from the evidence, summary judgment will not lie (*id* at 678).

Further,

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 to the plaintiff and that the defendant's negligence was a proximate cause of the alleged injuries" (*Hai Ying Xiao v. Martinez*, 185 AD3d 1014, 1014 [2nd Dept 2020--internal quotation marks omitted]; *see Rodriguez v. City of New York*, 31 NY3d 312 (2018); *Tsyganash v. Auto Mall Fleet Mgt., Inc.*, 163 AD3d 1033, 1033-1034 [2nd Dept 2018])).

(*Shah v MTA Bus Company*, 201 AD3d 833 [2d Dept 2022])).

Since summary judgment is a drastic remedy, it should not be granted where there is any doubt as to the existence of a triable issue (*see Rotuba Extruders v Ceppos*, 46 NY2d 223 [1978])). As a preliminary matter,

A plaintiff is no longer required to show freedom from comparative fault to establish her or his *prima facie* entitlement to judgment as a matter of law on the issue of liability.

(*Xin Fang Xia v Saft*, 177 AD3d 823, 825 [2d Dept 2019]); *Rodriguez v City of New York*, *supra*).

In addition, a violation of the Vehicle and Traffic Law is *prima facie* evidence of negligence (*Nsiah-Ababio v Hunter*, 78 AD3d 672 [2d Dept 2010]; *Rodriguez v Budget Rent A-Car Sys., Inc.*, 44 AD3d 216 [1st Dept 2007]). Pursuant to Vehicle and Traffic Law 1141,

The driver of a vehicle intending to turn to the 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. A violation of Vehicle and Traffic Law § 1141 constitutes negligence per se. Although a driver with a right-of-way also has a duty to use reasonable care to avoid a collision, . . . a driver with the right-of-way who has only seconds to react to a vehicle which has failed to yield is not comparatively negligent for failing to avoid the collision" (*Marangoudakis v Suniar*, 208 AD3d 1233, 1235-1236 [2d Dept 2022]internal citations and quotation marks omitted)).

In addition, pursuant to VTL § 1163(a),

No person shall turn a vehicle at an intersection unless the vehicle is in proper position upon the roadway as required in section eleven hundred sixty, or turn a vehicle to enter a

private road or driveway, or otherwise turn a vehicle from a direct course or move right or left upon a roadway unless and until such movement can be made with reasonable safety.

"This statute prohibits a driver from turning unless the vehicle is in a proper position (discussed in section 1160) and can do so with reasonable safety" (Larry Cunningham, Practice Commentaries, McKinneys Cons Laws of NY, VTL 1163). Here, Plaintiff's submissions establish that Defendant's vehicle turned into an intersection without reasonable safety. Consequently, Plaintiff has established *prima facie* that Defendant violated VTL § 1163(a).

Pursuant to VTL § 1111(b),

Whenever traffic is controlled by traffic-control signals, other than lane direction control signal indications provided in section eleven hundred sixteen, exhibiting different colored lights, or colored lighted arrows, successively, one at a time or in combination, only the colors green, yellow and red shall be used, and said light shall indicate and apply to drivers of vehicles and to pedestrians as follows:

(b) Yellow indications:

1. Traffic, except pedestrians, facing a steady circular yellow signal may enter the intersection; however, said traffic is thereby warned that the related green movement is being terminated or that a red indication will be exhibited immediately thereafter.

2. Traffic, except pedestrians, facing a steady yellow arrow signal may cautiously enter the intersection only to complete the movement indicated by such arrow or make such other movement as is permitted by other indications shown at the same time; however, said traffic is thereby warned that the related green arrow movement is being terminated or that a red indication will be exhibited immediately thereafter.

Even if the court found, as Defendant argues, that this statute is controlling, it would not alter the outcome. Finally, "[d]rivers also have a duty to see what should be seen, and to exercise reasonable care under the circumstances to avoid an accident" (*Byrne, supra*, at 705; see *Filipazzo v Santiago*, 277 Ad2D 419 [2d Dept 2000]).

Here, upon a review of the pleadings, the motion papers, and exhibits, the court finds that Plaintiff has met the burden of establishing *prima facie* entitlement to summary judgment on the issue of liability. These submissions clearly show, *inter alia*, that the collision occurred when Defendant negligently made a left turn, striking Plaintiff's vehicle which had lawfully entered the intersection pursuant to a green traffic light.

In light of this *prima facie* showing, the burden shifted to Defendant to establish a triable issue of fact. Defendant's submissions, however, at best, show that Defendant made a left turn while the traffic light displayed a yellow left turn arrow.

Moreover, Defendant clearly admits driving too fast for the conditions then present. Lastly, Defendant's submissions do not establish that Plaintiff's vehicle drove through the intersection while facing a solid red light. In sum, Defendant fails to demonstrate that there is a material issue of fact. Therefore, Plaintiff's motion for summary judgment on liability must be granted.

2. Motion to Strike the Affirmative Defenses

Pursuant to CPLR 3211 (b),

A party may move for judgment dismissing one or more defenses, on the ground that a defense is not stated or has no merit.

"A plaintiff seeking dismissal of a defense has the burden of demonstrating that the defense is without merit as a matter of law. When faced with a CPLR 3211(b) motion, a court must liberally construe the pleadings in favor of the defendant and afford the defendant the benefit of every reasonable inference . . . CPLR 3211(b) is also available to lodge a merits-based attack against a defense. The plaintiff is free to submit evidence of any kind (as long as it is in admissible form), see Commentary C3211:40, to undercut any facts on which the defense is founded. If the plaintiff's evidence demonstrates that the defense is without

merit as a matter of law, see Commentary C3211:35, and the defendant does not submit any evidence rehabilitating the defense, dismissal is appropriate" (John R. Higgitt, Practice Commentaries, McKinney's Cons Laws of NY, C3211:35. Thus, "[w]hen material issues of fact are unresolved, a court should not strike a defense" (*Faulkner v City of New York*, 47 AD3d 879, 881 [2d Dept 2008])).

Here, upon liberally construing the defenses, Plaintiff has met the burden. As set forth above, Plaintiff has established, *prima facie*, that the three relevant defenses have no merit. Defendants' submissions do not suggest otherwise.

The remaining contentions, if any, do not compel a different result. Any additional relief requested by any party and not expressly considered herein is denied.

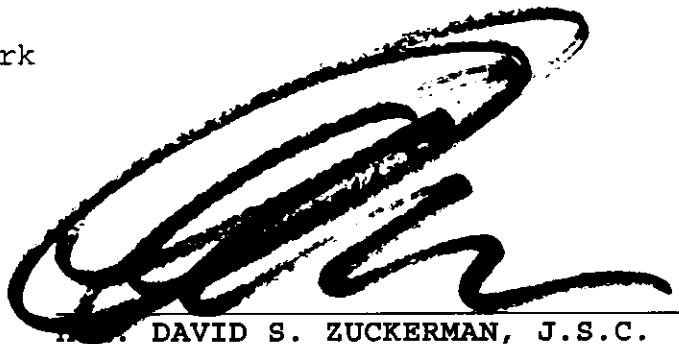
Based upon the foregoing, it is hereby

ORDERED, that the motion by Plaintiff for summary judgment on the issue of liability is granted; and it is further

ORDERED, that the fourth, fifth and sixth affirmative defenses are stricken.

The foregoing constitutes the Opinion, Decision & Order of
the Court.

Dated: White Plains, New York
February 26, 2025



DAVID S. ZUCKERMAN, J.S.C.

To: All Parties via NYSCEF