

Batista v Weitman
2025 NY Slip Op 35620(U)
March 3, 2025
Supreme Court, Suffolk County
Docket Number: Index No. 616177/2023
Judge: Maureen T. Liccione
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Short Form Order

Index No. 616177/2023

SUPREME COURT – STATE OF NEW YORK
PART 78 – SUFFOLK COUNTY**P R E S E N T:****Hon. Maureen T. Liccione**

Justice Supreme Court

-----X
JOSE BATISTA,

Plaintiff,

-against-

JERENE B. WEITMAN,

Defendant.
-----XMot. Seq. No. 001 – MD
Orig. Return Date: 12/11/2024
Mot. Submit Date: 12/18/2024**DECISION AND ORDER****PLAINTIFF'S ATTORNEY**CHOPRA & NOCERINO, LLP
100 Quentin Roosevelt Blvd., Unit 107
Garden City, NY 11530**DEFENDANT'S ATTORNEY**JAMES BUTLER & ASSOCIATES
300 Jericho Quadrangle, Suite 260
Jericho, NY 11753

Upon the e-filed documents 21 through 33, 35 through 37, and 39 through 42 and upon due deliberation, it is

ORDERED that plaintiff's motion for summary judgment on the issue of liability is denied.

This is an action for personal injuries alleged to have been sustained by the plaintiff Jose Batista as a result of a motor vehicle accident that occurred on May 23, 2023 on Cuba Hill Road in the Town of Huntington, New York. Plaintiff was proceeding straight on Cuba Hill Road near Newfoundland Avenue at the time of the accident. Defendant Jerene B. Weitman was traveling in the opposite direction on Cuba Hill Road, made a left turn to enter the Makinajian farm, and collided with plaintiff's vehicle. Plaintiff is now moving for summary judgment on the issue of liability. Defendant is opposing the motion.

The proponent of a summary judgment motion must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material

issues of fact from the case (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). To grant summary judgment it must clearly appear that no material and triable issues of fact are presented (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]; *Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 403 [1957]). The movant has the initial burden of proving entitlement to summary judgment (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 852 [1985]). Failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers (*id.*). Once such proof has been offered, the burden then shifts to the opposing party, who, in order to defeat the motion for summary judgment, must proffer evidence in admissible form and must “show facts sufficient to require a trial of any issue of fact” (CPLR 3212 [b]; *Alvarez*, 68 NY2d at 324). The court’s function on such a motion is to determine whether issues of fact exist, not to resolve issues of fact or to determine matters of credibility (*see Spilman v Matyas*, 212 AD3d 859, 860 [2d Dept 2023]; *Charlery v Allied Transit Corp.*, 163 AD3d 914, 915 [2d Dept 2018]). The 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 (*Santiago v Joyce*, 127 AD3d 954, 954 [2d Dept 2015]).

Pursuant to Vehicle and Traffic Law § 1141, the operator of a vehicle intending to turn left within an intersection or into a private road or driveway must yield the right-of-way to any oncoming vehicle that is within the intersection or so close to it as to constitute an immediate hazard (*Ming-Fai Jon v Wager*, 165 AD3d 1253, 1254 [2d Dept 2018]; *Attl v Speller*, 137 AD3d 1176, 1176 [2d Dept 2016]; *Katikireddy v Espinal*, 137 AD3d 866, 867 [2d Dept 2016]). A violation of this statute constitutes negligence per se (*Katikireddy*, 137 AD3d at 867; *Vainer v DiSalvo*, 79 AD3d 1023, 1024 [2d Dept 2010]). 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 (*Seizeme v Levy*, 208 AD3d 809, 810 [2d Dept 2022]; *Sapienza v Harrison*, 191 AD3d 1028 [2d Dept 2021]). “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]; *see Rodriguez v City of New York*, 31 NY3d 312, 323 [2018]).

Here, plaintiff failed to establish his prima facie entitlement to judgment as a matter of law on the issue of liability (*see Jimenez v Ramirez*, 171 AD3d 902, 903 [2d Dept 2019]). In support of his motion, plaintiff submitted the deposition testimony of the parties, which did not

demonstrate that defendant violated Vehicle and Traffic Law § 1141 and did not show that defendant made a left turn directly into the path of plaintiff's vehicle without yielding the right-of-way to the plaintiff.

Plaintiff testified that when he first saw defendant's vehicle, the "entire vehicle" was on his side of the roadway, that one second passed between the time he first saw the vehicle and the moment of impact, that the front of his vehicle came into contact with the right side of defendant's vehicle, and that he did not recall the speed he was travelling at the time of the collision (NYSCEF Doc No. 30, pp. 26-28). Defendant testified that plaintiff's vehicle collided with the "doors, center" on the passenger side of her vehicle, that before taking a left she had stopped her vehicle and then checked to make sure that "there was nobody coming," that at the time of the collision the front of her vehicle was "[p]artially on the driveway of the [Makinajian] farm" but the rear of her vehicle on Cuba Hill Road, that she was driving under 5 miles per hour at the time of the collision, and that as a result of the impact the rear of her vehicle "slammed into a huge rock that is the signature rock of the Makinajian Farm" (NYSCEF Doc No. 31, pp. 25-32). Defendant also testified that she told the police at the scene that she had her signal on at the time she made a left turn, and that "there was no sign of an oncoming car when [she] made [her] turn" into the Makinajian Farm driveway, and that as a result of the accident her vehicle was totalled (*id.*, pp. 37-38).

Pursuant to the testimony of both parties, a portion of defendant's vehicle was in front of plaintiff's vehicle at the time of the collision. In fact, defendant testified that the front of her vehicle had already entered the driveway of the Makinajian Farm at the time of the collision. Thus, plaintiff did not establish his prima facie entitlement to judgment as a matter of law, since he failed to show that the defendant made a left turn into plaintiff's path and that plaintiff did not have sufficient time to react to avoid the collision.

Contrary to defendant's contention, the unsigned deposition transcripts are admissible. Plaintiff showed that defendant's deposition transcript was mailed to defense counsel but was not returned signed. As the transcript was not returned signed within 60 days, the transcript "may be used as fully as though signed" (CPLR 3116 [a]). Although unsigned, the transcript of defendant's deposition was certified (*Rodriguez v Ryder Truck, Inc.*, 91 AD3d 935 [2d Dep 2012]). Furthermore, the unsigned but certified deposition of the plaintiff was admissible under CPLR 3116 (a), since the transcript was submitted by the party deponent himself and, therefore, was

Batista v Weitman

Index No. 616177/2023

adopted as accurate by the deponent (*David v Chong Sun Lee*, 106 AD3d 1044, 1045 [2d Dept 2013]).

Accordingly, there are questions of fact as to plaintiff's speed prior to the impact, whether defendant had commenced the turn when the oncoming traffic was clear, whether defendant's vehicle was visible with sufficient time to stop given his speed.

Plaintiff, as the proponent of a summary judgment motion, failed to tender sufficient evidence to eliminate any material issues of fact from the case.

Therefore, plaintiff's motion for summary judgment on the issue of liability is denied.

The foregoing constitutes the decision and Order of the Court.

ENTER

DATE: March 3, 2025
Riverhead, NY


HON. MAUREEN T. LICCIONE, J.S.C.

___ FINAL DISPOSITION

___X___ NON-FINAL DISPOSITION