

Reyes v Amato

2018 NY Slip Op 32799(U)

November 1, 2018

Supreme Court, New York County

Docket Number: 156899/2014

Judge: Adam Silvera

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART IAS MOTION 22

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MARLENY REYES, LENIN ROSARIO

Plaintiff,

- v -

CINDY AMATO, ALAJDIN MAMUDOSKI,

Defendant.

INDEX NO. 156899/2014

MOTION DATE 10/03/2018

MOTION SEQ. NO. 003

DECISION AND ORDER

-----X

HON. ADAM SILVERA:

The following e-filed documents, listed by NYSCEF document number (Motion 003) 46, 47, 48, 49, 50, 51, 54, 57, 58, 59

were read on this motion to/for

JUDGMENT - SUMMARY

Upon the foregoing documents, it is ORDERED that plaintiff on the counterclaim's motion for an order for summary judgment pursuant to CPLR 3212 to dismiss the complaint on the basis that plaintiff on the counterclaim did not breach any duty owed to the plaintiff is denied.

This action stems from a motor vehicle incident which occurred on June 8, 2012, on Bryant Avenue at or near its intersection with Lafayette Avenue, in Bronx County, City and State of New York, when a vehicle operated by defendant, Alajdin Mamudoski, and owned by defendant, Cindy Amato, allegedly failed to yield the right of way at a stop sign and struck a vehicle operated by plaintiff, Lenin Rosario, carrying passenger plaintiff, Marleny Reyes, that was proceeding through the intersection with right of way and led to the serious injury of plaintiffs.

Plaintiffs commenced this action to recover for injuries allegedly sustained as a result of the automobile accident which occurred on June 8, 2012. Defendants joined issue by service of

answering papers and filed a counterclaim against plaintiff, Lenin Rosario, alleging that plaintiff, Marleny Reyes, sustained the injuries alleged due to the culpable conduct of plaintiff, Rosario. Here, plaintiff, Rosario, claims that there is no evidence to dispute the fact that defendant, Mamudoski, breached his duty to yield and is the sole proximate cause of the underlying accident.

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 University Medical Center*, 64 NY2d 851, 853 [1985]). Once such entitlement has been demonstrated by the moving party, the burden shifts to the party opposing the motion to “demonstrate by admissible evidence the existence of a factual issue requiring a trial of the action or tender an acceptable excuse for his failure ... to do [so]” (*Zuckerman v City of New York*, 49 NY2d 557, 560 [1980]).

Violation of the Vehicle and Traffic Law (“VTL”) constitutes negligence per se (*See Flores v City of New York*, 66 AD3d 599 [1st Dep’t 2009]). Pursuant to VTL 1142(a) “every driver of a vehicle approaching a stop sign shall stop . . . and after having stopped shall yield the right of way to any vehicle which has entered the intersection.” The First Department Appellate Division has found that “when a driver, who approaches an intersection with a stop sign, fails to yield the right of way to another vehicle who approaches the same intersection from another street without a traffic control device, he/she violates Traffic Law Section 1140 and is thus guilty of negligence as a matter of law” (*Nevarez v S.R.M. Mgt Corp.*, 58 AD3d 295, 297 [1st Dept 2008]).

Here, plaintiff, Rosario, alleges that defendant, Mamudoski, violated the VTL when he failed to yield the right of way at the stop sign on Bryant Avenue at or near its intersection with

Lafayette Avenue. In support of his motion, plaintiff, Rosario, submits his own deposition, in addition to that of plaintiff, Marleny Reyes, and defendant, Alajdin Mamudoski (Mot, Exh B, C, and D). Plaintiff, Rosario, testified that he saw defendant's vehicle stopped at the stop sign on Bryant Avenue and plaintiffs' vehicle proceeded straight through the intersection, as there was no stop sign on Lafayette Avenue, when plaintiffs' vehicle was struck by defendant's vehicle (*id.*, Exh C at 11-13 & 18-20). Plaintiff, Reyes, testified that plaintiff, Rosario, was traveling at about 20-25 mph and did not change his speed while traveling through the intersection, when defendant's vehicle impacted the driver's side of plaintiffs' vehicle (*id.*, Exh B at 33-40). Defendant testified that he stopped at the stop sign and then proceeded to move forward in an attempt to turn left, when his vehicle struck plaintiffs' vehicle (*id.*, Exh D at 10-21).

The deposition of plaintiffs and defendant driver demonstrates that defendant did not yield traffic for plaintiffs' vehicle and thus violated the VTL. As such, plaintiffs have demonstrated defendant's prima facie negligence and the burden shifts to defendant to raise an issue of fact. Here, defendant's opposition points to the deposition of defendant, Alajdin Mamudoski, who testified that both Lafayette Avenue and Bryant Avenue have stop signs (*id.*, at 10). Thus, defendant has raised an issue of fact as to whether plaintiff, Rosario, also had a duty to yield at the intersection. Plaintiff's motion for an order granting plaintiff, Lenin Rosario, summary judgment to dismiss defendant's complaint is denied.

Accordingly, it is

ORDERED that plaintiff on the counterclaim's motion for an order for summary judgment pursuant to CPLR 3212 to dismiss the complaint on the basis that plaintiff on the counterclaim did not breach any duty owed to the plaintiff is denied; and it is further

ORDERED that within 30 days of entry, defendant shall serve a copy of this Decision/Order upon plaintiff with notice of entry.

This constitutes the Decision/Order of the Court.



11/1/2018
DATE

HON. ADAM SILVERA
J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED	<input type="checkbox"/>	
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		SUBMIT ORDER	<input type="checkbox"/>	REFERENCE
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		FIDUCIARY APPOINTMENT	<input type="checkbox"/>	