SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

Index No.: 518878/2017
Motion Dates: 7-17-18
Mot. Cal. No.: 9

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SHAMEKA EDWARDS-STUCKEY,

Plaintiff,

AMENDED
DECISION/ORDER

-against-

ABDESSAMAD RAMZAOUI,

Defendant,

----------x

The following papers numbered 1 to 3 were read on these motions:

Papers:	**Numbered**
Notice of Motion/Order to Show Cause Affidavits/Affirmations/Exhibits	1
Answering Affirmations/Affidavits/Exhibits	2
Reply Affirmations/Affidavits/Exhibits	3
Other	

Upon the foregoing papers, the motion is decided as follows:

In this action to recover damages for personal injuries arising out of a motor vehicle accident, the plaintiff, SHAMEKA EDWARDS-STUCKEY, moves to renew her prior motion for partial summary judgment on the issue of liability, which was denied, and upon renewal, for an order granting the motion.

By Notice of Motion dated December 6, 2017, the plaintiff moved for partial summary judgment on the issue of liability. In support of the motion, plaintiff submitted, among other things, her sworn affidavit wherein she averred that on April 23, 2016, she was operating a motor vehicle on Flatlands Avenue, near its intersection with Ralph Avenue in Brooklyn, when it

1 of 4

collided with a motor vehicle owned and operated by the defendant, ABDESSAMAD RAMZAOUI. At the time of the impact, the plaintiff averred that she was in the left turning lane, with her left turn signal on, making a left turn onto Ralph Avenue from Flatlands Avenue when defendant's vehicle abruptly made a left turn from the center lane of Flatlands Avenue. She maintains that the front of defendant's vehicle collided into the passenger side of her vehicle.

In opposition to the motion, the defendant submitted his own affidavit stating that at the time of the accident, he was proceeding along Flatlands Avenue towards its intersection with Ralph Avenue and was intending to make a left turn onto Ralph Avenue. He maintained that when he was a "great distance" from the intersection and about to merge into the left turning lane, plaintiff's vehicle, which was a couple of car lengths behind him, sped up, merged into the turning lane and began making a left turn in a hurried fashion before the light controlling traffic at the intersection turned red. He stated that front passenger side bumper of the plaintiff's vehicle made contact with the driver's side front of his vehicle

On March 18, 2018, when the parties appeared for oral argument of the motion, the Court issued a short form order denying the motion on the ground that the plaintiff did not "establish lack of comparative fault as a matter of law." At time the motion was decided, it was the law in the Second Department that in order "to prevail on a motion for summary judgment on the issue of liability, a plaintiff [was] required to submit evidence in admissible form establishing, *prima facie*, that the defendant was negligent and that the plaintiff was free from comparative fault" (*Derieux v. Apollo NY City Ambulette, Inc.*, 131 AD3d 504, 504-505 [2d Dept 2015]; *see also Zhu v. Natale*, 131 AD3d 607, 608 [2d Dept 2015], see also. *Ramos v. Bartis,* 112 A.D.3d 804, 804, 977 N.Y.S.2d 315 [2d Dept 2013]; *Pollack v. Margolin,* 84 A.D.3d at 1342, 924 N.Y.S.2d

2 of 4

282 [2d Dept 2011]).

Plaintiff now moves to renew her motion arguing that in light of the Court of Appeals holding in *Rodriguez v. City of New York*, 31 N.Y.3d 312, 101 N.E.3d 366 [2018], which was decided on April 3, 2018, a plaintiff no longer has establish his or her freedom for comparative fault in order to prevail on a partial motion for partial summary judgment on the issue of liability. Plaintiff contends that her submissions established that defendant's negligence and that at the very least, she should be awarded partial summary judgment on the issue of defendant's liability regardless of whether triable issues of fact remain concerning her own comparative negligence.

A motion for leave to renew ". . . shall demonstrate that there has been a change in the law that would change the prior determination. . . ." (**CPLR § 2221(e)**). While plaintiff correctly states that holding in *Rodriguez* represents a change in the law, plaintiff has not demonstrated that the holding would change the Court's prior determination. In order to prevail on a motion for partial summary judgment on the issue of liability, the plaintiff has to demonstrate that defendant's negligence was a substantial factor in causing the accident. *Rodriquez* did not change this fundamental principle. Even if it can be said that the plaintiff demonstrated that the defendant violated one or more of the litany of the Vehicle & Traffic Law provisions cited by the plaintiff in her moving papers, in the Court's review, there remain questions of fact as to whether any such violation or violations were a substantial factor in causing the accident. "[I]issues of proximate cause are generally fact matters to be resolved by a jury" (*Benitez v. New York City Bd. of Educ.*, 73 N.Y.2d 650, 659, 543 N.Y.S.2d 29, 541 N.E.2d 29 [1989]). While there are instances where only one conclusion may be drawn from the established facts and the question of legal cause may be decided as a matter of law (*Derdiarian v.*

3 of 4

Felix Contr. Corp., 51 N.Y.2d 308, 315, 434 N.Y.S.2d 166, 414 N.E.2d 666 [1980]; *see also, Belling v. Haugh's Pools*, 126 A.D.2d 958, 511 N.Y.S.2d 732 [1987], *lv. denied* 70 N.Y.2d 602, 518 N.Y.S.2d 1024, 512 N.E.2d 550 [1987]), this is not one of those instances.

Accordingly, it is hereby

ORDERED that Plaintiff's motion is in all respects **DENIED.**

Dated: November 2nd, 2018

PETER P. SWEENEY, J.S.C.

2018 NOV -7 AM 8:00
COUNTY CLERK
FILED

4 of 4