

Gritsus v Coincon

2018 NY Slip Op 34176(U)

August 28, 2018

Supreme Court, Orange County

Docket Number: Index No. EF008125-2016

Judge: Catherine M. Bartlett

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT-STATE OF NEW YORK
IAS PART-ORANGE COUNTY

Present: HON. CATHERINE M. BARTLETT, A.J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

-----X
VADIM GRITSUS,

Plaintiff,

-against-

LYNNEA COINCON, KEITH COINCON and
JAMES BARTELINI,

Defendants.
-----X

To commence the 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.

Index No. EF008125-2016
Motion Date: July 9, 2018

The following papers numbered 1 to 6 were read on defendant James Bartelini's motion for summary judgment, and Plaintiff's cross-motion to dismiss the Coincon defendants' affirmative defenses:

Notice of Motion (Bartelini) - Affirmation / Exhibits - Affidavit	1-3
Affirmation in Opposition (Coincon)	4
Notice of Cross Motion (Plaintiff) - Affirmation / Exhibits	5
Reply Affirmation (Bartelini)	6

Upon the foregoing papers it is ORDERED that the motion is disposed of as follows:

This is a personal injury action arising out of an accident that occurred on September 25, 2016 on State Highway 17M in the Village of Monroe, New York. Defendant Lynnea Coincon was making a left turn from a Dunkin Donuts parking lot onto Route 17M westbound. She was facing a stop sign, and failed to yield the right of way to defendant James Bartelini, who was

traveling eastbound on 17M. With almost no time to react, Mr. Bartelini struck defendant Coincon's vehicle and pushed it onto the north shoulder of the roadway, where it struck Plaintiff's bicycle.

Vehicle and Traffic Law ("VTL") §1172(a) provides in pertinent part:

...every driver of a vehicle approaching a stop sign shall stop at a clearly marked stop line, but if none, then shall stop before entering the crosswalk on the near side of the intersection...and the right to proceed shall be subject to the provisions of section 1142.

VTL §1142(a) provides in pertinent part:

...every driver of a vehicle approaching a stop sign shall stop as required by section 1172 and after having stopped shall yield the right of way to any vehicle which has entered the intersection from another highway or which is approaching so closely on said highway as to constitute an immediate hazard during the time when such driver is moving across or within the intersection.

Mr. Bartelini established *prima facie* entitlement to summary judgment by proving that Ms. Coincon failed to yield the right of way to his vehicle in violation of VTL §§ 1172(a) and 1142(a), and that he himself was free from comparative fault.

The failure of a motorist to yield the right of way in violation of the statute is negligence as a matter of law and cannot be disregarded by the jury [cit.om.]. A driver is entitled to partial summary judgment on the issue of liability based on defendant's violation of VTL §1142(a) [cit.om.]. A driver is entitled to anticipate that a motorist facing a stop sign will yield the right of way [cit.om.]. The fact that the view of a motorist properly stopped is obscured does not exculpate the motorist; the motorist is under a common-law duty to see what is there to be seen [cit.om.]. Further, the fact that the motorist may have initially stopped at the stop sign does not negate his liability if he subsequently fails to yield the right of way [cit.om.].

1A NY PJI 3d 2:80, at 501-502 (2018). *See, e.g., Maliza v. Puerto-Rican Transp. Corp.*, 50 AD3d 650 (2d Dept. 2008); *Bolta v. Lohan*, 242 AD2d 356 (2d Dept. 1997). Furthermore, "a driver with the right-of-way who has only seconds to react to a vehicle that has failed to yield is not comparatively negligent for failing to avoid the collision." *See, Bennett v. Granata*,

118 AD3d 652, 653 (2d Dept. 2014); *Barbato v. Maloney*, 94 AD3d 1028, 1030 (2d Dept. 2012); *Socci v. Levy*, 90 AD3d 1020, 1021 (2d Dept. 2011). The evidence shows that Mr. Bartelini had no meaningful opportunity to avoid the Coincon vehicle when it failed to yield the right of way, and that Mrs. Coincon's negligence was the sole proximate cause of the accident. *See, Ricciuti v. Porcu*, 124 AD3d 616, 617 (2d Dept. 2015). Plaintiff does not oppose Mr. Bartelini's motion. Mrs. Coincon's speculative and conclusory assertion that Mr. Bartelini should have seen her vehicle and taken evasive measures is unsupported by the record and insufficient to withstand summary judgment. *See, Socci v. Levy, supra; Mateiasevici v. Daccordo*, 34 AD3d 651, 652 (2d Dept. 2006).

Accordingly, Mr. Bartelini is entitled to summary judgment dismissing the claims against him.

Plaintiff's motion for an order striking affirmative defenses is unopposed.

It is therefore

ORDERED, that defendant James Bartelini's motion for summary judgment is granted, and it is further

ORDERED, that the Plaintiff's Amended Complaint as against defendant James Bartelini is dismissed, and it is further

ORDERED, that the cross-claim of defendants Lynnea and Keith Coincon against defendant James Bartelini is dismissed, and it is further

ORDERED, that Plaintiff's cross motion to strike affirmative defenses is granted, and it is further

ORDERED, that the Paragraphs labeled "Seventh", "Ninth", "Eleventh", "Fourteenth", "Sixteenth" and "Seventeenth" in the Amended Answer of defendants Lynnea and Keith Coincon are stricken.

The foregoing constitutes the decision and order of this Court.

Dated: August 28, 2018
Goshen, New York

ENTER


HON. CATHERINE M. BARTLETT, A.J.S.C.

HON. C. M. BARTLETT
JUDGE NY STATE COURT OF CLAIMS
ACTING SUPREME COURT JUSTICE