Agwu v Lazin
2018 NY Slip Op 34198(U)
January 18, 2018
Supreme Court, Westchester County
Docket Number: Index No. 50806/2017
Judge: Linda S. Jamieson
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INDEX NO. 50806/2017

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.

Disp ____ Dec __x__ Seq. No._1_ Type __partial SJ____

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

PRESENT: HON. LINDA S. JAMIESON

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NGOZI BLESSING AGWU,

Plaintiff,

-against-

Index No. 50806/2017

DECISION AND ORDER

LARRY G. LAZIN,

Defendant.

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The following papers numbered 1 to 3 were read on this motion:

Paper	Number
Notice of Motion, Affirmation and Exhibits	1
Affidavit and Affirmation in Opposition	2
Reply Affirmation	3

Plaintiff's motion seeks summary judgment on liability in this car accident case.

Plaintiff was driving westbound without a stop sign, when defendant, who was driving north, hit her in the middle of the car (a "t-bone" hit). There is no dispute that defendant had a stop sign. Defendant testified at his deposition that he had stopped at the stop sign prior to the accident. Defendant testified that there was a "wall of cars" in the intersection, so he had to get another car to let him in so that he could begin to

cross the intersection. Once he was in the middle of the intersection, defendant stopped a second time to wait his turn to go. Defendant testified that he did not see plaintiff's car at any time prior to the impact, and that he was "looking forward" at the time of the impact. Defendant further testified that it was a "heavy rain," "quite dark and very hard to see," but his automatic lights were on.

Defendant testified that even though he was in the middle of the intersection, his view of the westbound traffic was blocked, so that he had to inch out. His view of the westbound traffic "due to the rain, the darkness, how far I could see, it was limited." Those cars were coming up a hill, and were "not in my eyesight." Once he decided to go, he hit plaintiff.

While there are certain issues in dispute (such as how fast plaintiff was driving, or whether her lights were on, for example), none of these disputed issues is particularly material to the question at the heart of this motion for partial summary judgment: was defendant negligent in causing the accident? This Court finds that the answer is yes. Defendant has not raised any material issues of fact; his assertions about plaintiff's speed are "conclusory and speculative," and are "not sufficient to defeat the defendants' motion for summary judgment." *Broadway Houston Mack Dev., LLC v. Kohl*, 71 A.D.3d 937, 897 N.Y.S.2d 505 (2d Dept. 2010). *See also Agin v. Rehfeldt*, 284 A.D.2d 352, 353,

726 N.Y.S.2d 131, 132 (2d Dept. 2001) (driver was "was negligent in failing to see that which, under the circumstances, she should have seen, and in crossing in front of the defendant John J. Rehfeldt's vehicle when it was hazardous to do so.").

Put another way, defendant was the one who should have seen plaintiff's car before crossing the intersection. *Torro v. Schiller*, 8 A.D.3d 364, 777 N.Y.S.2d 915 (2d Dept. 2004) ("This evidence was sufficient to support the defendants' motion for summary judgment dismissing the complaint on the ground that the defendant driver was not negligent as a matter of law in the occurrence of the accident."). *See also Fenster v. Ellis*, 71 A.D.3d 1079, 898 N.Y.S.2d 582 (2d Dept. 2010) ("plaintiff established, prima facie, that Ellis made a left turn into the path of her vehicle without yielding the right-of-way. . . . The plaintiff, who had the right-of-way, was entitled to anticipate that Ellis would obey the traffic law which required him to yield, and his violation of Vehicle and Traffic Law § 1141 was the sole proximate cause of the accident."). There is simply no evidence that plaintiff did anything to cause the accident. *Biddy v. Vanmaltke*, 67 A.D.3d 845, 889 N.Y.S.2d 239 (2d Dept. 2009) ("There is no proof that the appellant operated his vehicle improperly or engaged in any conduct which helped bring about" the collision). The motion for partial summary judgment on the issue of liability is granted.

The parties are directed to appear for a Settlement Conference in the Settlement Conference Part on February 27, 2018 at 9:15 a.m. in Courtroom 1600.

The foregoing constitutes the decision and order of the Court.

Dated: White Plains, New York
January 18, 2018

HON. LINDA S. JAMIESON
Justice of the Supreme Court

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