

Amaya v Martinez

2019 NY Slip Op 33197(U)

October 23, 2019

Supreme Court, New York County

Docket Number: 159565/2016

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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PATRICIA AMAYA, PAMELA LUCAS,	INDEX NO.	<u>159565/2016</u>
Plaintiff,		05/14/2019,
- v -	MOTION DATE	<u>05/14/2019,</u>
		<u>06/06/2019</u>
RAUL MARTINEZ, S.R. MARTINEZ LOPEZ, KENNETH LUCAS	MOTION SEQ. NO.	<u>001 002 003</u>
Defendant.		

DECISION + ORDER ON MOTION

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HON. ADAM SILVERA:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 74, 85, 86, 87, 88, 96, 100, 101 were read on this motion to/for JUDGMENT - SUMMARY.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 56, 57, 58, 59, 60, 75, 97 were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER).

The following e-filed documents, listed by NYSCEF document number (Motion 003) 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 76, 77, 78, 79, 80, 81, 82, 83, 84, 89, 90, 91, 92, 93, 94, 95, 98, 99 were read on this motion to/for JUDGMENT - SUMMARY.

Before the Court is plaintiff Pamela Lucas' motion, motion sequence 001, for an order granting summary judgment on the issue of liability against defendants S.R. Martinez Lopez, Raul Martinez, and Kenneth J. Lucas; plaintiff Patricia Amaya's motion, motion sequence 002, for an order granting summary judgment on the issue of liability against all defendants and to dismiss affirmative defenses alleging contributory negligence, comparative negligence, and assumption of risk; and defendant Kenneth J. Lucas' motion, motion sequence 003, for an order granting summary judgment on the issue of liability in favor of said defendant and to dismiss the complaints of plaintiffs as against said defendant, along with any and all cross-claims.

The accident at issue stems from a motor vehicle accident which occurred on August 19, 2016, on the eastbound Ocean Parkway near Cedar Beach, in the town of Islip, County of Suffolk, and State of New York, when a vehicle operated by defendant Kenneth Lucas and transporting plaintiff Pamela Lucas struck a vehicle operated by defendant S.R. Martinez Lopez and transporting co-plaintiff Patricia Amaya that was executing a U-turn, which allegedly led to the serious injury of both plaintiffs.

Plaintiffs' motions, motion sequence 001 and 002 on the issue of liability as against defendants are granted. "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]).

Summary judgment in favor of the plaintiff is warranted where the defendant's own conduct inculcates him (*Uragrizza v Schmieder*, 46 NY2d 471 [1979]). "It is well settled that the right of an innocent passenger to summary judgment is not in any way restricted by potential issues of comparative negligence as between the drivers of the two vehicles" (*Garcia v Tri-County Ambulette Serv.*, 282 AD2d 206, 207 [1st Dept 2001] citing *Johnson v Phillips*, 261 AD2d 269, 272 [1st Dept 1990]).

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]). VTL 1163(a) states that

"[n]o person shall turn a vehicle at an intersection unless the vehicle is in proper position

upon the roadway as required in Section 1160 . . . or otherwise turn a vehicle from a direct course or move right or left upon a roadway unless or until such movement can be made with reasonable safety. No person shall so turn any vehicle without giving an appropriate signal.”

Pursuant to VTL 1180(a), “No person shall drive a vehicle at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing.” Under VTL 1128:

Whenever any roadway has been divided into two or more clearly marked lanes for traffic the following rules in addition to all others consistent herewith shall apply:

- (a) A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety.

VTL 1160(e) provides that:

The driver of a vehicle intending to turn at an intersection shall do so as follows:

- (e) U-turns. U-turns shall be made from and to that portion of the highway nearest the marked center line. Where more than one lane of a highway has been designated for left turns, U-turns shall be made only from the lane so designated that is adjacent to the marked center line.

Here, plaintiffs were seat belted innocent passengers and were free of any contributory negligence for the accident at issue. Plaintiffs have demonstrated that the actions of defendants S.R. Martinez Lopez and Kenneth J. Lucas are the sole proximate causes of the accident. In support of their motions, plaintiffs attach their depositions, the deposition of defendant Lucas, the deposition of defendant Martinez Lopez, the certified police report, the deposition of

reporting State Trooper Vincent T. Taurmina, Bosch Crash Data Retrieval from defendants' vehicles, photographs depicting the site of the accident and defendant Lucas' vehicle, and the affidavit of licensed engineer crash expert Nicholas Bellizzi (Mot 001, Exh J, K, M, N, O, P, Q, R, S; Mot 002, Exh B).

Expert Nicholas Bellizzi, who examined all evidence pertaining to the accident, concluded that the accident was caused by the negligence of both defendant Martinez Lopez and Lucas (Mot, Exh R, ¶¶ 8-10). Bellizzi opined within a reasonable degree of engineering and accident reconstruction certainty, that the first factor for the happening of the incident was that defendant Martinez Lopez did not properly negotiate the 180-degree U-turn curve in the median and entered the eastbound lane where defendant Lucas' vehicle struck it (*id.*, ¶¶ 13 & 20). Expert Bellizzi also opined that the excessive speed of defendant Lucas' vehicle was the second factor for the happening of the incident (*id.*, ¶ 21). Bellizzi concludes that both defendants failed to control and operate their vehicles with due care and in a reasonably safe manner in violation of the VTL. Thus, plaintiffs have demonstrated that both defendant drivers Martinez Lopez and Lucas violated the VTL and have made a prima facie showing of entitlement to summary judgment on the issue of liability as against defendants.

In opposition defendants fail to raise an issue of fact or provide a non-negligent explanation for the collision. Thus, plaintiff Pamela Lucas' motion, motion sequence 001, for an Order granting summary judgment on the issue of liability in favor of plaintiff Lucas against defendants is granted. For the same reasons mentioned above, plaintiff Patricia Amaya's motion for an Order granting summary judgment on the issue of liability as against all defendants and to dismiss affirmative defenses alleging contributory negligence, comparative negligence, and assumption of risk is granted.

Defendant Kenneth J. Lucas' motion, motion sequence 003, for an order granting summary judgment on the issue of liability in favor of said defendant and to dismiss the complaints of plaintiffs as against said defendant, along with any and all cross-claims is denied. For the reasons noted above, the Court has found that defendant Lucas is jointly and severally liable for the accident at issue. Thus, defendant's motion on the issue of liability is denied.

Accordingly, it is

ORDERED that plaintiff Pamela Lucas' motion, motion sequence 001, for an order granting summary judgment on the issue of liability against defendants S.R. Martinez Lopez, Raul Martinez, and Kenneth J. Lucas is granted; and it is further

ORDERED that Patricia Amaya's motion, motion sequence 002, for an order granting summary judgment on the issue of liability against all defendants and to dismiss affirmative defenses alleging contributory negligence, comparative negligence, and assumption of risk is granted; and it is further

ORDERED that defendants' affirmative defenses alleging contributory negligence, comparative negligence, and assumption of risk are dismissed; and it is further

ORDERED that defendant Kenneth J. Lucas' motion, motion sequence 003, for an order granting summary judgment on the issue of liability in favor of said defendant and to dismiss the complaints of plaintiffs as against said defendant, along with any and all cross-claims is denied.

This constitutes the Decision/Order of the Court.

10/23/19
DATE


ADAM SILVERA, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER
REFERENCE