Miliotto v Ciano
2019 NY Slip Op 34668(U)
December 13, 2019
Supreme Court, Suffolk County
Docket Number: Index No. 610603/2019
Judge: Paul J. Baisley, Jr.
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SHORT FORM ORDER **INDEX NO. 610603/2019**

SUPREME COURT - STATE OF NEW YORK
DCM-J - SUFFOLK COUNTY

PRESENT:
Hon. Paul J. Baisley, Jr., J.S.C.

SALVATORE MILIOTTO,

Plaintiff,

-against-

ALEXIS CIANO,

Defendant.

ORIG. RETURN DATE: November 1, 2019
FINAL RETURN DATE: November 1, 2019
MOT. SEQ. #: 001 MD

PLTF'S ATTORNEY:
GRUENBERG KELLY DELLA
700 KOEHLER AVENUE
RONKONKOMA, NY 11779

DEFT'S ATTORNEY:
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MELVILLE, NY 11747

Upon the following papers read on this motion e-filed motion for summary judgment: Notice of Motion/ Order to Show Cause and supporting papers by plaintiff, filed October 9, 2019; Notice of Cross Motion and supporting papers _____; Answering Affidavits and supporting papers by defendant, filed October 28, 2019; Replying Affidavits and supporting papers by plaintiff, filed October 29, 2019; Other _____; (~~and after hearing counsel in support and opposed to the motion~~) it is,

ORDERED that the motion by plaintiff for summary judgment in his favor on the issue of defendant's negligence and for a determination as to his comparative fault is denied; and it is further

ORDERED that counsel for the parties shall appear for a preliminary conference at 10:00 a.m. on January 8, 2020 at the DCM-J Part of the Supreme Court, 1 Court Street, Riverhead, New York.

This is an action to recover damages for injuries allegedly sustained by plaintiff Salvatore Miliotto as a result of a motor vehicle accident, which allegedly occurred on June 28, 2017, at the intersection of Patchogue-Holbrook Road and Main Street in Holbrook, New York. The accident allegedly occurred when a vehicle operated and owned by defendant Alexis Ciano disregarded its red traffic light and struck plaintiff's vehicle.

Plaintiff now moves for summary judgment in his favor on the issue of defendant's negligence and a determination as to his comparative negligence. Plaintiff contends that defendant violated Vehicle and Traffic Law §§ 1111 and 1141 by entering the intersection when her direction of travel was governed by a red light, and by making a left turn into the path of his vehicle traveling with the right-of-way. He also contends that defendant's conduct was the sole proximate cause of the accident. In support of his motion, plaintiff submits, among other things, a copy of a certified police report, his affidavit, and the affidavit of nonparty Daniel Schaefer. In opposition, defendant argues that triable facts exist as to how the accident occurred, and submits her affidavit.

In his affidavit, plaintiff avers that prior to the collision, his vehicle was traveling southbound on Patchogue-Holbrook Road, and that his direction of travel was governed by a green light. His vehicle allegedly was proceeding through the subject intersection when it was struck by defendant's eastbound vehicle, which was attempting to make a left turn onto northbound Patchouge-Holbrook Road. Plaintiff contends that defendant's direction of travel was governed by a red light at the subject intersection.

Daniel Schaeffer contends that prior to the accident, his southbound vehicle was traveling behind plaintiff's vehicle, and that plaintiff's direction of travel was governed by a green light at the subject intersection. He avers that prior to the accident, defendant proceeded into the subject intersection against a red light controlling her direction of travel, and attempted to make a left turn onto northbound Patchogue-Holbrook Road.

According to defendant's affidavit, her direction of travel was governed by a green light prior to the accident. Defendant allegedly looked to her left and observed that there was no oncoming traffic before attempting to make the left turn. Defendant avers that plaintiff's vehicle proceeded into the intersection despite having a red light controlling his direction of travel.

The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law by tendering evidence in admissible form sufficient to eliminate any material issues of fact from the case (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 508 NYS2d 923 [1986]; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 87 NYS2d 316 [1985]). The movant has the initial burden of proving entitlement to summary judgment (*Winegrad v New York Univ. Med. Ctr.*, *supra*). Once the movant demonstrates a prima facie entitlement to judgment as a matter of law, the burden shifts to the party opposing the motion to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action (*see Vega v Restani Constr. Corp.*, 18 NY3d 499, 942 NYS2d 13 [2012]; *Alvarez v Prospect Hosp.*, *supra*; *Zuckerman v City of New York*, 49 NY2d 557; 427 NYS2d 595 [1980]; *see also* CPLR 3212 [b]). The failure to make such showing requires a denial of the motion, regardless of the sufficiency of the opposing papers (*see Winegrad v New York Univ. Med. Ctr.*, *supra*). In deciding the motion, the court must view all evidence in the light most favorable to the nonmoving party (*see Matter of New York City Asbestos Litig.*, 33 NY3d 20, 99 NYS3d 734 [2019]; *Vega v Restani Constr. Corp.*, *supra*).

A failure to comply with Vehicle and Traffic Law constitutes negligence as a matter of law (*Kerolle v Nicholson*, 172 AD3d 1187, 101 NYS3d 387 [2d Dept 2019]; *Marks v Rieckhoff*, 172 AD3d 847, 101 NYS3d 63 [2d Dept 2019]; *Kaziu v Human Care Servs. for Families & Children, Inc.*, 167 AD3d 588, 90 NYS3d 66 [2d Dept 2018]). Vehicle and Traffic Law § 1111 (d) (1) provides, in pertinent part, that traffic facing a steady red traffic signal shall stop before entering the intersection. Vehicle and Traffic Law § 1110 (a) further requires that a driver obey official traffic-control devices applicable to him or her. Accordingly, a driver who enters an intersection without stopping at a red traffic signal in violation of Vehicle and Traffic Law §§ 1110 (a) and 1111 (d) (1) is negligent as a matter of law (*see Lanicci v Hansen*, 153 AD3d 687, 59 NYS3d 753 [2d Dept 2017]; *Bentick v Gatchalian*, 147 AD3d 890, 48 NYS3d 171 [2d Dept 2017]; *Chuachingco v Christ*, 132 AD3d 798, 18 NYS3d 425 [2d Dept 2015]). In addition, pursuant to Vehicle and Traffic Law § 1141, a vehicle

intending to turn left within an intersection must yield the right-of-way to any vehicle approaching from the opposite direction which is within the intersection or so close as to constitute an immediate hazard (*see Ming-Fai Jon v Wager*, 165 AD3d 1253, 87 NYS3d 82 [2d Dept 2018]; *Giannone v Urdahl*, 165 AD3d 1062, 86 NYS3d 562 [2d Dept 2018]; *Lebron v Mensah*, 161 AD3d 972, 76 NYS3d 219 [2d Dept 2018]).

Although a driver with the right-of-way is entitled to anticipate that other drivers will obey traffic laws requiring them to yield to him or her, a driver with the right-of-way still has a duty to use reasonable care to avoid a collision (*see Jeong Sook Lee-Son v Doe*, 170 AD3d 973, 96 NYS3d 302 [2d Dept 2019]; *Enriquez v Joseph*, 169 AD3d 1008, 94 NYS3d 599 [2d Dept 2019]; *Shashaty v Gavitt*, 158 AD3d 830, 71 NYS3d 560 [2d Dept 2018]). Nonetheless, a driver with the right-of-way, who only has seconds to react to a vehicle which has failed to yield, is not comparatively negligent for failing to avoid the collision (*see Jeong Sook Lee-Son v Doe*, *supra*; *Enriquez v Joseph*, *supra*; *Rohn v Aly*, 167 AD3d 1054, 91 NYS3d 256 [2d Dept 2018]). Further, a driver is negligent if he or she fails to see that which, through the proper use of his or her senses, should have been seen (*see Shvydkaya v Park Ave. BMW Acura Motor Corp.*, 172 AD3d 1130, 100 NYS3d 320 [2d Dept 2019]; *Aponte v Vani*, 155 AD3d 929, 64 NYS3d 123 [2d Dept 2017]; *Pivetz v Brusco*, 145 AD3d 806, 43 NYS3d 457 [2d Dept 2016]).

Although a plaintiff is no longer required to show freedom from comparative fault to establish his or her prima facie entitlement to judgment as a matter of law on the issue of negligence (*Rodriguez v City of New York*, 31 NY3d 312, 76 NYS3d 898 [2018]; *see Liu v Lowe*, 173 AD3d 946, 102 NYS3d 713 [2d Dept 2019]; *Heard v Schade*, 172 AD3d 1335, 99 NYS3d 666 [2d Dept 2019]), the issue of a plaintiff's comparative negligence may, however, be decided in the context of a summary judgment motion if the plaintiff moves for summary judgment dismissing a defendant's affirmative defense of comparative negligence (*see Higashi v M & R Scarsdale Rest., LLC*, 176 AD3d 788, 2019 NY Slip Op 07240 [2d Dept 2019]; *Wray v Galella*, 172 AD3d 1446, 101 NYS3d 401 [2d Dept 2019]; *Poon v Nisanov*, 162 AD3d 804, 79 NYS3d 227 [2d Dept 2018]). Here, the Court deems plaintiff's application for a declaration that he is free from comparative negligence, in effect, as a request for summary judgment dismissing defendant's affirmative defense of comparative negligence. There can be more than one proximate cause of an accident, and the issue of comparative fault is generally a question for the fact finder to determine (*see Richardson v Cablevision Sys. Corp.*, 173 AD3d 1083, 104 NYS3d 655 [2d Dept 2019]; *Enriquez v Joseph*, *supra*; *Matias v Bello*, 165 AD3d 642, 84 NYS3d 551 [2d Dept 2018]).

Plaintiff established his prima facie entitlement to judgment as a matter of law on the issue of defendant's negligence by demonstrating that defendant entered the intersection against a red traffic light (*see Duvalsaint v Yupe-Garcia*, 169 AD3d 864, 92 NYS3d 714 [2d Dept 2019]; *Napolitano v Sanderson*, 167 AD3d 1024, 88 NYS3d 354 [2d Dept 2018]; *Meredith v Engel*, 162 AD3d 658, 77 NYS3d 148 [2d Dept 2018]; *Jung Geun Lee v Mason*, 139 AD3d 807, 33 NYS3d 76 [2d Dept 2016]; *Joaquin v Franco*, 116 AD3d 1009, 985 NYS2d 131 [2d Dept 2014]). Plaintiff's submissions demonstrated, prima facie, that defendant entered the intersection against a red light, while plaintiff entered the intersection with a green in his favor at the time of the accident.

In opposition, defendant raised a triable issue of fact as to how the accident occurred, and whether defendant was negligent at all in the happening of the accident (*see Duvalsaint v Yupe-Garcia*, *supra*; *Kaziu v Human Care Servs. for Families & Children, Inc.*, 167 AD3d 588, 90 NYS3d 66 [2d Dept 2018]; *Pilgrim v Vishwanathan*, 151 AD3d 769, 56 NYS3d 268 [2d Dept 2017]). Defendant submits her affidavit, which contradicts plaintiff's version of how the accident occurred (*see Duvalsaint v Yupe-Garcia*, *supra*; *Napolitano v Sanderson*, *supra*; *Jung Geun Lee v Mason*, *supra*; *Chuachingco v Christ*, 132 AD3d 798, 18 NYS3d 425 [2d Dept 2015]). Defendant avers that plaintiff's vehicle entered the intersection against a red light, and that her vehicle proceeded through the intersection with a green light in her favor at the time of the accident (*see Duvalsaint v Yupe-Garcia*, *supra*; *Napolitano v Sanderson*, *supra*; *Jung Geun Lee v Mason*, *supra*; *Chuachingco v Christ*, *supra*). While plaintiff may use defendant's admission in the certified police report that her vehicle proceeded into the intersection against a red light, the relative weight to be accorded to the admission in light of defendant's subsequent explanation included in her affidavit is to be determined by the fact finder (*see Wein v Robinson*, 92 AD3d 578, 939 NYS2d 364 [1st Dept 2012]; *Fravezzi v Koritz*, 295 AD2d 290, 744 NYS2d 669 [1st Dept 2012]; *Imamkhodjaev v Kartvelishvili*, 44 AD3d 619, 843 NYS2d 160 [2d Dept 2007]). Notably, defendant denies making the statement reflected in the accident report (*see Wein v Robinson*, *supra*; *Imamkhodjaev v Kartvelishvili*, *supra*).

According, the motion by plaintiff for summary judgment is denied.

Dated: 12/13/19

HON. PAUL J. BAISLEY, JR., J.S.C.