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| <b>Logan v Sanullah</b>                                                                                                                                                                                                        |
| 2021 NY Slip Op 31559(U)                                                                                                                                                                                                       |
| May 6, 2021                                                                                                                                                                                                                    |
| Supreme Court, Kings County                                                                                                                                                                                                    |
| Docket Number: 527229/2019                                                                                                                                                                                                     |
| Judge: Debra Silber                                                                                                                                                                                                            |
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS : PART 9

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PATRICIA LOGAN,

Plaintiff,

-against-

MD SANAULLAH,

Defendant.

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DECISION / ORDER

Index No.: 527229/2019

Motion Seq. No. 1

***Recitation, as required by CPLR 2219 (a), of the papers considered in the review of plaintiffs' motion for summary judgment.***

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| Papers                                                    | NYSCEF Doc.  |
|-----------------------------------------------------------|--------------|
| Notice of Motion, Affirmation, and Exhibits Annexed ..... | <u>10-20</u> |
| Affirmation in Opposition.....                            | <u>24</u>    |
| Affirmation in Reply .....                                | <u>25</u>    |

**Upon the foregoing cited papers, the Decision and Order on this motion is as follows:**

This is an action for personal injuries arising from a one-car motor vehicle accident that occurred on November 26, 2019 at approximately 7:00 p.m. Plaintiff was a passenger in a taxi owned and operated by defendant, who allegedly lost control of his vehicle and collided with parked cars near 1182 Flushing Avenue in Brooklyn, New York.

In Motion Seq.1, plaintiff moves for an order granting her summary judgment against defendant on the issue of liability. She submits a certified police accident report, the pleadings, her own affidavit, and other exhibits. She avers that defendant's vehicle "suddenly sped up, swerved violently to the left, drove into oncoming traffic, and then collided with at least two parked vehicles" and that she did not contribute to the accident in any manner (Doc 17). In the police report, the responding officer noted that defendant

“state[d] he was traveling [westbound] on Flushing Avenue when he lost control of his vehicle due to unk[nown] reason causing him to veer into oncoming traffic lane and did then collide into” a parked car, which in turn struck another parked car. A witness at the scene reported that defendant “appear[ed] to lose control of his steering wheel” and “steer into oncoming traffic and collide with” the parked cars (Doc 12). The police report indicates that the front of defendant’s vehicle struck the front of an unattended, parked vehicle on the opposite side of the roadway (*id.*).

Plaintiff argues that defendant violated Vehicle and Traffic Law (VTL) § 1128 which requires vehicles to 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.” Plaintiff also argues that defendant violated VTL § 1226, which requires drivers to maintain one hand on the steering wheel at all times, and VTL § 1146, which requires “[d]rivers to exercise due care.” Plaintiff asserts that she is entitled to summary judgment on the issue of liability because there are no issues of fact as to her complete absence of liability for the accident. She asks the court to grant her motion for summary judgment against defendant and direct a trial on the issue of damages only.

Defendant responds by counsel that the motion must be denied as plaintiff does not make out a prima facie case for summary judgment. Specifically, he argues that plaintiff has not demonstrated that he was negligent or that such negligence was the proximate cause of the accident. He contends that plaintiff’s submissions provide inconsistent accounts of the accident<sup>1</sup> and that she fails to “establish what actually

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<sup>1</sup> Specifically, he argues that the witness said she observed defendant collide with two vehicles, whereas defendant said he collided with one vehicle, which in turn collided with a third, according

occurred” or “why Defendant lost control of his vehicle.” Further, plaintiff did not identify VTL § 1226 in her bill of particulars or allege in the complaint that defendant was speeding at the time of the accident.

### ***Discussion***

To be entitled to summary judgment, the moving party "must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact from the case" (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). Failure to make a prima facie showing requires denial of the motion, regardless of the sufficiency of any opposing papers (*id.*).

Viewing the evidence in the light most favorable to the nonmovant, the court finds that plaintiff has established a prima facie showing of her entitlement to summary judgment on the issue of liability with her affidavit, corroborated by the certified police report, in which she indicates that the accident was caused when defendant left his lane of traffic, crossed into the lane intended for oncoming traffic, and collided with a parked and unoccupied vehicle. She thus established that defendant violated his duty to stay in his lane (see VTL § 1128 [a]), and not to crossover the double yellow line. Doing so constituted negligence per se (*e.g. Davis v Turner*, 132 AD3d 603 [1st Dept 2015]).

Defendant submits no affidavit or other evidence to provide a non-negligent explanation, such as mechanical failure, and thus does not raise a triable issue of fact. There is no explanation offered for the accident. Defendant’s counsel’s argument that there are factual contradictions in the record is without merit, as the inconsistency he identifies (whether defendant struck one, two, or possibly more than two parked vehicles

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to the accident report. In addition, plaintiff avers that defendant struck “at least two other vehicles.”

after his car veered into the opposing lane of traffic) is immaterial to the elements of the issue of liability.

Accordingly, plaintiff's motion for summary judgment on the issue of liability (MS 01) is granted, and this case will proceed to a trial on the issue of damages only once the Note of Issue is filed.

This shall constitute the decision and order of the court.

Dated: May 6, 2021

ENTER:



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Hon. Debra Silber, J.S.C.