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| <b>Blandford v Insomnia Cookies, LLC</b>   |
| 2021 NY Slip Op 31601(U)   |
| May 10, 2021   |
| Supreme Court, New York County   |
| Docket Number: 156700/2018   |
| Judge: Alexander M. Tisch  |
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ALEXANDER M. TISCH PART IAS MOTION 18EFM

Justice

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KRISTEN BLANDFORD,

Plaintiff,

- v -

INSOMNIA COOKIES, LLC, JACK ARMIJOS,

Defendants.

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INDEX NO. 156700/2018
MOTION DATE 10/21/2020
MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33 were read on this motion to/for JUDGMENT - SUMMARY

Upon the foregoing documents, plaintiff Kristen Blandford (Blandford) moves pursuant to CPLR 3212 seeking an order for summary judgment as to liability against Insomnia Cookies, LLC (Insomnia Cookies) and Jack Armijos (Armijos) (collectively defendants).<sup>1</sup>

This action arises from an alleged bicycle collision. Blandford alleges that while she was riding her bicycle at the intersection of Pearl Street and Wall Street in the County, City and State of New York on August 1, 2015 at approximately 11:30 PM, Armijos crashed into Blandford while Armijos was riding a bicycle the wrong direction down a one-way street. As a result of the crash, Blandford alleges, among other things, physical injuries to her hand and foot requiring medical attention and damage to personal property.

“The proponent of a motion for summary judgment must demonstrate that there are no material issues of fact in dispute, and that it is entitled to judgment as a matter of law” (Dallas-Stephenson v Waisman, 39 AD3d 303, 306 [1st Dept 2007]). Upon proffer of evidence

<sup>1</sup> Armijos ceased employment with Insomnia Cookies prior to the commencement of this action and has not appeared for an examination before trial (EBT).

establishing a prima facie case by the movant, “the party opposing a motion for summary judgment bears the burden of produc[ing] evidentiary proof in admissible form sufficient to require a trial of material questions of fact” (*People v Grasso*, 50 AD3d 535, 545 [1st Dept 2008] [internal quotation marks and citation omitted]). “[A] motion should not be granted where the facts are in dispute, where conflicting inferences may be drawn from the evidence, or where there are issues of credibility” (*Scott v Long Is. Power Auth.*, 294 AD2d 348 [2d Dept 2002]).

Plaintiff contends she is entitled to summary judgment on liability because Armijos negligently rode the wrong direction while traveling down a one-way street and crashed into Blandford’s bicycle while she was lawfully riding. Plaintiff also avers Armijos violated New York State and City vehicle and traffic statutes. In addition, she maintains that Armijos’s negligence was committed while acting in the scope of his employment and negligence is further imputed on the employer Insomnia Cookies under the theory of respondeat superior. Finally, plaintiff claims there is no evidence that Blandford failed to use due care or otherwise contributed to the causing of the accident, and therefore Armijos’s negligence was the sole proximate cause of the accident. In support of her motion, plaintiff proffers deposition transcripts from Blandford and the Director of Operations for Insomnia Cookies Samuel Neagles; and a photo of the accident location.

In opposition, defendants contend plaintiff fails to meet her prima facie entitlement for summary judgment; Blandford’s testimony shows culpable conduct; and there remains issues of fact. Defendants believe because plaintiff testified to failing to stop at the intersection and allegedly violating New York Vehicle and Traffic Law § 1172 (a) that plaintiff is precluded from affirmatively establishing a prima facie entitlement as to liability and that plaintiff is not free from negligence. Moreover, at the intersection, because plaintiff failed to look the opposite

direction of traffic and look for pedestrians, defendants maintain plaintiff failed to take due care while riding her bicycle in ensuring that the intersection was clear before continuing into the intersection. In addition, defendants argue that plaintiff never saw the face of the person alleged to have caused the accident and that she did not personally identify Armijos as the individual.

In reply, plaintiff argues that the opposition fails to raise a material issue of fact warranting denial of summary judgment. Moreover, plaintiff asserts she established that she was traveling in the correct direction of travel and had the right of way. Furthermore, plaintiff notes that defendants do not refute: that Armijos was traveling the wrong way on Pearl Street; that he failed to yield the right of way to plaintiff; or that although plaintiff did not properly identify the rider at the time of the accident, nevertheless, defendants' do not refute that Armijos was the individual who struck plaintiff. Finally, plaintiff claims in arguendo, at best defendants would be able to raise a comparative negligence defense which does not bar the granting summary judgment.

Here, plaintiff testified that she was cycling on Wall Street heading east when she approached the intersection of Wall Street and Pearl Street, which is an all-way stop. Plaintiff further testified that while she was approaching the intersection and during the period of time that she entered the intersection, she was periodically checking Pearl Street looking north where traffic would be coming southbound as Pearl Street is a one-way single lane road. In addition, plaintiff testified to being abruptly struck from the left, which would be the opposing direction of travel for Pearl Street by a bicyclist who she later discovered works for Insomnia Cookies.

“Every person riding a bicycle [...] upon a roadway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle” (VTL § 1231). Drivers and bicyclists are “required to obey the statutes governing traffic and [are] entitled to assume that

the other also will do so” (*Palma v Sherman*, 55 AD3d 891, 891 [2d Dept 2008]; see VTL § 1127[a] [“Upon a roadway designated and signposted for one-way traffic, a vehicle shall be driven only in the direction designated”]). Therefore, plaintiff has met her initial burden.

In opposition, defendants failed to submit any evidence demonstrating an issue of fact as to their liability (see *Alvarez v Prospect Hosp.*, 68 NY2d 320, 327 [1986]; *Ramos v New York City Hous. Auth.*, (264 AD2d 568, 568 [1st Dept 1999])). Plaintiff is therefore entitled to summary judgment as to liability against defendants, notwithstanding defendants’ claims of comparative fault (see *Fernandez v Ortiz*, 183 AD3d 443, 444 [1st Dept 2020] citing *Rodriguez v City of New York*, 31 NY3d 312 [2018]).

However, the Court declines to grant the motion in its entirety, as it seeks to hold defendants’ entirely responsible for the accident. Defendants contend that plaintiff’s deposition testimony suggests she violated VTL § 1172 (a) and/or otherwise failed to exercise due care to avoid the collision (see, e.g., *Deegan v Getter*, 42 Misc 3d 1225[A], NY Slip Op 50196[U] [Sup Ct, Kings County 2014], citing VTL 1146 [a]). Accordingly, as the function of this Court is issue-finding, rather than issue-determining, if there is any “doubt” as to plaintiff’s comparative fault, or if such issue is “arguable,” that branch of the motion should be denied (see *Sillman v. Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404 [1957]; see also *Allen v Echols*, 88 AD3d 926, 927 [2d Dept 2011] [“While a driver is negligent if he or she fails to see that which, through the proper use of one’s senses, should have been seen, there can be more than one proximate cause of an accident, and the issue of comparative fault is generally a question for the trier of fact”] [internal citations omitted]).

Accordingly, it is hereby ORDERED that plaintiff's motion is granted in part and plaintiff is entitled to summary judgment as to the defendants' liability.

This constitutes the decision and order of the Court.



5/10/2021  
DATE

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ALEXANDER M. TISCH, J.S.C.

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|-----------------------|--------------------------|----------------------------|-------------------------------------|-----------------------|--------------------------|
| CHECK ONE:            | <input type="checkbox"/> | CASE DISPOSED              | <input checked="" type="checkbox"/> | NON-FINAL DISPOSITION |                          |
|                       | <input type="checkbox"/> | GRANTED                    | <input type="checkbox"/>            | GRANTED IN PART       | <input type="checkbox"/> |
| APPLICATION:          | <input type="checkbox"/> | SETTLE ORDER               |                                     | SUBMIT ORDER          |                          |
| CHECK IF APPROPRIATE: | <input type="checkbox"/> | INCLUDES TRANSFER/REASSIGN |                                     | FIDUCIARY APPOINTMENT | <input type="checkbox"/> |
|                       |                          |                            |                                     |                       | REFERENCE                |