Guevara v Guevara
2021 NY Slip Op 33553(U)
February 10, 2021
Supreme Court, Suffolk County
Docket Number: Index No. 623965/2017
Judge: Denise F. Molia

PUBLISH

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SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 39 - SUFFOLK COUNTY

PRESENT:
Hon. **DENISE F. MOLIA**
Justice

JESSIE GUEVARA,

Plaintiff,

-against-

JAMIE A. GUEVARA, JULIA D. GUEVARA, ASHLEY N. RAMIREZ and PASTOR RAMIREZ,

Defendants.

CASE DISPOSED: **NO**
MOTION R/D: **7/10/2020**
SUBMISSION DATE: **10/30/20208/7/2020**
MOTION SEQUENCE NO.: **001; MG;**

ATTORNEY FOR PLAINTIFF:
Donald Leo & Associates, LLC
100-1 Patco Court
Islandia, New York 11722

ATTORNEYS FOR DEFENDANTS:
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Brooklyn, New York 11201

Upon the **E-file document list** numbered 15 to 52 read on the motion by plaintiff Jesse Guevara for an order pursuant to CPLR 3212 granting summary judgment on the issue of liability against defendants Jamie A. Guevara, Julia D. Guevara, Ashley N. Ramirez, and Pastor Ramirez and granting plaintiff leave to file a late note of issue; it is

ORDERED that the motion by plaintiff for summary judgment on the issue of liability as against defendants Jamie A. Guevara, Julia D. Guevara, Ashley N. Ramirez, and Pastor Ramirez, is **GRANTED** for the reasons set forth herein; and it is further

ORDERED that plaintiff's unopposed motion for leave to file a late note of issue for the purpose of placing this matter on the trial calendar as to the issue of damages is **GRANTED**; and it is further

ORDERED that plaintiff shall file a note of issue within twenty (20) days from the date of entry of this order.

This is an action seeking damages for personal injuries alleged to have been suffered by plaintiff Jesse Guevara ("plaintiff") as a result of a motor vehicle accident on April 15, 2017 at the intersection of Van Cedar Street and Monroe Avenue, Brentwood, County of Suffolk, State of New York. Plaintiff commenced this action by the filing of a summons and complaint on December 15, 2017. The complaint alleges that plaintiff was a passenger in the motor vehicle operated by Jamie A. Guevara ("Guevara") when the Guevara vehicle collided with the vehicle operated by defendant Ashley N. Ramirez ("Ramirez"). Issue was joined and discovery completed. A compliance conference order was entered on November 19, 2019. Plaintiff now moves for summary judgment on the issue of liability pursuant to CPLR 3212 and for leave to file a late note of issue. In support of the motion, plaintiff submits, *inter alia*, an attorney affirmation, a sworn affidavit, a copy of the certification order, the pleadings, the examination before trial transcripts of plaintiff and Ramirez, and various photographs of the Guevara vehicle and the location of the accident. Defendants Guevara and Julia D. Guevara (the "Guevara defendants") oppose the motion by attorney affirmation and submit the transcript of the examination before trial of Guevara. Defendants Ramirez and Pastor Ramirez (the "Ramirez defendants") oppose plaintiff's motion and adopt the arguments raised by the Guevara defendants.

It is well settled that a party moving for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issue of fact (*see* ***Alvarez v Prospect Hosp.***, 68 NY2d 320, 508 NYS2d 923 [1986]; ***Friends of Animals v Associated Fur Mfrs.***, 46 NY2d 1065, 1067, 416 NYS2d 790 [1979]). The failure of the moving party to make a prima facie showing requires the denial of the motion regardless of the sufficiency of the opposing papers (*see* ***Winegrad v New York Univ Med. Ctr.***, 64 NY2d 851, 487 NYS2d 316 [1985]). However, once the movant has made the requisite showing, the burden then shifts to the party opposing the motion to produce evidentiary proof in admissible form sufficient to require a trial on any material issue of fact (***Zuckerman v City of New York***, 49 NY2d 557, 427 NYS2d 595 [1980]. To defeat a motion for summary judgment, a party opposing such motion must lay bare his proof in evidentiary form; conclusory allegations are insufficient to raise a triable issue of fact (*see* ***Friends of Animals, Inc. v Associated Fur Mfrs.***, 46 NY2d 1065, 416 NYS2d 790; ***Burns v City of Poughkeepsie***, 293 AD2d 435, 739 NYS2d 458 [2d Dept 2002]). In deciding the motion, the Court must view all evidence in the light most favorable to the nonmoving party (***Nomura***, *supra*; *see also* ***Ortiz v Varsity Holdings, LLC***, 18 NY3d 335, 339, 937 NYS2d 157 [2011]). A motion for summary judgment should be denied where the facts are in dispute, where conflicting inferences may be drawn from the evidence, or

where there are issues of credibility (*see* ***Chimbo v Bolivar***, 142 AD3d 944, 37 NYS3d 339 [2d Dept 2016]; ***Benetatos v Comerford***, 78 AD3d 730, 911 NYS2d 155 [2d Dept 2010]).

"A plaintiff in a negligence action moving for summary judgment on the issue of liability must establish, prima facie, that the defendant breach a duty owed to the plaintiff and that the defendant's negligence was a proximate cause of the alleged injuries" (***Tsyganash v Auto Mall Fleet Mgmt., Inc.,*** 163 AD3d 1033, 83 NYS3d 74 [2d Dept 2018]). A violation of a standard of care imposed by the Vehicle and Traffic Law constitutes negligence per se (***Lebron v Mensah,*** 161 AD3d 972, 76 NYS3d 219 [2d Dept 2018]; ***Barbaruolo v Difede,*** 73 AD3d 957, 900 NYS2d 671 [2d Dept 2010]; ***Ciatto v Lieberman,*** 266 AD2d 494, 698 NYS2d 54 [2d Dept 1999]; *see also* ***Barbieri v Vokoun***, 72 AD3d 853, 856, 900 NYS2d 315 [2d Dept 2010]; ***Smith v State of New York,*** 121 AD3d 1358, 1358-59, 955 NYS2d 329 [3d Dept 2014]. A driver with the right of way is entitled to anticipate that other motorists will obey traffic laws that require them to yield the right of way (*see* ***Lebron v Mensah,*** 161 AD3d 972, 76 NYS3d 219 [2d Dept 2018]; ***Bullock v Calabretta***, 119 AD3d 884 [2d Dept 2014]; ***Kucar v Town of Huntington***, 81 AD3d 784, 917 NYS2d 646 [2d Dept 2011]; ***Todd v Godek***, 71 AD3d 872 [2d Dept 2010] ***Kann v Maggies Paratransit Corp.***, 63 AD3d 792, 882 NYS2d 129 [2d Dept 2009]; ***Berner v Koegel***, 31 AD3d 591, 819 NYS2d 89 [2d Dept 2006]; ***Gabler v Marly Bldg. Supply Corp.***, 27 AD3d 519, 813 NYS2d 120 [2d Dept 2006]). Further, a driver is negligent when an accident occurs because the driver failed to see that which through proper use of the driver's senses he or she should have seen (*see* ***Laino v Lucchese***, 35 AD3d 672, 827 NYS2D 249 [2d Dept 2006]; ***Berner v Koegel***, 31 AD3d 591, 819 NYS2d 89 [2d Dept 2006]; ***Bongiovi v Hoffman***, 18 AD3d 686, 795 NYS2d 354 [2d Dept 2005]). However, "a driver who has the right-of-way has a duty to exercise reasonable care to avoid a collision with another vehicle" (***Gause v Martinez,*** 91 AD3d 595, 936 NYS2d 272 [2d Dept 2012] *quoting* ***Todd v Godek,*** 71 AD3d 872, 895 NYS2d 861 [2d Dept 2010]; ***Bonilla v Calabria***, 80 AD3d 720 [2d Dept 2011]; ***Gardner v Smith***, 63 AD3d 783 [2d Dept 2009]; ***Cox v Nunez***, 23 AD3d 427 [2d Dept 2005]). There can be more than one proximate cause of an accident and the issue of comparative negligence is generally a question of fact for the jury to decide (*see* ***Bullock v Calabretta***, 119 AD3d 884, 989 NYS2d 862 [2d Dept 2014]; ***Bonilla v Calabria***, 80 AD3d 720 [2d Dept 2011]; ***Todd v Godek,*** 71 AD3d 872, 895 NYS2d 861 [2d Dept 2010]). The fact that a party violated the Vehicle and Traffic Law would not preclude a finding that comparative negligence by another party contributed to the accident (*see* ***Gardner v Smith***, 63 AD3d 783 [2d Dept 2009; ***Cox v Nunez,*** 23 AD3d 427 [2d Dept 2005]). However, a plaintiff need not prove that he or she was free from comparative fault in order to establish his or her prima facie entitlement to summary judgment (*see* ***Rodriguez v City of New York***, 31 NY3d 312, 76 NYS3d 898 [2018]; ***Edgerton v City of New York***, 160 AD3d 809, 74 NYS3d 617 [2d Dept 2018]).

Here, plaintiff made a prima facie showing of entitlement to summary judgment in that there is no dispute that plaintiff was an innocent passenger in the Guevara vehicle and there was no negligence or culpable conduct on the part of the plaintiff that contributed to the accident (*see* ***Johnson v Braun,*** 120 AD3d 765, 991 NYS2d 351 [2d Dept 2014]; ***Mughal v Rajput,*** 106 AD3d 886, 965 NYS2d 545 [2d Dept 2013]). It has been determined that the right of an innocent passenger to summary judgment on the issue of whether he or she was at fault in the happening of an accident is not restricted by potential issues of comparative negligence which may exist as between two defendant drivers (*see* ***Morris v Dorota,*** 187 AD3d 1174, 131 NYS3d 577 [2d Dept 2020]; ***Romain v City of New York,*** 177 AD3d 590, 591, 112 NYS3d 162 [2d Dept 2019]). In opposition, defendants fail to raise a question of fact. In that regard, neither driver suggested that the innocent plaintiff passenger bore any fault in the happening of the accident (*see* ***Morris v Dorota,*** *supra*; ***Romain v City of New York,*** *supra*). While plaintiff does not bear the burden of establishing the absence of his own comparative fault (***Rodriguez v City of New York***, 31 NY3d 312, 76 NYS3d 898 [2018]) here, the court finds as a matter of law that plaintiff did not engage in any culpable conduct that contributed to the happening of the accident and dismisses defendants' affirmative defenses of comparative negligence as against plaintiff, in addition to granting plaintiff summary judgment on liability (*see* ***Morris v Dorota,*** 187 AD3d 1174, 131 NYS3d 577 [2d Dept 2020]; ***Romain v City of New York,*** 177 AD3d 590, 591, 112 NYS3d 162 [2d Dept 2019]; ***Jung v Glover,*** 169 AD3d 782, 93 NYS3d 390 [2d Dept 2019]; ***Medina v Rodriguez,*** 92 AD3d 850 [2d Dept 2012]; *cf.* ***Hedian v MTLR Corp.,*** 169 AD3d 620, 92 NYS3d 880 [1st Dept 2019]; ***Oluwatayo v Dulinayan,*** 142 AD3d 113, 35 NYS3d 84 [1st Dept 2016]).

Accordingly, plaintiff's motion for summary judgment on the issue of liability is granted. Inasmuch as no defendant has addressed plaintiff's request for leave to file a late note of issue, plaintiff's motion in this regard is granted, without opposition.

The foregoing constitutes the decision and Order of this Court.

Dated: February 10, 2021

HON. DENISE F. MOLIA A.J.S.C.