Kazaryan v Curreri
2022 NY Slip Op 32660(U)
July 28, 2022
Supreme Court, Kings County
Docket Number: Index No. 516357/2021
Judge: Carl J. Landicino
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At an IAS Term, Part 81 (MOA) of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse thereof at 360 Adams St., Brooklyn, New York on the 28th day of July, 2022.

PRESENT:
HON. CARL J. LANDICINO,
Justice.

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RAZMIK KAZARYAN,

Plaintiff,

-against-

ANTHONY H. CURRERI,

Defendant.

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DECISION AND ORDER

Index No.: 516357/2021

Motion Sequence #1

Recitation, as required by CPLR §2219(a), of the papers considered in the review of this motion:

	Papers Numbered
Notice of Motion/Cross Motion and Affidavits (Affirmations) Annexed	11-20
Opposing Affidavits (Affirmations)	22-27
Reply and Sur-Reply Affidavits (Affirmations)	28, 29

After oral argument and a review of the submissions herein, the Court finds as follows:

Plaintiff, Razmik Kazaryan (the "Plaintiff"), moves for summary judgment (motion sequence #1) on the issue of liability and proceeding to a trial on damages only. The motion concerns a collision Plaintiff had, while riding his bicycle, with Defendant Anthony Curreri (the "Defendant"), who was driving the vehicle he purportedly owned, on April 7, 2021. Plaintiff contends that Defendant moved around the rear of his bicycle seeking to enter a parking space, when Defendant unexpectedly collided with his bicycle. Plaintiff contends that Defendant was negligent and, *inter alia*, violated VTL 1146(a). Plaintiff further contends that he could not avoid

the collision, "… as the vehicle that struck me was behind my bicycle." (See Plaintiff's affidavit in support).

Defendant opposes the motion and contends that it is premature. Defendant also contends that his conflicting version of events serves to defeat Plaintiff's application. Defendant represents that prior to the collision he was stopped with his right turning signal on preparing to enter the parking space. Defendant contends that he looked, but did not see Plaintiff on his electric bicycle, and proceeded to enter the parking space when Plaintiff rode into the passenger side of his vehicle. Defendant further states that Plaintiff was not wearing reflective clothing and did not have his flashers on. Defendant also relies on a video in support of his contentions. A review of the video reflects very little except that the collision occurred.

Summary judgment is a drastic remedy that deprives a litigant of his or her day in court, and it "should only be employed when there is no doubt as to the absence of triable issues of material fact." *Kolivas v. Kirchoff*, 14 AD3d 493, 787 N.Y.S2d 392 [2d Dept 2005], citing *Andre v. Pomeroy*, 35 NY2d 361, 364, 362 N.Y.S.2d 1341 [1974]. The proponent for summary judgment 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. *See Sheppard-Mobley v. King*, 10 AD3d 70, 74, 778 N.Y.S.2d 98 [2d Dept 2004], citing *Alvarez v. Prospect Hospital*, 68 NY2d 320, 324, 508 N.Y.S.2d 923 [1986], *Winegrad v. New York Univ. Med. Ctr.*, 64 NY2d 851, 853, 487 N.Y.S.2d 316 [1985]. "In determining a motion for summary judgment, evidence must be viewed in the light most favorable to the nonmoving party, and all reasonable inference must be resolved in favor of the nonmoving party." *Adams v. Bruno*, 124 AD3d 566, 1 N.Y.S.3d 280, 281 [2d Dept 2015] citing *Valentin v. Parisio*, 119 AD3d 854, 989 N.Y.S.2d 621 [2d Dept 2014]; *Escobar v. Velez*, 116 AD3d 735, 983 N.Y.S.2d 612 [2d Dept 2014].

Once a moving party has made a *prima facie* showing of its entitlement to summary judgment, "the burden shifts to the opposing party to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action" *Garnham & Han Real Estate Brokers v Oppenheimer*, 148 AD2d 493, 538 N.Y.S.2d 837 [2d Dept 1989]. Failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers. *See Demshick v. Cmty. Hous. Mgmt. Corp.*, 34 AD3d 518, 520, 824 N.Y.S.2d 166, 168 [2d Dept 2006]; *see Menzel v. Plotnick*, 202 AD2d 558, 610 N.Y.S.2d 50 [2d Dept 1994]. However, "[a] plaintiff is no longer required to show freedom from comparative fault in establishing his or her *prima facie* case..." if they can show "...that the defendant's negligence was a proximate cause of the alleged injuries." *Tsyganash v. Auto Mall Fleet Mgmt., Inc.*, 163 AD3d 1033, 1034, 83 N.Y.S.3d 74, 75 [2d Dept 2018]; *Rodriguez v. City of New York*, 31 NY3d 312, 320, 101 N.E.3d 366, 371 [2018].

As an initial matter, it should be noted that the "motion was not premature since the defendant[s] failed to demonstrate that discovery might lead to relevant evidence or that facts essential to justify opposition to the motion were exclusively within the knowledge and control of the plaintiff." *Turner v. Butler*, 139 AD3d 715, 716, 32 N.Y.S.3d 174, 175 [2d Dept 2016].

The Court finds that the actions of the Defendant driver were negligent and a proximate cause of the accident. The Defendant driver was under a duty to see that which was there to be seen and purportedly did not see the Plaintiff's vehicle. See *Mu-Jin Chen v. Cardenia*, 138 AD3d 1126, 31 N.Y.S.3d 134 [2d Dept 2016]; see also *Wilson v. Rosedom*, 82 AD3d 970, 919 N.Y.S.2d 59 [2d Dept 2011]; see also VTL § 1128(a). However, there are issues of fact remaining in relation to Plaintiff's comparative negligence.

> **A driver who has the right-of-way is entitled to anticipate that other drivers will obey the traffic laws requiring them to yield (*see Vazquez v New York City Tr. Auth.*, 94 AD3d 870, 871, 941 NYS2d 887 [2012]; *Bonilla v Calabria*, 80 AD3d 720, 915 NYS2d 615 [2011]). However, a driver with the right-of-way also has a duty to use reasonable care to avoid a collision (*see Bennett v Granata*, 118 AD3d 652, 653, 987 NYS2d 424 [2014]; *Regans v Baratta*, 106 AD3d 893, 894, 965 NYS2d 171 [2013]), and "[t]here can be more than one proximate cause of an accident" (*Cox v Nunez*, 23 AD3d 427, 427, 805 NYS2d 604 [2005]; *see Gobin v Delgado*, 142 AD3d 1134, 1134, 38 NYS3d 63 [2016]).**

Beres v. Terranera, 153 AD3d 483, 485, 60 N.Y.S.3d 207, 209 [2d Dept 2017].

The Defendant argues that he had slowed down and engaged his turning signal, raising an issue as to whether Plaintiff could have anticipated the turn and taken evasive action. See *Rodriguez v. City of New York*, 31 N.Y.3d 312, 320, 101 N.E.3d 366, 371 [2018]; see also *Pipinias v. Ferreira*, 155 AD3d 1073, 65 N.Y.S.3d 533 [2d Dept 2017]; see also *Bermejo v. Khaydarov*, 155 AD3d 597, 63 N.Y.S.3d 107 [2d Dept 2017]; see also *Pena v. Santana*, 5 AD3d 649, 774 N.Y.S.2d 744 [2d Dept 2004].

Accordingly, the Plaintiff's motion (motion sequence #1) is granted solely to the extent that Defendant was negligent and a proximate cause of the accident, and the issue of Plaintiff's comparative negligence shall be addressed at trial.

The foregoing constitutes the Decision and Order of the Court.

ENTER:

Hon. Carl J. Landicino, J.S.C.

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KINGS COUNTY CLERK
FILED