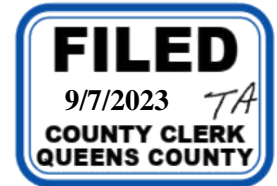


Ezenyilimba v Gassama
2023 NY Slip Op 33265(U)
September 7, 2023
Supreme Court, Queens County
Docket Number: Index No. 712478/2019
Judge: Denis J. Butler
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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY



Present: HONORABLE DENIS J. BUTLER IAS Part 12
Justice

-----x
RAYCENTH EZENYILIMBA,

Index
Number: 712478/2019

Plaintiff,

Motion Date:
July 25, 2023

-against-

Motion Seq. No.: 002

KEIFALA GASSAMA and
SYLDIA TRANSPORT INC.,

Defendants.

-----x
The following papers were read on this motion by plaintiff for an order: (1) pursuant to CPLR § 3212 granting summary judgment against defendants Keifala Gassama and Syldia Transport, Inc., as to the issue of liability; (2) finding that plaintiff is free from comparative fault and dismissing defendants' First, Third, Fourth, Fifth, Sixth, Seventh, Eighth, and Ninth, Affirmative Defenses.

	Papers Numbered
Notice of Motion, Affirmation, Exhibits.....	E53-65
Affirmation In Opposition, Exhibits.....	E66-69
Reply Affirmation.....	E70

Upon the foregoing papers, it is ordered that this motion is determined as follows:

On December 6, 2017, the vehicle operated by plaintiff was driving on 120th Avenue in Queens when plaintiff entered the intersection of 153rd Street. The subject intersection was governed by a stop sign affecting traffic entering the intersection from 153rd Street. Plaintiff was in the middle of the intersection proceeding through the intersection when the middle passenger side

of plaintiff's vehicle was struck by the front of the vehicle owned and operated by defendants.

The first branch of the motion by plaintiff seeks summary judgment in plaintiff's favor on the issue of liability.

A proponent for summary judgment must make a prima facie showing of entitlement to judgment, as a matter of law, through the submission of sufficient evidence to demonstrate the absence of any material issues of fact (see Alvarez v Prospect Hosp., 68 NY2d 320, 24 [1986]). Once the movant establishes prima facie entitlement to summary judgment, the burden shifts to the opposing party to produce evidence, in admissible form, sufficient to establish the existence of triable issues of fact (see Id.; Zuckerman v City of New York, 49 NY2d 557, 63 [1980]).

On a motion for summary judgment on the issue of a defendant's liability, 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 (see Rodriguez v City of New York, 31 NY3d 312, 318 [2018]; Marangoudakis v Suniar, 2022 NY Slip Op 05208 [2d Dept 2022]). "Even though a plaintiff is not required to establish his or her freedom from comparative negligence to be entitled to summary judgment on the issue of liability, the issue of a plaintiff's comparative negligence may be decided in the context of a summary judgment motion where the plaintiff moves for summary judgment dismissing a defendant's affirmative defense alleging comparative negligence and culpable conduct on the part of the plaintiff" (Kwok King Ng v West, 195 AD3d 1006, 1008 [2d Dept 2021]).

"Pursuant to Vehicle and Traffic Law § 1142(a), a driver entering an intersection controlled by a stop sign must yield the right-of-way to any other vehicle that is already in the intersection or that is approaching so closely as to constitute an immediate hazard" (Park v Giunta, 217 AD3d 661 [2d Dept 2023] [internal quotation marks omitted]). "As a general matter, a driver who fails to yield the right-of-way after stopping at a stop sign is in violation of Vehicle and Traffic Law § 1142(a) and is negligent as a matter of law" (id. [internal quotation marks omitted]). "While an operator of a motor vehicle traveling with the right-of-way is entitled to assume that the opposing driver will obey the traffic laws requiring him or her to yield, the operator traveling with the right-of-way still has an obligation to keep a proper lookout and see what can be seen through the reasonable use of his or her senses to avoid colliding with other vehicles" (White v Adom Rental Transp., Inc., 150 AD3d 938, 939 [2d Dept 2017]).

Plaintiff, in support, annexed plaintiff's deposition testimony wherein plaintiff testified she was traveling on 120th Avenue at 25 miles per hour, and was in the middle of the subject intersection when defendants' vehicle struck the middle passenger side of plaintiff's vehicle, and that the impact to plaintiff's vehicle was heavy and pushed her vehicle into a fence. Plaintiff further testified at her deposition that she never observed defendants' vehicle prior to the accident, and that defendants' vehicle came from 153rd Street, which is governed by a stop sign. This evidence demonstrated, prima facie, that defendants were negligent in the happening of the accident, and that plaintiff was not at fault in the happening of the accident (see Park v Giunta, 217 AD3d 661 [2d Dept 2023]; Bentick v Gatchalian, 147 AD3d 890, 891 [2d Dept 2017]).

In opposition, defendants failed to raise a triable issue of fact as "counsel's affirmation, standing alone, was insufficient to raise a triable issue of fact" (id.).

As such, the first branch of the motion by plaintiff seeking summary judgment in plaintiff's favor on the issue of liability is granted, and defendant's third affirmative defense asserting comparative fault is dismissed.

The second branch of the motion by plaintiff seeks to dismiss defendants' first, fourth, fifth, sixth, seventh, eighth, and ninth affirmative defenses on the ground the affirmative defenses have either been waived, or are inapplicable to this case. Defendants, in opposition, failed to address this branch of plaintiff's motion.

As such, the second branch of the motion by plaintiff seeking to dismiss defendants' first, fourth, fifth, sixth, seventh, eighth, and ninth affirmative defenses is granted in the absence of opposition to that specific branch of the motion.

Accordingly, it is hereby

ORDERED that the first branch of the motion by plaintiff seeking summary judgment on the issue of liability is GRANTED in favor of the Plaintiff and against the Defendant, and defendants' third affirmative defense asserting comparative negligence is hereby DISMISSED; and it is further

ORDERED that the second branch of the motion by plaintiff seeking to dismiss defendants' first, fourth, fifth, sixth, seventh, eight, and ninth affirmative defenses is GRANTED and defendants' first, fourth, fifth, sixth, seventh, eight, and ninth hereby DISMISSED.

This constitutes the decision and order of the court.

Dated: September 7, 2023



Denis J. Butler, J.S.C.

