

2019 WL 1926060
Supreme Court, Appellate Division, Second Department, New York.

Tyler BRODNEY, Respondent,
v.
Maria PICINIC, et al., Appellants.

2018-07855
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(Index No. 708875/17)
|
Argued—January 28, 2019
|
May 1, 2019

Synopsis

Background: Left-turning driver and owner of left-turning vehicle appealed from an order of the Supreme Court, Queens County, [Dicia T. Pineda-Kirwan](#), J., granting northbound driver's motion for summary judgment on issue of liability in his action to recover damages for personal injuries he suffered as a result of a vehicle accident.

[Holding:] The Supreme Court, Appellate Division, held that genuine issue of material fact as to whether northbound driver's vehicle was so close as to constitute an immediate hazard precluded summary judgment.

Reversed.

West Headnotes (3)

[1]	Automobiles
	A violation of the statute governing left-turning vehicles constitutes negligence per se. N.Y. Vehicle and Traffic Law § 1141 . Cases that cite this headnote

[2]	Automobiles
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	Genuine issue of material fact as to whether, at time left-turning driver initiated her turn, northbound driver's vehicle was so close as to constitute an immediate hazard precluded summary judgment in northbound driver's action to recover damages for personal injuries he suffered as a result of accident in which his vehicle struck left-turning vehicle. N.Y. Vehicle and Traffic Law § 1141. Cases that cite this headnote
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[3]	Judgment
	A plaintiff need not demonstrate his or her freedom from comparative fault in order to meet his or her prima facie burden for summary judgment on the issue of a defendant's liability. Cases that cite this headnote

Attorneys and Law Firms

Picciano & Scahill, P.C., Bethpage, N.Y. (Andrea E. Ferrucci of counsel), for appellants.

Kravet Hoefer & Maher, P.C., Bronx, N.Y. ([John A. Maher](#) of counsel), for respondent.

[ALAN D. SCHEINKMAN](#), P.J., [JOHN M. LEVENTHAL](#), [FRANCESCA E. CONNOLLY](#), [VALERIE BRATHWAITE NELSON](#), JJ.

DECISION & ORDER

*1 In an action to recover damages for personal injuries, the defendants appeal from an order of the Supreme Court, Queens County (Diccia T. Pineda-Kirwan, J.), entered May 16, 2018. The order, insofar as appealed from, granted that branch of the plaintiff's motion which was for summary judgment on the issue of liability.

ORDERED that the order is reversed insofar as appealed from, on the law, with costs, and that branch of the plaintiff's motion which was for summary judgment on the issue of liability is denied.

The plaintiff commenced this action to recover damages for personal injuries allegedly sustained by him when a vehicle he was operating struck a vehicle operated by the defendant Maria Picinic and owned by the defendant Egidio Picinic. The accident allegedly occurred when the defendant driver, who was traveling southbound on Marathon Parkway in Queens, attempted to make a left turn onto Thebes Avenue and was struck by the plaintiff's vehicle which was traveling in the opposite direction on Marathon Parkway.

After joinder of issue but before depositions were taken, the plaintiff moved, inter alia, for summary judgment on the issue of liability, and the Supreme Court granted that branch of the motion. The defendants appeal. We reverse insofar as appealed

from.

[1] Pursuant to [Vehicle and Traffic Law § 1141](#), “[t]he driver of a vehicle intending to turn to the left within an intersection ... shall yield the right of way to any vehicle approaching from the opposite direction which is within the intersection or so close as to constitute an immediate hazard” (see [Ming-Fai Jon v. Wager](#), 165 A.D.3d 1253, 1253–1254, 87 N.Y.S.3d 82; [Attl v. Spetler](#), 137 A.D.3d 1176, 28 N.Y.S.3d 699). A violation of this statute constitutes negligence per se (see [Katikireddy v. Espinal](#), 137 A.D.3d 866, 867, 26 N.Y.S.3d 775; [Vainer v. DiSalvo](#), 79 A.D.3d 1023, 1024, 914 N.Y.S.2d 236).

[2] [3] The plaintiff established his prima facie entitlement to judgment as a matter of law on the issue of liability through, inter alia, his own affidavit, which established that the defendant driver violated [Vehicle and Traffic Law § 1141](#) by turning left in front of his vehicle without warning or signaling, leaving him no time to react (see [Ming-Fai Jon v. Wager](#), 165 A.D.3d at 1253, 87 N.Y.S.3d 82; [Shashaty v. Gavitt](#), 158 A.D.3d 830, 831, 71 N.Y.S.3d 560; [Hyo Jin Yoon v. Guang Chen](#), 127 A.D.3d 1023, 7 N.Y.S.3d 471). Contrary to the defendants’ contention, a plaintiff need not demonstrate his or her freedom from comparative fault in order to meet his or her prima facie burden for summary judgment on the issue of a defendant’s liability (see [Rodriguez v. City of New York](#), 31 N.Y.3d 312, 76 N.Y.S.3d 898, 101 N.E.3d 366).

However, in opposition, through the affidavit of the defendant driver, the defendants raised a triable issue of fact as to whether the defendant driver violated [Vehicle and Traffic Law § 1141](#). The defendant driver averred that, as she approached the intersection, she slowed her vehicle, activated her left hand turn signal, and “looked to ensure that the roadway was clear.” As she was in the process of turning, she noticed the plaintiff’s vehicle for the first time and observed it traveling toward her at such an excessive rate of speed that she was unable to avoid the impact. The foregoing was sufficient to raise a triable issue of fact as to whether, at the time the defendant driver initiated her turn, the plaintiff’s vehicle was “so close as to constitute an immediate hazard” ([Vehicle and Traffic Law § 1141](#); see [Katikireddy v. Espinal](#), 137 A.D.3d 866, 868, 26 N.Y.S.3d 775; [Calemine v. Hobler](#), 263 A.D.2d 495, 495, 693 N.Y.S.2d 622; cf. [Foley v. Santucci](#), 135 A.D.3d 813, 814, 23 N.Y.S.3d 338).

*2 Accordingly, the Supreme Court should have denied that branch of the plaintiff’s motion which was for summary judgment on the issue of liability.

[SCHEINKMAN](#), P.J., [LEVENTHAL](#), [CONNOLLY](#) and BRATHWAITE NELSON, JJ., concur.

All Citations

--- N.Y.S.3d ----, 2019 WL 1926060, 2019 N.Y. Slip Op. 03314

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