

Short Form Order

NEW YORK STATE SUPREME COURT - QUEENS COUNTY

Present: HONORABLE PATRICIA P. SATTERFIELD IAS TERM, PART 19

Justice

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ANGELA SHEF,

Plaintiff,

-against-

BEN SCHECTER,

Defendants.

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Index No: 3598/07

Motion Date: 10/31/07

Motion Cal. No: 27

Motion Seq. No: 2

The following papers numbered 1 to 9 read on this motion by plaintiff for an order granting partial summary judgment on the issue of liability.

	PAPERS NUMBERED
Notice of Motion-Affidavits-Exhibits.....	1 - 4
Answering Affidavits-Exhibits.....	5 - 7
Reply.....	8 - 9

Upon the foregoing papers, it hereby is ordered that the motion is disposed of as follows:

This is an action to recover for personal injuries allegedly sustained by plaintiff resulting from a motor vehicle accident with the vehicle operated by defendant, while plaintiff's vehicle was proceeding through an intersection controlled by a traffic light. At the time of the accident, defendant was attempting to make a left turn across the intersection. Plaintiff moves for summary judgment on the ground that as the accident occurred as a result of defendant's violation of the Vehicle and Traffic Law, there are no triable issues of fact to be determined.

Summary judgment should be granted when there is no doubt as to the absence of triable issues. See, Rotuba Extruders, Inc. v. Ceppos, 46 N.Y.2d 223, 231 (1978); Andre v. Pomeroy, 35 N.Y.2d 361, 364 (1974); Taft v. New York City Tr. Auth., 193 A.D.2d 503, 505 (1st Dept. 1993). As such, the function of the court on the instant motion is issue finding and not issue determination. See, D.B.D. Nominee, Inc., v. 814 10th Ave. Corp., 109 A.D.2d 668, 669 (2d Dept. 1985). The proponent of a summary judgment motion must tender evidentiary proof in admissible form eliminating any material issues of fact from the case. See, Zuckerman v. City of New York, 49 N.Y.2d 557, 562 (1980). If the proponent succeeds, the burden shifts to the party opposing the motion, who then must show the existence of material issues of fact by producing evidentiary proof

in admissible form, in support of his position. See, Zuckerman v. City of New York, supra.

Section 1141 of the Vehicle and Traffic Law provides that “[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.” Failure to yield the right of way constitutes negligence as a matter of law See, McNamara v. Fishkowitz, 18 A.D.3d 721 (2d Dept. 2005); Ishak v. Guzman, 12 A.D.3d 409 (2d Dept. 2004); Rossani v. Rana, 8 A.D.3d 548 (2d Dept. 2004); Spatola v. Gelco Corp., 5 A.D.3d 469 (2d Dept. 2004). A driver thus is required to bring his or her vehicle to a stop and remain stationary until it is clear to proceed across an intersection [(see Breslin v. Rudden, 291 A.D.2d 471 (2d Dept. 2002); Bolta v. Lohan, 242 A.D.2d 356 (2d Dept. 1997)], and is obligated to see oncoming traffic through the proper use of his senses [(see, Bongiovi v. Hoffman, 18 A.D.3d 686 (2d Dept. 2005)]. As a corollary to these principles of law, a driver with the right of way is entitled to anticipate that an opposing driver controlled by a stop sign will obey the traffic laws requiring him to yield. Gabler v. Marly Building Supply Corp., 27 A.D.3d 519 (2d Dept. 2006).

Here, plaintiff demonstrated her prima facie entitlement to judgment as a matter of law by establishing that defendant violated “Vehicle and Traffic Law § 1141 when he made a left turn directly into the path of [plaintiff’s] vehicle as it legally proceeded with the right of way [(see, Moreback v. Mesquita, 17 A.D.3d 420, 793 N.Y.S.2d 148 (2005); Torro v. Schiller, 8 A.D.3d 364, 777 N.Y.S.2d 915 (2d Dept. 2004); Casaregola v. Farkouh, 1 A.D.3d 306, 767 N.Y.S.2d 57; Rieman v. Smith, 302 A.D.2d 510, 755 N.Y.S.2d 256; Russo v. Scibetti, 298 A.D.2d 514, 748 N.Y.S.2d 871 (2d Dept. 2003); Agin v. Rehfeldt, 284 A.D.2d 352, 726 N.Y.S.2d 131 (2d Dept 2001); Stiles v. County of Dutchess, 278 A.D.2d 304, 717 N.Y.S.2d 325 (2d Dept.2000)].” Gabler v. Marly Bldg. Supply Corp., supra. See, also, Berner v. Koegel, 31 A.D.3d 591 (2d Dept.2006)[“The plaintiff demonstrated her prima facie entitlement to judgment as a matter of law by establishing that the defendant violated Vehicle and Traffic Law § 1141 when she made a left turn directly into the path of the plaintiff’s vehicle as the plaintiff’s vehicle was legally proceeding into the intersection with the right-of-way”]. Moreover, plaintiff had the right to anticipate that defendant would obey the traffic laws which required him to yield to her vehicle. Bongiovi v. Hoffman, 18 A.D.3d 686 (2d Dept. 2005).

As defendant was negligent in failing to see that which, under the circumstances, should have been seen, and in making a left turn that crossed in front of plaintiff’s vehicle when it was apparently hazardous to do so [see, Sirico v. Beukelaer, 14 A.D.3d 549 (2d Dept. 2005); Rebay v. Tormey, 2 A.D.3d 826 (2d Dept. 2003); Pryor v. Reichert, 265 A.D.2d 470 (2d Dept.1999); Canceleno v. Johnston, 264 A.D.2d 405 (2d Dept.1999). Pryor v. Reichert, 265 A.D.2d 470 (2d Dept.1999); Canceleno v. Johnston, 264 A.D.2d 405 (1999)], plaintiff’s motion for summary judgment on the issue of liability is granted. A trial shall be held on the issue of damages, including the threshold issue of serious injury, following the completion of discovery and the filing of a note of issue with statement of readiness, if necessary.

Dated: December 20, 2007

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J.S.C.