

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D33455
W/mv

_____AD3d_____

Argued - December 5, 2011

PETER B. SKELOS, J.P.
ARIEL E. BELEN
PLUMMER E. LOTT
JEFFREY A. COHEN, JJ.

2011-03386

DECISION & ORDER

Christopher G. Socci, appellant,
v Louis Levy, et al., respondents.

(Index No. 26566/09)

Law Offices of Purcell & Ingrao, P.C., Mineola, N.Y. (Patrick J. Purcell, Corey J. Pugliese, and George F. Sacco of counsel), for appellant.

Verrill & Goodstein (Crafa & Sofield, P.C., Rockville Centre, N.Y. [Thomas R. Sofield], of counsel), for respondents.

In an action to recover damages for personal injuries, etc., the plaintiff appeals from an order of the Supreme Court, Suffolk County (Rebolini, J.), entered March 7, 2011, which denied his motion for summary judgment on the issue of liability.

ORDERED that the order is reversed, on the law, with costs, and the plaintiff's motion for summary judgment on the issue of liability is granted.

On March 7, 2009, the plaintiff was operating his motorcycle northbound on New York State Route 110 (hereinafter Route 110) in Huntington. The defendant Louis Levy (hereinafter Levy), who was operating a motor vehicle owned by the defendant Barbara Levy, was stopped in the dedicated left-turn lane on southbound Route 110, at the intersection of Schwab Road, waiting to make a U-turn into the northbound lanes of Route 110. In the process of making the U-turn, Levy collided with the plaintiff, allegedly causing injuries to the plaintiff. The plaintiff then commenced this action against the defendants. After discovery, the plaintiff moved for summary judgment on the issue of liability. In support of his motion, the plaintiff submitted his own deposition testimony,

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as well as Levy's deposition testimony and that of a nonparty witness. The Supreme Court denied the plaintiff's motion, and the plaintiff appeals. We reverse.

Even when viewed in the light most favorable to the nonmoving party—here the defendants (*see Stukas v Streiter*, 83 AD3d 18)—the evidence submitted by the plaintiff in support of the motion established, prima facie, that the sole proximate cause of the accident was Levy's failure to yield the right-of-way to the plaintiff's motorcycle (*see Kutkiewicz v Horton*, 83 AD3d 904; *Vainer v DiSalvo*, 79 AD3d 1023, 1024; *Yelder v Walters*, 64 AD3d 762, 763-764; *Palomo v Pozzi*, 57 AD3d 498). The plaintiff testified at his deposition that the vehicle operated by Levy was approximately three inches away from his motorcycle when Levy made the U-turn, and immediately collided with the motorcycle. “[A] driver with the right-of-way who has only seconds to react to a vehicle which has failed to yield is not comparatively negligent for failing to avoid the collision” (*Vainer v DiSalvo*, 79 AD3d at 1024, quoting *Yelder v Walters*, 64 AD3d at 764; *see Jaramillo v Torres*, 60 AD3d 734).

In opposition, the defendants failed to raise a triable issue of fact as to whether the plaintiff was at fault in the happening of the accident (*see Vainer v DiSalvo*, 79 AD3d at 1024; *Yelder v Walters*, 64 AD3d at 764). To the extent that the defendants suggest the possibility that the accident might have been avoided, the assertion is completely speculative and is inadequate to withstand summary judgment (*see Loch v Garber*, 69 AD3d 814, 816; *Berner v Koegel*, 31 AD3d 591, 592; *Jacino v Sugerman*, 10 AD3d 593, 595).

Accordingly, the Supreme Court improperly denied the plaintiff's motion for summary judgment on the issue of liability.

SKELOS, J.P., BELEN, LOTT and COHEN, JJ., concur.

ENTER:



Aprilanne Agostino
Clerk of the Court