

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

D55646
L/htr

_____AD3d_____

Argued - January 16, 2018

RUTH C. BALKIN, J.P.
CHERYL E. CHAMBERS
LEONARD B. AUSTIN
HECTOR D. LASALLE, JJ.

2016-12607

DECISION & ORDER

Jeanine Tiberg, respondent, v Karen Strebel-Eichner,
appellant.

(Index No. 604277/16)

Gialleonardo, Frankini & Harms, Mineola, NY (Andrew J. Frank of counsel), for
appellant.

Levine and Wiss, PLLC (Mitchell Dranow, Sea Cliff, NY, of counsel), for
respondent.

In an action to recover damages for personal injuries, the defendant appeals from an
order of the Supreme Court, Suffolk County (Paul J. Baisley, Jr., J.), dated November 16, 2016. The
order granted the plaintiff's 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 denied.

On October 20, 2015, at about 5:40 p.m., the parties were involved in an automobile
accident at the intersection of Grundy Avenue and Furrows Road in the Town of Islip. The
intersection was governed by a four-way stop sign. The plaintiff commenced this action against the
defendant to recover damages for personal injuries allegedly sustained by her as a result of the
accident. Subsequently, the plaintiff moved for summary judgment on the issue of liability. The
Supreme Court granted the motion, and the defendant appeals.

“Any party may move for summary judgment in any action, after issue has been
joined” (CPLR 3212[a]). Here, the plaintiff's motion, which was made before the completion of
discovery, was predicated almost entirely on her own affidavit explaining how the accident occurred.

August 8, 2018

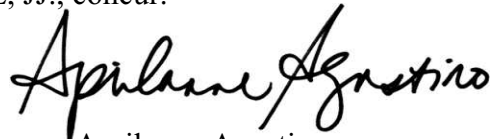
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The defendant, in opposition, submitted an affidavit presenting a different version of events. Although the plaintiff met her prima facie burden of proof that the defendant failed to yield the right of way, and that such failure was a proximate cause of the accident (*see Rodriguez v City of New York*, 31 NY3d 312), the defendant's opposition raised triable issues of fact, inter alia, as to which vehicle entered the intersection first, and which vehicle had the right of way. Therefore, the plaintiff's motion for summary judgment on the issue of liability should have been denied (*see Poon v Nisanov*, 162 AD3d 804).

BALKIN, J.P., CHAMBERS, AUSTIN and LASALLE, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Aprilanne Agostino". The signature is written in a cursive, flowing style.

Aprilanne Agostino
Clerk of the Court