

**Hagan v Sanford**

2008 NY Slip Op 32960(U)

October 27, 2008

Supreme Court, Nassau County

Docket Number: 18853/07

Judge: Roy S. Mahon

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SCAW

**SHORT FORM ORDER**

**SUPREME COURT - STATE OF NEW YORK**

**Present:**

**HON. ROY S. MAHON**

**Justice**

**DONALD HAGAN,**

**Plaintiff(s),**

**- against -**

**MARION SANFORD and CLARENCE SANFORD,**

**Defendant(s).**

**PATRICIA IA SCALZO and ARTHUR SCALZO, JR.,**

**Plaintiff(s),**

**- against -**

**MARION SANFORD and CLARENCE SANFORD,**

**TRIAL/IAS PART 9**

**INDEX NO. 18853/07**

**MOTION SEQUENCE  
NO. 1 & 2**

**MOTION SUBMISSION  
DATE: August 13, 2008**

**INDEX NO. 13127/08**

**ACTION NO. 2**

**The following papers read on this motion:**

- Notice of Motion** **X**
- Notice of Cross Motion** **X**
- Reply Affirmation** **XX**
- Affirmation in Opposition** **XX**

Upon the foregoing papers, the motion by the defendants for an Order consolidating Action No. 1 and Action 2 pursuant to CPLR 602(a) and (b) in the Supreme Court, County of Nassau and the cross motion by plaintiff for an Order pursuant to CPLR §3212 granting the plaintiff summary judgment on the issue of liability against the defendants and setting this matter down for an assessment of damages, are both determined as hereinafter provided:

This personal injury action arises out of a motor vehicle accident that occurred on August 30, 2007 at approximately 12:20 pm on Hicksville Road at or near its intersection with Gate Place, Bethpage, New York. At the time of the alleged incident in issue, the plaintiff Donald Hagan, a Nassau County Police Department Detective was proceeding southbound on Hicksville Road in a police department vehicle while on duty and the defendant Marion Sanford was driving a vehicle owned by the defendant Clarence Sanford

that was turning left onto Gate Road from the northbound lane of Hicksville Road.

The rule in motions for summary judgment has been succinctly re-stated by the Appellate Division, Second Dept., in **Stewart Title Insurance Company, Inc. v. Equitable Land Services, Inc., 207 AD2d 880, 616 NYS2d 650, 651 (Second Dept., 1994):**

"It is well established that a party moving for summary judgment must make a prima facie showing of entitlement as a matter of law, offering sufficient evidence to demonstrate the absence of any material issues of fact (*Winegrad v. New York Univ. Med. Center*, 64 N.Y.2d 851, 853, 487 N.Y.S.2d 316, 476 N.E.2d 642; *Zuckerman v. City of New York*, 49 N.Y.2d 557, 562, 427 N.Y.S.2d 595, 404 N.E.2d 718). Of course, summary judgment is a drastic remedy and should not be granted where there is any doubt as to the existence of a triable issue (*State Bank of Albany v. McAuliffe*, 97 A.D.2d 607, 467 N.Y.S.2d 944), but once a prima facie showing has been made, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish material issues of fact which require a trial of the action (*Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324, 508 N.Y.S.2d 923, 501 N.E.2d 572; *Zuckerman v. City of New York*, *supra*, 49 N.Y.2d at 562, 427 N.Y.S.2d 595, 404 N.E.2d 718)."

The Court initially observes that the plaintiff Donald Hagan brings this action pursuant to the provisions of General Municipal Law §205-e(1). Said section provides:

"In addition to any other right of action or recovery under any other provision of law, in the event any accident, causing injury, death or a disease which results in death, occurs directly or indirectly as a result of any neglect, omission, willful or culpable negligence of any person or persons in failing to comply with the requirements of any of the statutes, ordinances, rules, orders and requirements of the federal, state, county, village, town or city governments or of any and all their departments, divisions and bureaus, the person or persons guilty of said neglect, omission, willful or culpable negligence at the time of such injury or death shall be liable to pay any officer, member, agent or employee of any police department injured or whose life may be lost while in the discharge or performance at any time or place of any duty imposed by the police commissioner, police chief or other superior officer of the police department, or to pay to the spouse and children, or to pay the parents, or to pay the brothers and sisters, being the surviving heirs-at-law of any deceased person thus having lost his life, a sum of money, in case of injury to person, not less than one thousand dollars, and in the case of death not less than five thousand dollars, such liability to be determined and such sums recovered in an action to be instituted by an person killed as aforesaid, provided, however, that nothing in this section shall be deemed to expand or restrict any right afforded to or limitation imposed upon an employer, an employee or his or her representative by virtue of any provisions of the workers' compensation law."

Specifically, in relation to the instant application, the plaintiff contends that the defendant violated

§1141 and §1163(a) of the Vehicle and Traffic Law. Said sections respectively provide:

**"§1141. Vehicle turning left**

The driver of a vehicle intending to turn to the left within an intersection or into an alley, private road, or driveway 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."

**§1163. Turning movements and required signals**

(a) No person shall turn a vehicle at an intersection unless the vehicle is in proper position upon the roadway as required in section eleven hundred sixty, or turn a vehicle to enter a private road or driveway, or otherwise turn a vehicle from a direct course or move right or left upon a roadway unless and until such movement can be made with reasonable safety. No person shall so turn any vehicle without giving an appropriate signal in the manner hereinafter provided."

The plaintiff at the plaintiff's April 28, 2008 examination before trial set forth:

"Q. How many lanes are there in each direction on Hicksville Road?

A. I believe two.

Q. Does Hicksville Road proceed north and south?

A. Yes.

Q. What divides Hicksville Road, the north and southbound traffic?

A. Double yellow line.

Q. The two lanes of traffic in each direction, are they divided by any lines?

A. White dash markings.

Q. Broken lines?

A. Broken lines.

Q. How was the traffic on Hicksville Road from the time you made the right-hand turn on it until the point where the accident happened?

A. Moderate.

Q. Were you the only car on it or were other cars on --

A. There were other cars on it.

Q. That would be in the southbound direction, correct?

A. Both directions, actually.

Q. Now, after you made the right-hand turn into Hicksville Road, you mentioned you turned into the right-hand lane after you turned out of the parking.

A. When I turned, I was in the right-hand lane proceeding southbound.

Q. Did you change lanes at all from the time you turned onto Hicksville Road in the right-hand lane until the point where the accident happened?

A. No.

Q. How, did you have any emergency equipment on in the car at the time?

A. No.

Q. No lights, no sirens, no flashers?

A. No.

Q. Now, if the accident hadn't happened, what was going to be your route to get to North Massapequa?

- A. I would have crossed over Hempstead Turnpike, proceeded on Hicksville Road to Boundary, would have made a left on Boundary and then a right to Broadway.
- Q. Did you have to be there at any specific time?
- A. No.
- Q. Now, when you made the right-hand turn onto Hicksville Road proceeding southbound, were there any vehicles traveling immediately in front of you during that quarter of a mile - - approximate quarter of a mile?
- A. Immediately in front of me?
- Q. Immediately in front of you.
- A. No.
- Q. How about in your right lane of traffic, were there any vehicles in front of you ahead in the right-hand lane?
- A. I was in the right lane.
- Q. Directly - -
- A. In front of me?
- Q. Not directly in front of you, but a distance in front of you that you noticed.
- A. No.
- Q. Did you have to pass through any traffic control devices on Hicksville Road?
- A. No.
- Q. Now, how about in the left-hand lane as you were proceeding approximately a quarter of a mile, were there any vehicles traveling in the left-hand lane?
- A. Yes.
- Q. Could you approximate how many vehicles were in the left-hand lane during that quarter of a mile?
- A. I know there was one a little ahead of me and I was in its rear, and we were traveling roughly the same speed.
- Q. What type of vehicle was that other vehicle?
- A. I don't remember.
- Q. Do you remember seeing a white or grayish van in the area where the accident was?
- A. No.
- Q. What was your highest rate of speed on Hicksville Road before the accident happened?
- A. Probably 25 miles an hour.
- Q. Where was Patricia sitting?
- A. In the front passenger's seat.
- Q. Did you have a seat belt on?
- A. Yes.
- Q. What type of seat belt is that?
- A. Lap harness belt (indicating).
- Q. Does it also cover the waist?
- A. Yes. Lap harness comes across your chest and your waist.
- Q. How about Patricia, did she have her seat belt on?
- A. Yes.
- Q. Did you have to do anything to the vehicle - - do anything to the vehicle before you got into the vehicle; did you have to inspect it, check it out of anything before you got into the vehicle?
- A. No.

Q. Do you remember if you were in that vehicle at all that morning before the accident happened?

A. I don't remember.

Q. During that quarter mile before the accident happened, did you experience any mechanical problems with the vehicle?

A. No.

Q. How about at all, when you started it up or pulling out of the parking lot, any mechanical problems?

A. No.

Q. Did the accident happen - - did your accident happen at an intersection?

A. Yes.

Q. Now, Hicksville Road and some other road - -

A. Yes.

Q. - - do you remember what the other road was?

A. Gate Place, I believe.

Q. Had you ever been through this intersection before?

A. Yes.

Q. Is that part of the - - you had been frequently - - almost on a daily basis you pass through this?

A. To travel up to Hempstead Turnpike, you have to pass Gate Place.

Q. What type of intersection; four-way intersection, T intersection?

A. I think it's a T intersection.

Q. As you are traveling southbound on Hicksville Road, which way does Gate Place appear - - which way does Gates Place come towards Hempstead Turnpike, from the left or right?

MR. BRAUNSTEIN: Hicksville - -

Gates Place where Hicksville - -

MR. GAMRAT: I will rephrase that.

Q. As you were proceeding southbound on Hicksville Road, which way does Gates Place intersect with?

A. It's on your right.

Q. Do you know if Gates Place is a one-way or two-way street?

A. I believe it's a two-way street.

MR. BRAUNSTEIN: You are saying Gates. I think it's Gate.

Mr. Gamrat: Gate. Sorry.

Q. Now, did you ever see the other vehicle that you had the accident with at any time before the actual accident took place?

A. Yes.

Q. When for the first time did you see this other vehicle?

A. When I was approaching Gate Place, when I was traveling southbound.

Q. Where was this other vehicle when you first saw it?

A. In the left northbound lane stopped right before Gate Place.

Q. Did you ever see that other vehicle moving, coming towards Gate Place in a northbound direction before you saw it stopped; did you ever see it approaching?

A. I may have.

Q. Now, how far were you from the intersection when you saw this other vehicle for the first time; had you entered the intersection yet, was it before the intersection?

A. It was prior to me approaching the intersection.

Q. Approximately how many car lengths were you before the intersection, if you can approximate?

A. Maybe ten, 15.

Q. When you saw this other vehicle, you mentioned it was stopped. Did it have its directional signal on?

A. I don't remember

Q. When you saw this other vehicle, were there any vehicles in the left-hand lane of southbound traffic on Hicksville Road when you saw this other vehicle?

A. Yes.

Q. Where was the other vehicle or other vehicles when you first saw this vehicle you had the accident with?

A. It was ahead of me by about a car length or so, one or two car lengths in front of me.

Q. Now, this other vehicle that was proceeding in the southbound direction on Hicksville Road, did that vehicle pass Gate Place before the accident happened?

A. No.

Q. This other vehicle that was in the left-hand lane, could you describe that other vehicle - -

A. No.

Q. - - that was involved in the accident at all?

A. No.

Q. Did that vehicle continue - - before the accident happened, did that vehicle continue southbound on Hicksville Road or did it do anything else; did it turn at all?

A. I believe it stopped or it slowed down.

Q. Where in relationship to Gate Place did this vehicle slow down?

A. Prior to Gate Place.

Q. Do you know why it slowed down?

A. No.

Q. Did you see traffic ahead of this other vehicle in the left-hand lane going -

A. In my lane?

Q. In the left lane but - - in your direction, but in the left-hand lane, did you see traffic backed up on Hicksville Road passed Gate Place?

A. No.

Q. Did this other vehicle come to a stop? Not the vehicle you had the accident with, this vehicle in the left-hand lane.

A. It slowed down. As it did - - I was passing it as it slowed, and then that's when she made the turn and we collided.

Q. As you - - what was the position - - I'm trying to get this in my mind.

When the other vehicle slowed, down did your vehicle eventually catch up to run parallel with this vehicle?

A. It eventually passes it because it wasn't involved in the auto accident.

Q. While you were passing this vehicle that was in the left-hand lane, was this still before Gates Place - - Gate Place or had you reached - -

A. No, it was almost at Gate Place.

Q. When you - - as your were passing this vehicle in the left-hand lane, were you still able to see the vehicle you had the accident with?

A. It was right in front of me at that point.

Q. That vehicle had turned then?

A. Yes.

Q. Now, did you - - where was your brake as you were passing Gate Place -  
MR. GAMRAT: Withdrawn.

Q. Where was your right foot as you were passing Gate Place; were you on the gas, hovering over the brake, something else?

A. At what particular point? When I notices the car right in front of me, it was on the brake.

Q. As you were passing this vehicle that was in the left-hand lane, if you know.

A. It was either on the gas or the brake.

Q. Were you accelerating, decelerating or maintaining your speed as you were approaching Gate Place?

A. As I approaching, I was maintaining my speed.

Q. Did there come a time when your vehicle came in contact or the two vehicles came in contact with each other?

A. Yes.

Q. What portion of each vehicle came in contact with each other?

A. The front end of the detective car was in collision with the passenger's side - - driver - - passenger door and rear door of the other vehicle.

Q. Now, did you see - - the other vehicle that you had the accident with, did you see her making the turn onto Gate Place or did you see it when it was just in your lane?

A. It was too late by the time she was in my intersection and we struck - - we collided.

Q. At the time the two care came in contact, where was this other vehicle in the left-hand lane; was that still - -

A. I wasn't paying attention at that time. I have no idea.

Q. When you saw the vehicle that you eventually had the contact with in your lane of traffic, was that car still the car that was in the left-hand lane still next to you?

A. I have no idea.

Q. When the collision took place, on what part of the roadway did the collision take place, Hicksville Road and Gate Place; where?

A. On Hicksville Road.

Q. In the southbound right-hand lane?

A. Southbound right-hand lane.

Q. Did you do anything in relationship to the vehicle you were operating when you saw that vehicle in front of you, any emergency evasive actions or anything like that?

A. I slammed on my brakes, but it was instant."

*see deposition transcript of Donald Hagan at pgs 39-52*

The defendant Marion Sanford stated at the defendant's April 28, 2008 deposition:

"Q. Was Hicksville Road in that area around Gate Place, was it a level roadway? Did it go uphill or downhill?

A. It's rather level.

Q. How, when you got to Gate Place, you said that you came to a stop?

A. I stopped.

- Q. For how long a period of time were you stopped before you began to proceed?
- A. A few minutes and then I had my signal on.
- MR. BRAUNSTEIN: Move to strike as not responsive. We will get to everything. You're doing fine but just try to stick to answering just what I ask you.
- Q. When you say a few minutes that you were stopped, was it more than five minutes or less than five minutes?
- A. Less than five minutes.
- Q. Can you give me some idea and be a little more specific as to how long you were stopped for?
- A. Not really.
- Q. Now, where Hicksville Road intersects Gate Place, is Hicksville Road still two lanes of moving traffic northbound or is there any type of intending to make a left turn onto Gate Place?
- A. No.
- Q. So there's no turning lane?
- A. No turning lane.
- Q. How would you describe traffic conditions on Hicksville Road during those three blocks or so that you traveled up to Gate Place until the time that you made the left turn? Would you describe traffic as light, medium, heavy or something else?
- A. It would be kind of moderate.
- Q. During those few minutes that you were stopped, waiting to make your left turn onto Gate Place, did any vehicles pass you also northbound in the right lane.
- A. Yes. There were on both lanes.
- Q. You were traveling northbound?
- A. Yes.
- Q. You were in the left lane?
- A. Yes.
- Q. You came to a stop at Gate Place to make your left?
- A. Yes.
- Q. Did any vehicle stop behind you in the left lane, waiting for you to make your left turn?
- A. No. There were all in the right lane passing me.
- Q. Could you estimate for me approximately how many vehicles past you in the right lane, while you were stopped waiting to make your left turn onto Gate Place?
- A. I don't know.
- Q. Can you give me some approximation? More than five or less than five?
- A. I don't know because I was watching those coming south.
- Q. I'm trying to get some idea. Can you give me some approximation at all? If you can't you can't.
- A. I can't because I was watching the right.
- Q. While you were stopped on Hicksville Road, at Gate Place, did you see vehicles traveling in the southbound lane?
- A. Yes.
- Q. Were those vehicles traveling in both the left lane and the right lane or just one lane or the other? What did you see?

- A. I saw at first that they were traveling in both lanes. Then a van stopped.
- Q. Did any vehicles pass you on Hicksville Road traveling southbound before you made the left turn?
- A. Yes, there were cars that had gone past.
- Q. Can you approximate for me how many cars went past you on Hicksville Road in the southbound direction before you started making your left turn?
- A. I'm only guessing.
- Q. Don't guess. Your best approximation.
- A. Twelve, fifteen cars in the two lanes.
- Q. While you were stopped on Hicksville Road, northbound, stopped at Gate Place, how far in front of you were you able to see?
- A. I don't know distance. But I will approximate about eight blocks or so. About eight blocks that I could see.
- Q. Let me ask you this. While you were northbound on Hicksville Road, stopped at Gate Place, are there any intersections in front of you that have traffic lights for traffic governing Hicksville Road?
- A. Only at the post office, which I can't give you an approximation. But I would gather something that would be like 12 blocks or something like that.
- Q. Twelve blocks from where you were?
- A. Yes.
- Q. What post office is that?
- A. Bethpage.
- Q. So while you were stopped on Hicksville Road, at Gate Place, while you were waiting to make your left turn, before the accident happened were you able to see down towards the traffic light governing traffic on Hicksville Road at the post office.
- A. Yes.
- Q. You could see 12 blocks?
- A. Yes.
- Q. Could you see beyond that traffic light?
- A. It would be difficult because of the road. It begins to kind of split there.
- Q. But, from those two blocks or so where the post office is upon until Gate Place, it is one roadway for four lanes across?
- A. Yes.
- Q. Did any cars slow down before you made the left turn?
- A. The van, a white/grayish van stopped. It was going south in the left hand lane and it stopped.
- Q. Where did it stop?
- A. It stopped just previous to the entrance to Gate Place.
- Q. Did that van have any writing on it?
- A. Not that I noticed.
- Q. No names, no phone numbers, nothing like that?
- A. Nothing like that.
- Q. Do you know who the operator of that van was?
- A. No, I do not.
- Q. Have you ever gotten the name of the operator of that van?
- A. No.
- Q. Could you describe what the operator of the van looked like?
- A. No.
- Q. Do you know if it was a man or a woman?

- A. A man, yes.
- Q. Do you recall anything about him at all?
- A. No. Just that he stopped and he waved me to go across and I went across.
- Q. The white van was heading in a southbound direction on Hicksville Road?
- A. Yes.
- Q. Did you see that white van before it stopped.?
- A. Yes, as it was coming?
- Q. How many blocks back did you see the white van?
- A. I would way two or three blocks or something like that.
- Q. When you first saw the white van, which of the southbound lanes was it in? In the left lane or right lane?
- A. Left lane.
- Q. When you saw that white van in the left lane, southbound, did you keep the white van under your constant observation or did you take your eyes off of it at anytime?
- A. Well, I stopped previous to it and that's when I made the turn.
- Q. That's not really what I'm asking you. You saw the white van. You said two or three blocks back.
- A. Right.
- Q. And it's approaching Gate Place?
- A. Yes.
- Q. Did you keep that van under your constant observation? Did you watch it travel two or three blocks towards you or did you take your eyes off of it and look someplace else? Or did you do something else?
- A. I'm not really aware.
- Q. When you saw that white van two or three blocks back, did you notice if there were any vehicles traveling behind that white van?
- A. There was - -
- Q. - - let me finish the question. When you saw the white van two or three blocks away, back from Gate Place, did you see any vehicles traveling behind that van in the left lane southbound?
- A. No.
- Q. When you saw that white van two or three blocks away, did you see any vehicles traveling in front of it, in the left lane southbound?
- A. Before it?
- Q. Right.
- A. Yes.
- Q. Did the vehicles that were in front of that white van pass you before there was an accident?
- A. Yes.
- Q. Can you tell me how much time went by from the time that the last vehicle in front of the white van passed you, to the time that you started to make the left turn?
- A. Something like a minute. A minute and a half. Something like that.
- Q. That's from the time the last vehicle in front of the white van crossed Gate Place?
- A. Yes.
- Q. When you first saw that white van two or three blocks from Gate Place, while you were stopped waiting to make your turn, left turn, did you see any

vehicles in the right lane either in front of the white van or behind the white van, in the southbound right lane?

A. No,

Q. How many vehicles were involved in this accident?

A. Two."

Upon review of the foregoing, the Court finds that the defendant Mario Sanford did violate the provisions of Vehicle and Traffic Law §1141 and §1163(a) and that the defendant's action in making the left hand turn across the southbound lanes of Hicksville Road was the sole proximate cause of the accident in issue. As such, that portion of the plaintiff's application which seeks an Order pursuant to CPLR §3212 on the issue of liability, is **granted**. The Court further notes that the action is currently scheduled to appear in the Calendar Control Part on November 5, 2008.

In light of the foregoing, the defendant's cross motion for an Order CPLR §3212 granting the plaintiff summary judgment on the issue of liability against the defendants and setting this matter down for an assessment of damages, is **denied as moot**.

SO ORDERED.

DATED: *10/27/2008*

*Reg. Wehner*  
.....  
J.S.C.

**ENTERED**

OCT 29 2008  
NASSAU COUNTY  
COUNTY CLERK'S OFFICE