

**Marascia v Korpi**

2011 NY Slip Op 31848(U)

June 30, 2011

Supreme Court, Suffolk County

Docket Number: 09-28411

Judge: Arthur G. Pitts

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**ORDERED** that motion (001) by the third-party defendant to strike the action from the trial calendar and vacate plaintiffs' note of issue and statement of readiness shall be marked withdrawn pursuant to the letter of third-party defendant's counsel, dated March 25, 2011; and, it is further

**ORDERED** that motion (002) by the third-party defendant for an order pursuant to CPLR 3212 dismissing the third-party plaintiffs' complaint is denied; and, it is further

**ORDERED** that the cross motion (003) of plaintiffs' for an order pursuant to CPLR 3212 granting summary judgment in their favor against defendants Alexander Korpi and David K. Bashen on the issue of liability is denied.

This is an action to recover damages for personal injuries allegedly sustained by plaintiffs Robert and Maria Marascia (the Marascias) as a result of a motor vehicle accident which occurred on March 20, 2009 at 11:26 p.m. at the intersection of Lincoln Avenue and Hiddink Street in Islip, New York. The Marascias were passengers in a motor vehicle owned by them, operated by their daughter, third-party defendant Alyssa M. Marascia. Defendants and third-party plaintiffs Alexander Korpi and David K. Bashen were respectively the operator and owner of the vehicle which collided with the Marascias' vehicle.

In the complaint, the Marascias allege that defendants Korpi and Bashen were negligent in, *inter alia*, operating and controlling their motor vehicle and in failing to stop at the stop sign on Hiddink Street. In the third-party complaint, third-party plaintiffs Korpi and Bashen allege that third-party defendant Alyssa Marascia was negligent in, *inter alia*, operating and controlling the Marascias' motor vehicle.

Alyssa Marascia now moves for summary judgment on the ground that she was not negligent as a matter of law, and the Marascias cross-move for summary judgment against defendants Korpi and Bashen on the issue of liability. In support of her motion for summary judgment, Ms. Marascia submits a copy of the pleadings, police accident report, sworn statements from defendant Korpi and non-party witness Cassandra House and copies of the deposition transcripts of the Marascias, defendant Korpi, Alyssa Marascia, Officer Bonenfant and non-party witness Cassandra House. It should be noted that the police accident report is not certified and the deposition transcripts of the Marascias are not signed.

In support of her motion, Alyssa Marascia argues that defendant Korpi failed to yield the right of way to her by proceeding through the stop sign on Hiddink Street without stopping, thereby violating Vehicle and Traffic Law § 1142 (a). She further argues that defendant Korpi's failure to stop at the stop sign was the sole proximate cause of the accident. At her deposition, Alyssa Marascia testified that she was traveling approximately 25 miles per hour southbound on Lincoln Avenue. There were no traffic control devices in the direction that she was traveling. Defendant Korpi was traveling eastbound on Hiddink Street, and there was a stop sign on Hiddink Street at the intersection of Lincoln Avenue and Hiddink Street. She states that she looked to the left and to the right before she entered the intersection and that she was midway into the intersection when she saw the vehicle operated by defendant Korpi. She beeped her horn and yelled out, "He's not going to stop." After she beeped her horn, defendant Korpi collided with the rear right passenger side of her vehicle.

Cassandra House, a witness to the accident, testified at her deposition that she was traveling on Lincoln Avenue and was approximately 100 feet from the subject intersection when she witnessed the accident. Ms. House further testified that the Marascias' vehicle was traveling approximately 45 miles per hour. Defendant Korpi was traveling approximately 35-45 miles per hour and went through the intersection without making a complete stop at the stop sign. Specifically, defendant Korpi made a "tap stop" at the stop sign and continued into the intersection colliding with the Marascias' vehicle.

In a sworn statement to the Suffolk County Police Department, defendant Korpi states, "I came up Hidnick (*sic*) and stop[ped] at the stop sign and the car coming down Lincoln [was] speeding and I didn't see it coming until we were both in the intersection."

Officer Bonenfant testified at his deposition that he was informed by Cassandra House that the vehicle defendant Korpi was operating proceeded through the stop sign without stopping. At the scene of the accident, he issued a citation to defendant Korpi for failure to obey the stop sign. Officer Bonenfant further testified that the speed limit in that area is 30 miles per hour.

In opposition, defendants Korpi and Bashen argue that a triable issue of fact exists as to whether third-party defendant Alyssa Marascia was negligent in speeding at the time that the accident occurred. Defendants Korpi and Bashen also assert that the uncertified police report is inadmissible. In addition, the deposition transcripts of the Marascias are inadmissible since they are unsigned.

In support of their cross motion for summary judgment against defendants Korpi and Bashen, the plaintiffs argue that defendant Korpi's failure to stop at the stop sign was the sole proximate cause of the accident. The Marascias submit a copy of the deposition transcript of defendant Korpi wherein he testifies that he knew that there were no traffic control devices on Lincoln Avenue. He states that he stopped at the stop sign for a few seconds. While he was stopped, he did not see any vehicles approaching from his left or right. After traveling approximately 1-2 feet, the collision occurred. He asserts that he hit his brakes when he saw the Marascias' vehicle. Korpi testified that his vehicle came into contact with either the front middle or front passenger's side of the Marascias' vehicle. In addition, the left side of the hood of his vehicle was impacted. He also testified that Alyssa Marascia sounded her horn. The Marascias argue that the deposition transcript and witness statement of non-party witness Cassandra House establish that defendant Korpi was 100% at fault for the happening of the accident.

In opposition to the cross motion, defendant Korpi asserts that he stopped at the stop sign and that third-party defendant Alyssa Marascia was speeding prior to the accident. In addition, the deposition testimony of non-party witness Cassandra House establishes that the Marascias' vehicle was traveling 15 miles per hour over the speed limit of 30 miles per hour. Thus, an issue of fact exists as to whether third-party defendant Alyssa Marascia was comparatively negligent by speeding prior to the accident.

Summary judgment is a drastic remedy and should only be granted in the absence of any triable issues of fact (*see Rotuba Extruders, Inc. v Ceppos*, 46 NY2d 223, 413 NYS2d 141 [1978]; *Andre v Pomeroy*, 35 NY2d 361, 362 NYS2d 131 [1974]). It is well settled that the proponent of a summary judgment motion must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient proof to demonstrate the absence of any material issues of fact (*Alvarez v Prospect Hosp.*, 68

NY2d 320, 324, 508 NYS2d 923, 925 [1986]). Failure to make such a showing requires a denial of the motion, regardless of the sufficiency of the opposing papers (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853, 487 NYS2d 316, 318 [1985]). Further, the credibility of the parties is not an appropriate consideration for the Court (*S.J. Capelin Assocs., Inc. v Globe Mfg. Corp.*, 34 NY2d 338, 357 NYS2d 478 [1974]), and all competent evidence must be viewed in a light most favorable to the party opposing summary judgment (*Benincasa v Garrubbo*, 141 AD2d 636, 637, 529 NYS2d 797,799 [2d Dept 1988]). Once a *prima facie* showing has been made, the burden shifts to the party opposing the summary judgment motion to produce evidence sufficient to establish the existence of a material issue of fact (*see Alvarez v Prospect Hosp., supra*).

As a preliminary matter, the Court notes that it cannot consider the unsigned deposition transcripts of the Marascias since they were submitted without an explanation as to why they were unsigned (*see McDonald v Mauss*, 38 AD3d 727, 832 NYS2d 291 [2d Dept 2007]). In addition, the Court cannot consider the uncertified police report since it is inadmissible hearsay (*see Rivera v GT Acquisition 1 Corp.*, 72 AD3d 525, 899 NYS2d 46 [1st Dept 2010]; *State Farm Mut. Auto. Ins. Co. v Langan*, 18 AD3d 860, 796 NYS2d 663 [2d Dept 2005]).

Vehicle and Traffic Law § 1172 (a) provides that “every driver of a vehicle approaching a stop sign shall stop at a clearly marked stop line, but if none, then shall stop before entering the crosswalk on the near side of the intersection, or in the event there is no crosswalk, at the point nearest the intersecting roadway where the driver has a view of the approaching traffic on the intersecting roadway before entering the intersection and the right to proceed shall be subject to the provisions of section eleven hundred forty-two.” Vehicle and Traffic Law § 1142 (a) provides that “every driver of a vehicle approaching a stop sign shall stop as required by section eleven hundred seventy-two and after having stopped shall yield the right of way to any vehicle which has entered the intersection from another highway or which is approaching so closely on said highway as to constitute an immediate hazard during the time when such driver is moving across or within the intersection.” It is well settled that “a driver who has the right-of-way is entitled to anticipate that the other motorist will obey the traffic law requiring him or her to yield” (*Vainer v DiSalvo*, 79 AD3d 1023, 1024, 914 NYS2d 236, 237 [2d Dept 2010]; *see also Platt v Wolman*, 29 AD3d 663, 816 NYS2d 121 [2d Dept 2006]; *Dileo v Barreca*, 16 AD3d 366, 793 NYS2d 53 [2d Dept 2005]).

Here, third-party defendant Alyssa Marascia, on her motion for summary judgment dismissing the third-party complaint, and the plaintiffs, on their cross motion for summary judgment on the issue of liability, have established their *prima facie* entitlement to summary judgment as a matter of law by showing that defendant Korpi failed to properly observe and yield to cross traffic before proceeding into the intersection (*see* Vehicle and Traffic Law § 1142 [a]; § 1172 [a]; *Vainer v DiSalvo, supra*; *Platt v Wolman, supra*). In addition, third-party defendant Alyssa Marascia, who had the right of way, was entitled to assume that defendant Korpi would obey the traffic laws requiring him to yield (*see Platt v Wolman, supra*).

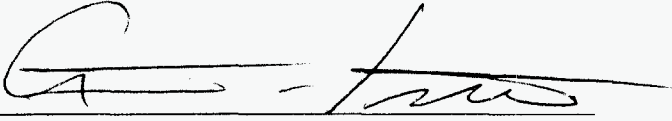
In opposition, defendants met their burden of producing evidence sufficient to establish the existence of a material issue of fact as to whether third-party defendant Alyssa Marascia contributed to the cause of the accident by speeding through the intersection after defendant Korpi had already entered the intersection (*see Kaplan v Vanderhans*, 12 AD3d 413, 786 NYS2d 526 [2d Dept 2004]; *Romano v 202 Corp.*, 305

Marascia v Korpi  
Index No. 09-28411  
Page 5

AD2d 576, 759 NYS2d 365 [2d Dept 2003]; *Hernandez v Bestway Beer & Soda Distr.*, 301 AD2d 381, 753 NYS2d 467 [1st Dept 2003]).

In view of the foregoing, the third-party defendant's motion for summary judgment dismissing the third-party complaint and the plaintiffs' cross motion for summary judgment against the defendants are denied.

Dated: June 30, 2011

  
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J.S.C.

\_\_\_\_\_ FINAL DISPOSITION      X   NON-FINAL DISPOSITION